



Appeal Decision

Site visit made on 31 May 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2022

Appeal Ref: APP/A2280/C/20/3256273

Land at Matthews Riding School, Capstone Farm Country Park, Capstone Road, Chatham, Kent

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Antonio Rocco against an enforcement notice issued by The Medway Council.
 - The enforcement notice was issued on 16 June 2020.
 - The breach of planning control as alleged in the notice is, without the benefit of planning permission, the operational development consisting of:
 - (a) the erection of a two-storey building
 - (b) the erection of four single storey buildings
 - (c) the erection of a wall, and
 - (d) excavation of land.
 - The requirements of the notice are:
 - (i) Demolish all the structures shown cross hatched on the plan numbered 1 attached to the notice
 - (ii) Demolish the extension structure shown stippled on the plan numbered 1 attached to the notice
 - (iii) Demolish the wall shown cross hatched on the plan numbered 1 attached to the notice
 - (iv) Remove all debris and associated materials from the property
 - (v) Infill and re-grade the area of land shown hatched on the plan numbered 2 attached to the notice back to previous land levels
 - (vi) Once step (v) has been completed finish with 300mm of topsoil and re-seed with grass.
 - The period for compliance with the requirements are:
 - (a) Steps 5(i) to (iii) inclusive within four calendar months.
 - (b) Steps 5(iv) to (v) inclusive within six calendar months.
 - (c) Step 5(vi) within seven calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld with a correction and variations as set out in the Formal Decision below

Procedural matters

1. It is the convention in enforcement notices to identify the address to which the notice relates with the prefix 'Land at'. The enforcement notice in this case does not follow that convention and, in deference to that normal convention, I will correct the notice to refer to 'Land at'.

2. The requirement a paragraph 5(iv) of the notice is to remove all debris and associated materials from the property. Although the appellant has clearly understood that this requirement relates only to debris and associated materials resulting from the demolition of the buildings and wall required by paragraphs 5(i), 5(ii) and 5(iii), the notice as worded is somewhat ambiguous in that regard. Accordingly, I will vary the requirement at paragraph 5(iv) to make that clear.
3. The power under section 176(1) of the 1990 Act provides that a notice may be corrected and varied provided that no injustice would be caused by doing so. I am satisfied that no injustice would be caused by correcting and varying the notice in the above respects.

The appeal on ground (f)

4. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice are to demolish all the structures stated in the notice, to infill and re-grade the land and to finish with topsoil/re-seed with grass. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.
5. The appellant's case on the ground of appeal is that the requirements are excessive because the buildings are steel framed structures that are bolted together. They could therefore be unbolted and removed from the property rather than being demolished. The majority of the buildings and walls are built with concrete and thermal blocks. The appellant therefore accepts that the buildings could be dismantled in part and, where this is not possible, demolished. The appellant accepts that this would be sufficient to remedy the alleged harm.
6. This is simply a matter of semantics. In order to achieve the purpose of the notice, the buildings/extension must be removed. Whether that removal is achieved by demolition or by dismantling the structure is entirely academic. However, in the interests of clarity, I will vary the requirements at paragraphs 5(i) and 5(ii) of the notice to specifically encompass both the demolition and the dismantling of the building.
7. Accordingly, the appeal on ground (f) succeeds to that limited extent.

The appeal on ground (g)

8. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three months for the demolition/dismantling of the buildings and the wall, six months for the removal of the resultant debris and to infill/re-grade the land, and seven months to finish with topsoil/re-seed with grass.

9. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice. In so doing, I must assume that the building subject to the enforcement notice does cause the harm alleged in the reasons for issuing the notice.
10. It is the appellant's intention (as stated in January 2021) to re-open the existing riding school premises to the public when its refurbishment is almost complete, which would be as soon as the (then extant) Covid-19 restrictions are relaxed or lifted. The public would be allowed onto the site and within existing buildings, which will limit access to the development. In addition, the appellant explains that appropriate care will have to be taken in removing the development in order to recycle and re-use the materials. The appellant considers that will take a minimum period of 18 months, but Covid-19 compliance will play a major part in the process and time taken to complete the removal of the development. The appellant therefore considers that a period of two years would be more appropriate to comply with the notice, to ensure against any delay caused by circumstances outside of his control and due to the Coronavirus pandemic.
11. However, none of the appellant's claims in these respects have been substantiated with evidence. There is also an inherent contradiction within the appellant's evidence. The buildings are of steel framed construction, and the walls are built largely with concrete and thermal blocks. There are some limited areas of brickwork, but these are not extensive. On the face of it, with possible exception of the steelwork and brickwork, there appears to be little of value to recycle and re-use. The appellant has not given any explanation as to what materials might be recycled and re-used, what the quantum of those materials is expected to be or why the period of time sought is required to achieve that.
12. Much of the appellant's request for additional time is predicated on the restrictions arising from the Coronavirus pandemic and his intention to re-open the existing riding school premises to the public. At the time of my site visit, those restrictions had not been in place for several months and yet there was no sign that the riding school was about to re-open in the near future. Neither were there any signs that work was in fact progressing towards that re-opening: at the time of my site visit, the building was being used to store vehicles and equipment, with no works taking place on the building itself. Consequently, even though the ground surface was covered in a suitable material, it is evident that a considerable amount of further work is required before the re-opening for use as a riding school would be possible. Given that the coronavirus restrictions have now been lifted, and that the riding school building is not yet available for public use, there is in my view no reason why works to comply with the notice cannot safely proceed. I therefore see no reason to extend the period of compliance on that account.
13. In weighing the balance between public and private interests, for the reasons set out above I consider that the public interest in expeditious compliance with the requirements of the enforcement notice outweighs private interest in extending that period of compliance. I am, therefore, not persuaded that there is any need to extend the period for compliance with the notice and am satisfied the period(s) of compliance of stated in the notice is a proportionate response to the breach of planning control that has occurred. Accordingly, the appeal on ground (g) fails.

Conclusion

14. For the reasons given above, I conclude that the requirements of the notice are not excessive to remedy the breach of planning control that has occurred and that the period for compliance with the notice does not falls short of what is reasonable. In the interests of clarity, I shall correct and vary the enforcement notice prior to upholding it

Formal Decision

15. It is directed that the enforcement notice is corrected by:
- in paragraph 3 of the notice, insert the words 'Land at' before the words 'Matthews Riding School'
16. It is directed that the enforcement notice is varied by:
- in paragraphs 5(i) and 5(ii) of the notice, insert after the word 'Demolish' the words 'and/or dismantle as appropriate'.
 - in paragraph 5(iv) of the notice, insert after the word 'Property' the words 'arising from compliance with the requirements at paragraph 5(i), 5(ii) and 5(iii) of the notice'.
17. Subject that correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer

INSPECTOR