



Appeal Decision

by **Felicity Thompson BA(Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 03 August 2022

Appeal Ref: APP/A4710/C/21/3282160

Land known as St Giles Stoneworks, St. Giles Road, Halifax HX3 8BN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Tony Hunter (also known as Sheill) of Spring Lodge Stone Services against an enforcement notice issued by Calderdale Metropolitan Borough Council.
 - The notice was issued on 13 August 2021.
 - The breach of planning control as alleged in the notice is:
 - 1) Without planning permission, the undertaking of engineering operations on the Land namely the excavation of previously restored land and extraction of mineral waste including stone, hardcore and soil using 360-degree excavators substantially altering the ground levels as shown on the photographs attached to the enforcement notice as Appendix 2 (Breach 1).
 - 2) Without planning permission, the material change of use of the Land from a use for the purchase of natural stone, both new and second hand; the storage, working, cutting, sawing and dressing of the stone, the selling and transportation of the finished stone to a mixed use for the purchase of natural stone, both new and second hand; the storage, working, cutting, sawing and dressing of the stone, the selling and transportation of the finished stone and the depositing and sorting of extracted mineral waste on the Land as shown on the photographs attached to the enforcement notice as Appendix 2 (Breach 2).
 - The requirements of the notice are:
 - (i) Stop the excavation of previously restored land on the Land
 - (ii) Stop the extraction of mineral waste on the Land
 - (iii) Cease the use of the Land for the depositing of extracted mineral waste.
 - (iv) Cease the use of the Land for the sorting of the extracted mineral waste.
 - (v) Restore the Land using the extracted waste materials to its original contours.
 - The periods for compliance with the requirements are: For requirements 5(i) - (iv) above: immediately on when this Notice takes effect, and for 5(v) above six months.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. Since the notice is found to be a nullity, no further action will be taken in connection with the appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act as amended.

Reasons

2. Section 173 of the Act and the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 set out what a notice shall include. S173(9) states that an enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different

steps or activities; and, where different periods apply to different steps or activities, references in this part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.

3. The Council in section five of the notice set out the steps required to comply with the notice. As set out in the banner heading above requirements 5(i) – (iv) require the engineering operations and the use for depositing and sorting the extracted mineral waste to cease and 5(v) the land to be restored to its original condition.
4. S173(9) requires the notice to specify 'the period' at the end of which there has to be compliance. It has been held by the courts that the word 'period' implies a starting point and an end point with a period of time in between, and that an enforcement notice which required compliance 'immediately this notice takes effect', did not specify a period as required by s173(9) and was a nullity.
5. In this case, whilst the notice specifies a period of six months for the restoration of the land (requirement 5(v)), it specifies that those requirements set out in 5(i) – (iv) should cease immediately when the notice takes effect. It is therefore apparent on the face of the notice itself that it does not comply with s173(9) of the Act.
6. Defects in enforcement notices fall into two main categories: those that make it a nullity and those that may make it invalid. In the former there is in effect no notice at all and therefore nothing that can be corrected or, indeed, form the basis of an appeal.
7. As the enforcement notice fails to specify a period of time within which requirements 5(i) – (iv) of the notice should be complied with, this renders the enforcement notice a nullity as it does not comply with s173(9). Therefore, the notice is of no legal effect, and it could not be amended under s176, since that power could only apply to a notice which was not a nullity.
8. However, the Council, by virtue of section 171B(4)(b) of the 1990 Act is not precluded from taking further enforcement action in respect of this matter.

Other Matters

9. Even if those powers under s176 were available, it is not clear what would be a reasonable period for compliance with requirements 5(i) – (iv). I would have therefore been second guessing what a reasonable period would be. The appellant would have had no right of appeal under ground (g) in respect of any period I were to impose and as such this would have caused him injustice.
10. Had I not found the notice to be a nullity, I would have sought views about the allegation, specifically whether the excavation and mineral extraction (Breach 1) formed part of the alleged unauthorised use and if so whether the allegation should and could be corrected to reflect that.

Conclusion

11. I conclude that the notice is a nullity. In these circumstances, the appeal on the ground set out in section 174(2)(c) of the 1990 Act as amended does not fall to be considered.

Felicity Thompson

INSPECTOR