



Appeal Decision

Site visit made on 7 July

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 August 2022

Appeal Ref: APP/D3450/C/21/3283208

Land Off Mill Hayes Road , Knypersley , Biddulph, Staffordshire ST8 7BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Charles Shaw against an enforcement notice issued by Staffordshire County Council.
- The notice was issued on 19 August 2021.
- The breach of planning control as alleged in the notice is without planning permission, waste material, including (but not limited to) soils and construction and demolition waste has been imported and deposited on the Land in the approximate location indicated in yellow on Plan 1 dated August 2021.
- The requirements of the notice are to:
 - a) Cease the importation and deposition of any waste material on the Land.
 - b) Remove all waste material as referred to in Paragraph 3 of this Notice from any part of the Land to a site lawfully permitted for the acceptance and / or disposal of waste.
- The periods for compliance with the requirements are:
 - 5a) Cease the importation and deposition of any waste material on the Land. 1 day after this notice takes effect (22 September 2021)
 - 5b) Remove all waste material as referred to in Paragraph 3 of this Notice from any part of the Land to a site lawfully permitted for the acceptance and / or disposal of waste. 8 weeks after this notice takes effect (12 October 2021)
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is corrected by:

- At section 3 of the notice, inserting the words 'material change of use of the land for the importation and deposition of' and the deletion of 'imported and deposited' in the allegation, so that it reads 'Without planning permission, the material change of use of the land for the importation and deposition of waste material, including (but not limited to) soils and construction and demolition waste in the approximate location indicated in yellow on Plan 1 dated August 2021'.
- At section 4 of the notice, deleting '58' from 'Decision-making (58 – Enforcement)' and inserting '59' so that it reads 'Decision-making (59 – Enforcement)'.
- At section 4 of the notice, deleting 'Staffordshire Moorlands District Council Core Strategy Development Plan Document (Adopted 2014)' and substitute 'Staffordshire Moorlands Local Plan (Adopted September 2020)'.

- At section 5 of the notice, inserting the words 'use of the land for' and deleting the word 'any' in requirement 5a so that it reads 'Cease the use of the land for the importation and deposition of waste material'.
 - At section 5 of the notice, deleting the words 'to a site lawfully permitted for the acceptance and/or disposal of waste'.
 - At section 6 of the notice, deleting '(22 September 2021)'.
 - At section 6 of the notice, deleting 'to a site lawfully permitted for the acceptance and / or disposal of waste.' and '(12 October 2021)'.
2. Subject to the corrections above, the appeal is dismissed and the enforcement notice is upheld.

Matters concerning the notice

3. Section 55(3)(b) states that the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if (i) the superficial area of the deposit is extended, or (ii) the height of the deposit is extended and exceeds the level of the land adjoining the site. The notice alleges the importation and deposition of waste material on the land, which is a material change of use.
4. In the interests of clarity, the notice should refer to a material change of use. Correcting the notice so that it refers to the material change of use of the land for the importation and deposition of waste in the allegation and 'use' in requirement 5a would provide clarity, without expanding the scope of the breach or the requirements. Since these corrections would not change the substance of the notice, I consider they can be made without causing injustice to either party.
5. Requirement 5b of the notice requires the recipient of the notice to 'Remove all waste material as referred to in Paragraph 3 of this Notice from any part of the Land to a site lawfully permitted for the acceptance and / or disposal of waste'. Since the management of waste is controlled by other legislation, it is unnecessary to include the words 'to a site lawfully permitted for the acceptance and / or disposal of waste'. I shall correct the notice by deleting this part of the requirement. Since the requirement to remove the material will remain, I consider there will be no injustice to either party.
6. The Council advise that the notice contains a mistitling error in section 4 of the notice in that it refers to the Staffordshire Moorlands District Council Core Strategy Development Plan Document (Adopted 2014) rather than the Staffordshire Moorlands Local Plan (Adopted September 2020) which superseded the Core Strategy. The notice also refers to paragraph 58 of the National Planning Policy Framework, when it should refer to paragraph 59. The appellant has not appealed under ground (a) and so I consider there would be no injustice in correcting the notice in this way.

Ground (c)

7. An appeal under ground (c) is made on the basis that the matters stated in the notice, if they occurred, do not constitute a breach of planning control. The main thrust of the appellants' case under this ground is that the development is

- permitted by the 'GDO' as the clay material is required for maintenance and repair of ecological pools/lakes on the land. The burden of proof in an appeal under ground (c) is firmly on the appellant, on the balance of probabilities.
8. The Act defines agriculture as 'the breeding and keeping of livestock (including any creature kept for the production of food, wool skins or fur, or the purpose of its use in the farming of land)...'. For the purposes of Classes A, B and C, 'agricultural land' means land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business. 'Agricultural unit' means agricultural land which is occupied as a unit for the purposes of agriculture.
 9. The Council advise that the appeal site comprises an area of approximately 5 hectares. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)('the GPDO') Part 6, Class A permits the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of (b) any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit.
 10. Condition A.2(c) states waste materials are not brought on to the land from elsewhere for deposit except for use in works described in Class A(a)¹¹ or in the provision of a hard surface and any materials so brought are incorporated forthwith into the building or works in question. Even if the appeal site is less than 5ha, Class B, which is agricultural development on units of less than 5 hectares, has a similar restriction set out in B.5.(3)(a).
 11. The appellant advises that the material has been brought to the site for the maintenance and repair of ecological pools/lakes on the land. It has therefore not been used in the provision of a hard surface or works for the erection, extension or alteration of a building and therefore fails to comply with the conditions set out in the GPDO.
 12. Although the appellant raises concern about his fish being washed away, the ponds are described as 'ecological'. The appellant has provided no substantive evidence to show that fish are being kept for the production of food or that the ponds themselves are necessary for agriculture within the site.
 13. At the time of my visit, the only animals I saw within the site were horses which were being fed with hay in a limited area which was fenced off from the rest of the site, rather than grazing the land. From the evidence submitted by the Council, it seems likely that horses have been brought to the site after the enforcement notice was issued.
 14. Although raised under ground (d), the appellant states that hard-core was put down to form a 'small safe access for farming'. However, the appellant has provided no substantive evidence to show how the land is being used for agriculture or that the appeal site was agricultural land comprised in an agricultural unit which was so used for the purposes of a trade or business, as required by Part 6 of the GPDO.
 15. The appellant asserts that the pool's status in planning terms was established because the Council 'dropped' their requirements to fill it in over 10 years ago and that any such thing, once lawful, has a right in law to be maintained. Section 55 of the Act sets out the meaning of development and identifies those

¹¹ Class A(a): Works for the erection, extension or alteration of a building.

operations which do not involve development of the land. The maintenance of ponds is not included in the list of exceptions. The appellant has not demonstrated that the material has been used in maintaining the ponds and even if he had, such works would not be permitted by the GPDO.

16. Thus, for the reasons given above, the appeal under ground (c) must fail.

Ground (d)

17. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The main thrust of the appellant's case is that, at the time the notice was issued, more than ten years had 'expired' for hard core that was put down to form a 'small safe access for farming and water pools/lakes re-establishment'.
18. Appeal reference APP/B348/C/11/2144798 related to an enforcement appeal at the site, which, as corrected concerned without planning permission, the excavation of earth and soil from the Red Land and its deposit onto the Red Land. In particular, the appeal concerned an excavation approximately 100m long and 20m wide which had filled with water. The requirements were to cease extraction of the land and restore the land to its condition before the breach took place.
19. The appellant suggests the pool is now lawful because the Council 'dropped their requirements to fill it in'. However, the requirements of an enforcement notice have an enduring effect. Section 173A(1) of the Act enables local planning authorities to waive or relax any requirement of an enforcement notice. I have no substantive evidence to show this is what has occurred.
20. Nevertheless, the notice which is the subject of this appeal is not attacking the creation of the pool itself but rather the material which has been imported which the appellant states has been used to maintain and repair the pond. As set out above, the importation of waste material and its use for the maintenance and repair of ponds is development which is not permitted by the GPDO.
21. The Council has provided numerous photographs which show that material has been deposited within the site between 2017 and 2021. An aerial photograph provided by the Council shows the access track to the appeal site is present in 2015. However, the access track present in 2015 is excluded from the notice and no such track is evident within the appeal site itself in 2015.
22. Thus, the appellant has not shown, on the balance of probability, that the waste material was deposited on or before 19 August 2011². Consequently, the appeal under ground (d) must fail.

Ground (f)

23. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice, or... to remedy any injury to amenity which has been caused by any such breach.

² 10 years before the notice was issued.

24. Section 173(4) of the Act sets out the purposes of an enforcement notice are (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
25. It is clear from the wording of the notice that its purpose is to remedy the breach of planning control by ceasing the use and removing the deposited material from the site.
26. The appellant states that the visual intrusion created by the deposit of clay will be removed when the clay is used for repair of pool/lake retaining mound. However, the appellant has not appealed under ground (a) and so I cannot consider planning merits. Allowing the appellant to retain material within the site would not remedy the breach and so the appeal under ground (f) must fail.

Ground (g)

27. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
28. The appellant suggests that any removal of material needs to be done in the summer time as the land is a wet land and such any excavation would be impeded by in rush of high water levels as the land is technically water logged.
29. Given the date of this decision, I consider there is likely to be sufficient dry weather for the appellant to remove the material. Consequently, the appeal under ground (g) fails.

Conclusion

30. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

M Savage

INSPECTOR