



Appeal Decision

Hearing held on 8 September 2022

Site visit made on 8 September 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 03 October 2022

Appeal Ref: APP/W0910/C/21/3289544

Land to the south of Leece Lane, Barrow in Furness, LA13 0JG, 322375, 469540

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mulberry Homes Ltd against an enforcement notice issued by Barrow-in-Furness Borough Council.
 - The notice, numbered ENF/2021/0002.P.663, was issued on 10 November 2021.
 - The breach of planning control as alleged in the notice is that without planning permission building and engineering operations that constitute development (as defined by Section 55 of the Town & Country Planning Act 1990) have taken place namely soil excavation, mounding, re-grading of land, deposit of hardcore, creation of hard surfaces and vehicular accesses, infilling of voids and associated ground clearance including the removal of roadside hedgerows, planting and tress to facilitate the engineering operations amounting to development and thereby a breach of planning control contained in the TCPA 1990 has taken place.
 - The requirements of the notice are to: (i) Cease carrying out the unauthorised engineering operations and works. (ii) Cease carrying out works of site clearance and ground and site preparation. (iii) remove the vehicular access to both fields. (iv) Remove all hardcore from Field 2 (the "Green Wedge") and reinstate the land to its previous greenfield condition. (v) Re-seed all land that has been disturbed (for clarity this refers to both fields) using agricultural grass seed and reinstate the land to its previous greenfield condition. This should be carried out and completed within the next planting season. (vi) Re-instate the hedgerows along the entire length of the roadside frontages of both fields, other than a gap from a small field gate, as indicated on Plan attached using the specification below. This should be carried out and completed within the next planting season with the land prepared for planting and drained in accordance with correct arborical good practice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f), (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by:
2. the deletion of the words in Section 5 (i) to (vi) and the substitution of the words:
 - (i) Permanently cease carrying out the unauthorised engineering operations described in paragraph 3 in this notice.
 - (ii) Permanently cease carrying out the unauthorised works of site clearance and ground site preparation described in paragraph 3 in this notice.

- (iii) Permanently stop-up the vehicular accesses created by the unauthorised works to each field, by returning them to their previous condition prior to the unauthorised works.
- (iv) Remove all of the hardcore that is visible on the surface of Field 2 (the "Green Wedge").
- (v) Re-instate the hedgerow along the entire length of the roadside frontage of both fields as indicated on Plan 3 attached, in accordance with the specification set out in paragraphs 5.1 – 5.4 of this notice and as indicated in Diagram 1 annexed hereto. The edge of the hedge fronting Field 2, where it abuts the highway, shall be set back 1m from the edge of the carriageway.

This work should be carried out and completed in accordance with the time period for compliance set out in section 6.2 of this notice.

3. the deletion of 6 months as the time for compliance in Section 6 and substitution with the words:
 - 6.1 In relation to 5 (i) and 5 (ii) the period for compliance is immediately.
 - 6.2 a: In respect of Field 1 – the period for compliance is 9 (nine) calendar months from the date upon which this notice takes effect.
 - b: In respect of Field 2 - the period for compliance is 6 (six) calendar months from the date upon which this notice takes effect.
4. Subject to the variations the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

5. The appellant withdrew the appeal under ground (c) at the beginning of the hearing.

Ground (f)

6. The parties sought to vary the requirements of the notice in light of a planning application that has been submitted relating to part of the appeal site. The surface of the fields has naturally 'greened' due to the passage of time and the Council accept that there is no longer a requirement to re-seed the site. As part of the site is allocated for housing and an application has been submitted the Council's case is that only the boundary to the site allocated as 'Green Wedge' (Field 2) needs to be replanted with hedgerow (rather than the whole of the site which adjoins the highway). They also require the vehicular accesses to be stopped up and the hardcore visible on the 'Green Wedge' to be removed. The appellant supports these variations.
7. The proposed variations do not cause injustice and there were no comments received from any interested parties regarding them. The varied requirements do not exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice. I therefore direct that the variations to the requirements should be made as set out above in the formal decision.

Ground (g)

8. The Council accepts that the period for compliance for the field to which the planning application relates (Field 1) should be extended to 9 months to allow time for that application to be properly determined, and I accept that this is proportionate in the circumstances. The time period in relation to the 'Green Wedge' (Field 2) will not change.
9. I therefore direct that the unauthorised engineering operation and works should cease immediately and that the period for compliance for the reinstatement works in relation to Field 1 should be varied to 9 months.

Zoë Franks

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Rawdon Gascoigne, BA (Hons), MRTPI, Emery Planning Partnership

Alexa Burns, Emery Planning Partnership

FOR THE LOCAL PLANNING AUTHORITY:

Maureen Smith BA (Hons), MSc, MRTPI, Principal Planning Officer

Timothy Leader, Barrister

INTERESTED PARTIES:

Paul Burns

Councillor Martin McCleary

Councillor Derek Gawne