



Appeal Decision

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21ST NOVEMBER 2022

Appeal Ref: APP/G5180/C/21/3285855

Land at Lower Hockenden Farm, Hockenden Lane, Swanley BR8 7QH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Killoughery Properties Limited against an enforcement notice issued by London Borough of Bromley.
 - The notice was issued on 27 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land for storage of metal containers, skips, quarrying equipment, metal cylinders and other machinery.
 - The requirements of the notice are: (1) Cease the unauthorised use of any part of the land for the storage of metal containers, skips, quarrying equipment, metal cylinders and other machinery, and; (2) Remove all the metal containers, skips, quarrying equipment, metal cylinders and other machinery from the land.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(e) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matter

2. I consider that the appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.

Ground (e) appeal

3. The ground of appeal is that copies of the enforcement notice were not served as required by s172 of the Act. That section requires copies of the notice to be served on the owner and on the occupier of the land to which it relates and on any other person with an interest in the land, being an interest which, in the opinion of the Local Planning Authority, is materially affected by the notice.
4. The appeal site consists of open land to the north of an active sand and gravel quarry. The activities described in the notice are taking place on a relatively small part of the site. Copies of the notice were served on the appellant, who I am given to understand owns the freehold of the site, as well as on HSBC Bank, by means of the Royal Mail recorded delivery service. In addition, copies of the notice addressed to the "Owner/Occupier" were affixed on machinery/equipment at the site associated with the activities described in the notice and on the vehicular access gates.

5. An enforcement notice is required to be served in accordance with s329(1) of the Act. The prescribed methods of service include delivering the notice to the person on whom it is to be served or to whom it is to be given; or leaving it at the usual or last known place of abode of that person, or in the case where an address for service has been given by that person, at that address; or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address; or in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.
6. A separate firm, Bournewood Sand and Gravel Ltd (BSG) has a right to use and occupy the site, under licence from the appellant. I am given to understand that it is BSG, not the appellant, who is responsible for undertaking the activities described in the notice. As an occupier, BSG clearly has an interest that is materially affected by the notice, given the likely major consequences for its operations at the site if the notice were to take effect.
7. The appellant had informed the Council of BSG's interest in the site in response to a Planning Contravention Notice. However, no copy of the enforcement notice was served on BSG at their registered or principal office. Addressing copies to the "Owner/Occupier" and affixing them to the site is not sufficient to amount to serving copies of the enforcement notice on BSG, as the proper method for service on an incorporated company or body, set out above, was not followed. Moreover, as the land is not unoccupied the provisions for service in that eventuality, set out in the Act at s329(3), do not apply. I understand that there is no reference to BSG having an interest in the site on the office copy obtained from the Land Registry. Even so, that does not mean that they have no interest in the site. There are many instances where all the interests in particular land and buildings cannot be ascertained solely by relying on the Land Registry.
8. Consequently, on the balance of probability I find that the notice was not served as required by s172 of the Act.
9. At s176(5), the Act provides that where it would otherwise be a ground for determining an appeal under s174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, that fact may be disregarded if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
10. As noted above, copies of the notice were affixed to objects on the site. However, in my view, given the relatively isolated location of the site, coupled with uncertainty over whether their employees visit regularly, there is a significant risk that the notice may not have come to BSG's attention until after the date it was due to take effect, thus denying them the opportunity to make an appeal. The appellant clearly received a copy of the notice and was able to make an appeal. The appellant could have made BSG aware of the notice, its implications and their right of appeal. However, I am not clear whether this has occurred in practice. In this regard, I note that no representations have been received from BSG concerning the appeal.

11. Moreover, it is entirely possible that, had BSG had the opportunity to do so, they would have lodged an appeal on grounds additional to those pursued by the appellant. For example, BSG could have appealed on ground (a)-that planning permission should be granted for the activities described in the notice and paid the relevant fee. They might also have appealed one or all of grounds (b), (c), (d) and (f). The fact that the appellant owns the site does not mean that they should be expected to incur the significant expenditure involved in preparing an appeal against the notice on behalf of an interested party. Nor can they be expected to be able to properly represent the interests of another party. As a result, I have little assurance that BSG have been afforded the opportunity to take part in these proceedings as an appellant and to fully argue why their appeal should be allowed.
12. Given the likely major consequences if the notice were to be upheld, in my view there would be substantial prejudice if the appeal were to proceed without giving BSG an opportunity to fully take part in the proceedings. It follows that it would not be appropriate for me to disregard the failure of service.
13. Therefore, the ground (e) appeal succeeds.

Conclusion

14. For the reasons given above I consider that the appeal should succeed on ground (e). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under ground (g) does not need to be considered.

Stephen Hawkins

INSPECTOR