



Appeal Decisions

Site visit made on 14 November 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2022

Appeal A Ref: APP/P0240/C/21/3280366 & Appeal B 3280367 & Appeal C 3280368 & Appeal D 3280369 & Appeal E 3280370

Land at Tudor Oaks Lodge & Restaurant, Taylors Road, Stotfold, Hitchin SG5 4AZ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeals are made by Mr Romal Zane (Appeal A), Mr Aidean Naseri (Appeal B), Mr Gharzai Naseri (Appeal C), Mr Mohammed Naseri (Appeal D) and Mr Quais Naseri (Appeal E) against an enforcement notice issued by Central Bedfordshire Council.
- The notice was issued on 5 July 2021.
- The breach of planning control as alleged in the notice is without planning permission, change of use of land for the importation, deposition and storage of waste including soils, stone construction and demolition type waste, shredded mixed waste, and trommel fines from shredded mixed waste, and the siting of metal storage containers.
- The requirements of the notice are to:
 1. Cease the importation, deposit and storage of waste materials use on the land.
 2. Cease the spreading of waste materials on the land.
 3. Remove from the land all deposited waste materials.
 4. Restore the land to its former condition prior to the commencement of the unauthorised development in July 2020 and reseed with grass.
 5. Remove from the land all plant, machinery and equipment used in association with the unauthorised development including all the metal storage containers.
- The periods for compliance with the requirements are: In respect of requirement 1 one calendar month. In respect of requirement 2 one calendar month. In respect of requirements 3 to 5 inclusive six calendar months.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decisions

1. It is directed that the enforcement notice is varied by:
 - At section 6, the deletion of 'six' and the substitution of 'nine' as the period for compliance in respect of requirements 3 to 5 inclusive, so that it reads 'In respect of requirements 3 to 5 inclusive nine calendar months from the date when this Notice takes effect.'
2. Subject to the variation above, the enforcement notice is upheld.

Preliminary Matters

3. The appellants requested that the appeal proceed by way of hearing due to the 'complex nature of the case and the number of interested parties with various degrees of culpability'. I have reviewed the evidence and, despite the number of appellants, given the matters in dispute, I am satisfied that the appeal can be determined by way of the written representations procedure.

Ground (b)

4. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting the breach of planning control have not occurred, as a matter of fact. In a ground (b) appeal, the burden of proof is firmly on the appellants, to show that the matters have not occurred, on the balance of probabilities.
5. The appellants question the amount of material claimed to be on site and assert that some of the material was already present. However, the appellants do not dispute that waste has been deposited at the site, nor do they suggest that the matters stated in the breach have not actually occurred. During my visit, I saw that significant quantities of waste material, which appears consistent with the description stated in the allegation, has been deposited at the site. The breach has occurred as a matter of fact and so the appeal under ground (b) must fail.

Ground (d)

6. Although the appellants did not tick ground (d) on the appeal form, given their assertion that some of the material was already present on site, I have considered whether the appeal should proceed under ground (d). For an appeal to succeed under ground (d), the appellants would need to show, on the balance of probabilities, that the material change of use occurred on or before 5 July 2011 and, if so, that it continued without significant interruption for at least 10 years thereafter.
7. The Council has responded to the appellants' argument in this regard and has provided an aerial photograph, dated 2016, which shows the area was laid with grass. The appellants do not provide any evidence to show how long the material they refer to was present at the site. Given the waste material is not evident in the 2016 aerial photograph provided by the Council, I consider it highly unlikely that the breach had occurred by 5 July 2011. Consequently, the appeal under ground (d) must fail.

Ground (f)

8. 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 those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
9. 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. Given the requirements, which include restoring the land to its former condition, it is clear that the purpose of the notice is to remedy the breach of planning control.
10. It is suggested that a significant amount of the deposited material could be used on site. However, the appellants have not appealed under ground (a) and so I cannot consider the planning merits of retaining material within the site. The purpose of the notice is to restore the land to its condition before the

breach took place. Allowing material to remain would therefore not remedy the breach. There are no lesser steps which have been put forward which would enable the land to be restored and so the appeals under ground (f) must fail.

Ground (g)

11. An appeal under ground (g) is made on the basis that any period specified in the notice...falls short of what should reasonably be allowed. The appellants assert that the leaseholder is responsible and should be the main target for enforcement action. Failing this, they suggest a period of 36 months is reasonable to comply with the notice.
12. Section 172(2) of the Act states that a copy of an enforcement notice shall be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. I have no evidence to show that the notice was not properly served and whilst the appellants state that the leaseholder is responsible for the breach of planning control, there is no error in serving the notice on the owners of the land.
13. Under section 178(2) of the Act, the landowner is entitled to recover from the person who committed the breach of planning control the expense of complying with the enforcement notice or the sums paid to the local planning authority if they took the required steps. However, this is a matter for the appellants and is not a reason, in my view, to extend the compliance period.
14. It is likely that the waste would need to be sampled to enable it to be sent to an appropriate facility. This may take some time, particularly since the material does not appear to be homogenous and so may require a number of samples to be taken. Poor weather conditions, which are more likely to occur over the winter, are also likely to affect the rate at which material can be taken away.
15. Although the material was brought to the land in a relatively short space of time, the appellants advise this was carried out by the leaseholder, who presumably had access to vehicles to deposit the material. While the site itself is close to the strategic highway network, it is likely that the appellants would need to arrange for an appropriate company to remove the material, once testing has been carried out. This is likely to take time to arrange.
16. I note the appellants raise financial constraints as a reason for extending the compliance period. However, I have no substantive evidence to show that such constraints necessitate extending the compliance period, particularly since the cost of remedying the breach is unlikely to be fully understood until the waste material has been tested.
17. The appellants cite Covid-19 restrictions as a reason for extending the compliance period. However, I am unaware of any remaining restrictions which are likely to impede the appellants' ability to comply with the notice. Given the nature of the breach, I consider it wholly undesirable to extend the compliance period to 36 months, which would be tantamount to a temporary planning permission.
18. In light of the above and having regard to the fact that this decision will be issued when weather conditions are likely to be less favourable, I consider extending the compliance period to nine months for requirements 3 to 5 only,

would be reasonable and proportionate. There is no justification to extend the compliance period for requirements 1 and 2 and I consider extending the compliance period for these requirements would be highly undesirable given the nature of the breach.

19. Thus, the appeals under ground (g) succeed to the extent set out above. I shall vary the enforcement notice before upholding it.

Conclusion

20. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeals on ground (g) succeed to that extent.

M Savage

INSPECTOR