



Appeal Decision

Site visit made on 30 November 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2023

Appeal Ref: APP/R3705/C/21/3288124

Land at Blabers Hall Farm, Green End Road, Fillongley

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Clarke Adams against an enforcement notice issued by North Warwickshire Borough Council.
 - The notice was issued on 4 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the undertaking of unauthorised engineering operations including the formation of earth bunds and alterations to the levels of the land by a cut-and-fill operation, together without the benefit of planning permission, the unauthorised screening and export of materials extracted from the land, shown edged red and hatched black, on the plan attached to the notice.
 - The requirements of the notice are to:
 1. Cease all engineering operations on the land including the formation of earth bunds, further alterations to the levels of the land by a cut and fill operation, and the screening and export of materials extracted from the land edged red and hatched black, on the attached plan.
 2. Remove the existing earth bunds shown cross hatched in the approximate position, on the attached plan, from the land, the materials forming the bunds should be removed from the land. Restore the land to its former levels.
 - The period for compliance with the requirements is: 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The enforcement notice is quashed.

Applications for costs

2. An application for costs has been made by North Warwickshire Borough Council against Mr Clarke Adams. This will be the subject of a separate decision.

Matters concerning the notice

3. An enforcement notice must be drafted fairly to tell the recipient what they have done wrong and what they must do to remedy it. The notice alleges engineering operations including the formation of earth bunds and alterations to the levels of the land by a cut-and-fill operation, together without the benefit of planning permission, the unauthorised screening and export of materials extracted from the land.
4. The appellant asserts that no cut-and-fill has taken place and no material has been exported. Cut and fill operations typically involve the removal, or cut of

- material from one location or part of a site for use elsewhere, to create a more suitable landform.
5. Photographs provided by the Council show a substantial depression in the land which has presumably been created by the extraction of material, whether that is mineral occurring naturally within the site, or deposited material. While this could accord with the 'cut' allegation, it is not clear what has become of the 'fill', whether it is contained within the bunds, and would therefore need to be removed from the site to accord with the requirements, or whether it has been placed elsewhere within the site.
 6. Photographs also show substantial mounds of material which appear to comprise rubble mixed with soil and a mound of mixed waste. The appellant states that no materials have been imported by him and the enforcement notice does not allege the importation of any material. The position from which the Council's photographs were taken is not identified on a plan. Nevertheless, the mounds of material do not appear to have been limited to the south western boundary, nor do they appear to have been shaped into bunds.
 7. During my site visit, I saw that much of the land has been levelled and stockpiles of materials which are evident in the photographs were not evident during my visit. From the evidence, it seems that waste materials have been historically imported and deposited within the site and that it is, at least in part, this material which has been processed within the site.
 8. The processing of waste material is generally a use of the land and the deposit of 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 the height of the deposit extended and exceeds the level of the land adjoining the site. However, the notice does not allege a material change of use, rather it alleges 'screening and export of materials'.
 9. The requirements, which include the removal of materials forming the bunds from the land, appear at odds with the allegation, since it does not allege the importation of material. I note the Council, suggests that the level of extracted materials cannot be utilised by re-use on the 'mixed-use planning unit'. However, if there was no importation of materials, it is not clear why simply restoring the levels would not be possible.
 10. The appellant has advanced their case on the basis that the operations are permitted by Schedule 2, Part 6, Class A, A(b) and Class C, C.1 and C.2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended). The Council disputes that the works accord with the GPDO as it exceeds the limitations within A.2(2). However, it is not clear from the notice or the Council's evidence where the alleged cut and fill has taken place.
 11. Although the general position of the bunds is identified on the notice, a substantial area, which incorporates structures and buildings, is identified as being the 'approximate extent of the unauthorised engineering operation'. I consider it highly likely that the Council has included this area because it has conflated engineering works with a use of the land.
 12. I find the wording of the notice to be ambiguous, with the ambiguity further compounded by the plan attached to it. Whilst the appellant has appealed

under ground (b), it is not disputed bunds have been constructed within the site and so I need to consider whether the notice can be corrected.

13. Were I to correct the allegation to refer to a material change of use of the land, this would change the nature of the allegation. The appellant has appealed under ground (a) on the basis of the alleged engineering works and not a material change of use. Correcting the notice in this way would cause injustice to the appellant since they are likely to have advanced a different case under ground (a).
14. Moreover, the Council alleges that part of Blabers Hall Farm is being used in connection with an unauthorised commercial storage use, being the subject of proposed further (authorised) enforcement action. In mixed use cases, the allegation should refer to all the components of the mixed use since the materiality of change should generally be assessed against the planning unit. It is not clear from the evidence before me, whether the mixed use would need to refer to a commercial storage use and if so, whether it would be necessary to require that it ceases.
15. Alternatively, I have considered whether it would be possible to correct the notice so that it simply refers to operational development, namely the formation of earth bunds and alterations to the levels of the land by a cut-and-fill operation. However, such a correction would not address the lack of precision regarding the cut and fill allegation or the apparent contradiction with the requirements and so ambiguity as to what the appellant has done wrong would remain.
16. I do not consider that the issues with the notice I have identified above are such as would necessarily render it a nullity. This is because the matters that appear to the Council as constituting a breach of planning controls are generally stated. Nevertheless, I conclude that the notice is invalid beyond correction, and should be quashed due to uncertainty.

Conclusion

17. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
18. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

M Savage

INSPECTOR