



Appeal Decision

Site visit made on 10 January 2023

by **A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

an Inspector appointed by the Secretary of State

Decision date: 06 February 2023

Appeal Ref: APP/Q9495/C/22/3297833

Land at Low Grassings and Level Field, Coniston, Cumbria

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr J Batty against an enforcement notice issued by Lake District National Park Authority.
- The enforcement notice was issued on 28 March 2022.
- The breach of planning control as alleged in the notice is making of a material change of use of agricultural land to a public car park and associated operational development consisting of the creation of tracks, areas of hardstanding, the installation of two pay and display parking machines, associated signage and supporting timber posts.
- The requirements of the notice are:
 - i. Discontinue use as a public car park; and
 - ii. Remove the infill stone from the excavations and from the Land; and
 - iii. Infill excavated voids created by requirement ii. with soil, compacted to match the ground level of the adjacent unexcavated areas; and
 - iv. Spread the areas of compacted soil with an agricultural grass seed at a mix amount of 20 kilograms of seed per hectare; and
 - v. Remove the two pay and display parking machines from the approximate locations indicated with a 'X' on the attached plan, from the Land; and
 - vi. Remove all associated signage and supporting timber posts relating to the use of the Land as a public car park, from the approximate locations indicated with a 'X' on the attached plan, from the Land; and
 - vii. Reinstate the land upon which the pay and display parking machines, associated signage and supporting timber posts were sited with an agricultural grass seed mix at a mix amount of 20 kilograms seed per hectare.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

The appeal on ground (b)

1. The ground of appeal is that the breach of control alleged in the enforcement notice had not occurred. In order to succeed on this ground it would need to be demonstrated that there has not been a material change of use of agricultural land to a public car park and that associated operational development has not occurred as a matter of fact.
2. The land is used for public car parking at certain time of the year and the for the rest of the time it remains in agricultural use, according to the appellant. At the time the enforcement notice was served, parts of the large field had been fenced off and excavation works taken place to create tracks and areas of

hardstanding to facilitate vehicular access and parking areas. Furthermore, there is evidence that two pay and display machines had been installed along with signage and supporting timber posts.

3. There is no dispute with reference to the above and consequently, the development had occurred as a matter of fact and thus the appeal on ground (b) must fail. The extent to which the development complies with permitted development requirements is discussed below under ground (c).

The appeal on ground (c)

4. The ground of appeal is that the matters alleged do not constitute a breach of planning control. Section 55 of the Act provides the statutory definition of development which includes the making of any material change in the use of any buildings or other land and the carrying out of building, engineering, mining or other operations in, on, over or under land.
5. Firstly, the appellant accepts that the creation of tracks and hardstanding constitute development for which planning permission is required. Since at the time the Notice was served no planning permission had been granted those parts of the development constitute a clear breach of planning control.
6. Moving on to whether there has been a breach of control with reference to a material change of use of the land, it is contended that the land continues to be used lawfully for agricultural purposes and the use for car parking occurs pursuant to permitted development provisions pursuant to Part 4, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The appellant confirms that the use for car parking in 2020 and 2021 did not exceed the 56 days allowed under the GPDO at that time, nor did it exceed 28 days in 2022 or will it in any subsequent years.
7. The appellant has accepted that the burden of proof lies with him but there is no evidence regarding the number of days when the car park has been used by the public. It is my understanding that a tally of vehicle numbers has been kept but that has not been submitted as evidence. Furthermore, the evidence before me is that the pay and display machines are too basic for records to be kept and the on line payment system does not record days. The lack of such evidence or any other evidence such as parking numbers derived from income generated by the use of the land for public car parking is of concern.
8. I acknowledge that the Council has not provided detailed numbers, but in this case the burden of proof is on the appellant and that has not been discharged sufficiently to show that on the balance of probabilities the level of use is below the thresholds set in the GPDO. I have taken account of the comments that the land continues to be used for agricultural purposes and I do not question whether or not the land continues to be used for such purposes at certain times of the year. However, based on the evidence before me the material change of use alleged in the Notice constitutes a breach of planning control and the appeal on ground (c) cannot succeed.
9. The signage, machines and timber supports can be moved when the car park is not being used, but that does not automatically mean they do not constitute operational development. Indeed, there are no permitted development rights for such operational development on the land in question and consequently,

although they are relatively minor parts of the alleged breach of planning control, they do require permission and such permission has not been granted to my knowledge. As such they are part and parcel of the alleged breach and the appeal on ground (c) cannot succeed.

The appeal on ground (f)

10. The ground of appeal is that the steps required by the Notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since in this case the Notice requires the discontinuance of the use of the Land as a public car park, the removal of excavated stone, infilling voids, spreading the areas of compacted soil with agricultural seed mix, removing the pay and display machines, removing signage and supporting timber posts and reinstating the land, the purpose is clearly remedy the breach. Allowing any part of the development to continue or remain in place would not achieve that purpose. In this respect, the appeals on ground (f) must fail.
11. As has been established by the courts¹ that an enforcement notice cannot take away permitted development rights. Therefore, even with full compliance with the requirements of the Notice the subject of this decision, the land could be used for a temporary period of up to 28 days in total in any calendar year for a temporary use.
12. In a case such as this where there is no appeal on ground (a), and the purpose is to remedy the breach of planning control, any lesser steps that would not remedy the breach cannot be accepted through ground (f). Therefore, the appeal on ground (f) does not succeed.

The appeal on ground (g)

13. The ground of appeal is that the time given to comply with the requirements is too short. The three calendar months given would be sufficient to discontinue the use and carry out the works necessary to reinstate the land to its condition before the breach took place. The twelve month compliance period suggested by the appellant would be excessive given the ongoing harm caused by the development in such a sensitive landscape setting. Therefore, the appeal on ground (g) fails.

Conclusion

14. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

15. The appeal is dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR

¹ Mansi v Elstree RDC [1964] 16 P&CR 154