
Appeal Decision

Site visit made on 7 February 2023

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

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Appeal Ref: APP/Z2315/C/22/3307509

Walton Copy Farm, Burnley Road, Cliviger, Burnley, Lancashire BB10 4TA

- 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 Philip Anthony Braithwaite against an enforcement notice issued by Burnley Borough Council.
- The enforcement notice was issued on 23 August 2022.
- The breach of planning control as alleged in the notice is the carrying out of unauthorised engineering and excavation works to the west and rear of the existing cottage. The creation of a new concrete road leading to a newly created higher plateau area with concrete block walling and concrete block compound area. The depositing on the site of unauthorised materials, concrete block compound and unauthorised storage containers.
- The requirements of the notice are:
 - a) Cease all unauthorised activity on the land.
 - b) Break up and remove from the land the concrete road and reinstate the land to its original form.
 - c) Remove all unauthorised materials, compacted hardcore and concrete blocks from the land.
 - d) Remove all unauthorised storage containers from the land.
 - e) Reinstate the land to its original form, as it was before the unauthorised excavation and engineering works took place and seed the land with grass.
- The periods for compliance with the requirements are:
 - 1) Cease all unauthorised activity immediately.
 - 2) Comply with the remainder of the steps to remedy the breach as outlined in section 5 of this Notice, those being b), c), d) and e) within 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: No further action is taken.

The Enforcement Notice

1. A Notice will be a nullity if it fails to specify a period for compliance – whether by complete omission or by failing to specify a period as such, perhaps by requiring compliance ‘immediately’. The courts have held¹ that ‘immediately’ is not a ‘period’ for the purposes of s173(9) of the 1990 Act as amended.
2. In this case the Notice requires all unauthorised activity on the land to cease ‘immediately’. Even though a time for compliance of six months is specified for remaining requirements b), c), d) and e), since there is a clear failure to specify a compliance period with respect to ceasing all unauthorised activity on the land, I have no option other than to find that the Notice is a nullity.

¹ R (oao Lynes & Lynes) v West Berkshire DC [2003] JPL 1137

Conclusions

3. For the reasons given above I conclude that the enforcement notice is a nullity and in those circumstances the appeal under the various grounds set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.

Formal Decision

4. Since the Notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act as amended.

A A Phillips

INSPECTOR