
Appeal Decision

Site visit made on 23 January 2023

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

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

Appeal Ref: APP/R4408/C/22/3304164

Land at Lund Hill Lane, Royston, Barnsley S71 4BD otherwise known as Monckton Colliery Site, Lund Hill Lane, Royston, Barnsley S71 4BD

- 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 Monckton Developments Limited against an enforcement notice issued by Barnsley Metropolitan Borough Council.
- The enforcement notice was issued on 1 July 2022.
- The breach of planning control as alleged in the notice is the material change of use of the Land for the importation and storage of construction and other waste materials (the Unauthorised Works).
- The requirements of the notice are:
 - i. Cease the unauthorised use specified in paragraph 3 at the Land.
 - ii. Remove all waste materials relating to the breach of planning specified in paragraph 3 from the Land.
 - iii. Restore the Land to its previous condition, prior to the breach of planning control taking place.
- The periods for compliance with the requirements are:
 - i. For the requirements specified in part 5(i) – ONE DAY from the date the Notice takes effect.
 - ii. For the requirements specified I part (ii) and (iii) – THREE MONTHS from the date the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2), (b), (c), (d), (e), (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 with a variation.

The appeal on ground (e)

1. The ground of appeal is that copies of the notice were not served as required by s172 of the Act. The appellant pleads that the Notice was not served on Monckton Developments Limited, as the owner and occupier of the Land and as such they have been substantially prejudiced.
2. However, it is clear to me that somehow the appellants must have received a correct copy of the Notice and made a valid appeal. As such, it has made little difference as to whether the Notice was properly served. Since under s176(5) of the Act they were not substantially prejudiced I am bound to conclude that the appeal on ground (e) cannot succeed.

The Appeal on ground (b)

3. The ground of appeal is that the breach of planning control alleged in the enforcement notice had not occurred. In order to succeed on this ground it

needs to be demonstrated that the material change of use of the Land for the importation and storage of construction and other waste materials as alleged had not occurred.

4. The appellant argues that the precise locations of the alleged unauthorised storage of waste materials on the Land are not clearly defined and the Notice fails to distinguish between mounds associated with the former use of the site as a colliery and coke works, including those used for maintenance and safety. It is also stated that numerous mounds of materials associated with the former colliery and coke works and subsequent demolition activities, remain on site and material from these mounds is periodically moved around the site before being regraded for maintenance and safety of the disused mine.
5. Other arguments presented by the appellant include the presence of contaminated materials, materials having been excavated from parts of the Land to fill in deep basements, pits, trenches and lagoons, the imported materials were products and not waste and previous excavation works have taken place on the Land to recover and remove residual stocks of coke and coal with some mounding of residual material on the Land. I also understand that subject to securing planning permission the Land would be fully remediated, including the removal of tyres. Works to provide clear access roads into and through the Land has also been undertaken by excavating existing materials and relocating them in other places within the site and laying hard access roads.
6. I accept that extensive authorised works may have taken place on the Land over the years, but the evidence presented by the appellant does not show that on the balance of probabilities the alleged breach of planning control, has not occurred as a matter of fact. It may well be that other activities have occurred alongside the unauthorised importation of construction and other waste materials. Indeed, it may be that construction materials may constitute "products" to which the appellant refers.
7. Furthermore, there is clear evidence from the Council that the alleged breach has occurred. This includes the complaints received, detailed photographic evidence taken by complainants showing large piles of construction and waste materials across parts of the site and aerial photographs which show how materials have accumulated on parts of the site since May 2019. The aerial photographs also appear to show vehicle tracks from the main vehicular access across the site to the area where materials have been deposited in the northern area of the Land in question. It is also my understanding the enforcement action has been taken following investigations including a multi-agency meeting between the Council, The Environment Agency, South Yorkshire Fire and Rescue and South Yorkshire Police.
8. Therefore, in the absence of clear evidence and based on the information before me and my own site observations, construction and other waste materials have been imported and stored on the Land and therefore the appeal on ground(b) must fail.

The appeal on ground (c)

9. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The materials change of use of the Land constitutes development within the meaning of s55 of the Act for which planning

permission is required. The appellant argues that the works do not constitute a breach of planning control since the development is permitted development pursuant to Class C, Part 17, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (the GPDO). This relates to "*the carrying out of development required for the maintenance of safety of the surface of the land at or adjacent to a mine or disused mine*".

10. Other than stating that the development is permitted development, there is insufficient evidence to support this assertion. It may be that some material has been imported onto the site or moved around the site to ensure health and safety requirements are met, but as a consequence of the lack of evidence I conclude that a breach of planning control has occurred. The appeal on ground (c) does not succeed.

The appeal on ground (d)

11. The ground of appeal is that at the date when the enforcement notice was issued, no action could be taken. In order to succeed on this ground it would be necessary to show that the material change of use of the Land for the importation and storage of construction and other waste materials occurred for a continuous period of ten years up to the date the enforcement notice was served.
12. In an appeal on ground (d) the onus of proving the relevant facts rests with the appellant, and the standard of evidence is the balance of probabilities. The appellant's own evidence does not need to be corroborated with independent evidence, and if there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.
13. Other than stating that the precise location of the mounds of material should have been clearly defined and that there are numerous authorised mounds of material on the Land associated with former site activities and maintenance and safety, there is little evidence to support this ground. There is certainly insufficient evidence to discharge the burden of proof.
14. Therefore, the appeal on ground (d) cannot succeed.

The appeal on ground (f)

15. 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 in s173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy the injury to amenity (s173(4)(b)). Since the Notice requires the unauthorised use to cease, removal of all waste materials relating to the alleged breach of planning control and the restoration of the Land to its previous condition prior to the breach of control taking place, the purpose is clearly to remedy the breach.
16. The continuation of any of the unauthorised activities, leaving any of the materials on site on site or failing to restore the land to its condition prior to the breach taking place would not achieve that purpose. In this respect, the appeal on ground (f) fails.

17. I have noted that the appellant has suggested that the materials could be used beneficially on the site. The failure of the appeal on ground (f) does not remove permitted development rights and should the appellant wish to pursue development activities pursuant to the provisions of the GPDO they would be entitled to do so.

The appeal on ground (g)

18. The ground of appeal is that the time given to comply with the requirements is too short. The one day given would be sufficient to cease all unauthorised use. With respect to the remaining requirements, the twelve month compliance period suggested by the appellants would be excessive having regard to the ongoing planning harm caused by the development. However, I do consider the period should be increased to enable the appellants to properly schedule the works, including minimising the potential effects on the site's ecology. The Council would not object to an extended total period for compliance of five month.
19. However, given the amount of waste to be removed and the additional works required to return the Land to its previous condition I consider eight months would strike an appropriate balance and would not place a disproportionate burden on the appellants. To this limited extent the appeal on ground (g) succeeds.

Formal Decision

20. The enforcement notice is varied by the deletion from paragraph 6 (ii) of the words "three months" and the substitution therefor of the words "eight months" as the time for compliance with requirements 5(ii) and 5(iii) of the Notice.
21. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR