



Appeal Decision

Site visit made on 7 March 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2023

Appeal Ref: APP/Q2371/C/22/3307825

Land at Haslingden Old Road, Oswaldtwistle BB5 3RG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Zohar Ali Ghafoor against an enforcement notice issued by Lancashire County Council.
 - The notice was issued on 23 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the deposit of waste within the land edged red on the plan attached to the enforcement notice.
 - The requirements of the notice are:
 - (i) Stop any further importation and deposit of waste within the land edged red attached to this notice.
 - (ii) Remove all imported wastes from the site for disposal at an authorised facility so that the surface of the land is reduced to the levels as existed prior to the development.
 - (iii) Replace all stripped topsoil within the land edged red to produce a level surface across all parts of the site where wastes have been deposited to provide a graded surface free of rocks and boulders exceeding 100 mm in any dimension together with bricks, concrete, stone and other materials of a size and type that would be detrimental any other impediments to normal agricultural operations.
 - (iv) Seed the land with an appropriate agricultural grass seed mix.
 - The periods for compliance with the requirements are:
 - (i) Within a period of 1 day from the date on which this notice takes effect.
 - (ii) Within a period of two months from the date on which this notice takes effect.
 - (iii) Within a period of three months from the date on which this notice takes effect.
 - (iv) Within six months of the date on which this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - 1) Deleting the allegation within section 3 of the enforcement notice (the matters which appear to constitute the breach of planning control) and replacing it with the following: *Without planning permission, the material change of use to use for the deposit of waste within the land edged red on the attached plan.*
2. Subject to the correction, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matter

3. The postcode in the banner heading above is taken from the appellant's appeal form since none was given in the enforcement notice.

The Enforcement Notice

4. The allegation as set out in section three of the enforcement notice refers to the deposit of waste on land, and in the reasons for issuing the notice the ten-year period is referenced. The enforcement notice should distinguish between operations and a material change of use, which it does not.
5. The parties' views were sought regarding a proposed correction to the allegation and the responses have been considered. The appellant's comments essentially relate to the Council's handling of their investigation. The Council considers that the development constitutes both operational development and a material change of use, although they confirmed that there would be no injustice caused by my proposed correction.
6. Waste material has been imported and deposited on the land. Whilst the levels of the land may have been raised, there is no evidence that the purpose of the waste deposit was to raise land levels. Consequently, and since it is evident that the appellant understands what the notice is directed at, I shall correct the notice to reflect that the development constitutes a material change of use.
7. Such a correction neither enlarges or reduces the scope of the breach or requirements and consequently, there would be no injustice to either party. I shall correct the notice accordingly under the available powers of section 176(1)(a) of the Act.

The appeal on ground (b)

8. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.'
9. It is evident from the Council's photographs that the breach has occurred, which is not disputed by the appellant. Their case is that the extent of the breach, as identified on the plan attached to the notice is too large and therefore the fee payable, for the deemed planning application, is incorrect.
10. The red line on the plan is drawn around a field boundary. The Council in their submissions refer to soils spread across the site at their first visit, and that the levels of the land have been raised across a large area of the field.
11. At my visit I saw that the land has become overgrown. Whilst I have powers to correct a defective enforcement notice, including by amending plans, subject to no injustice being caused, the appellant has submitted no substantive evidence to support their assertion that the plan does not accurately identify the land to which the notice relates. Consequently, I cannot conclude that the alleged breach has not taken place on all the land identified.
12. Accordingly, as a matter of fact, the matters stated in the notice have occurred. The appeal on ground (b) must fail.

The appeal on ground (f)

13. This ground of appeal is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173(4) of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)).
14. The appellant suggested that the matter could be addressed with specialist flood control techniques and repositioning of the soil across the land, however, I have no details before me. In any case, this is a matter which relates to and requires consideration of planning merits and since there is no ground (a) appeal there can be no arguments about the merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose.
15. The notice requires the use to cease and for the land to be restored to its previous condition, as such I find its purpose is to remedy the breach. That purpose can only be achieved in this case by ceasing the importation and deposit of waste and restoring the land. Since the requirements would do no more than seek to achieve this purpose, they are not excessive. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

16. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant suggested three months to be reasonable, on the basis that the period of one month is too short to submit a planning application, considering specialist advice and reports will be required. The notice sets out different periods for the different requirements, none of which are one month.
17. The time periods given for compliance within the enforcement notice are to allow for the use to cease and the physical works associated with the notice to be removed. Where an appeal is made against an enforcement notice, regardless of the grounds, the appeal 'stops the clock' and the period for compliance does not start until the date of the appeal decision.
18. The development enforced against has resulted in the loss of flood storage capacity therefore increasing the risk of flooding elsewhere. In this respect I note comments from the Environment Agency that properties downstream of the site have flooded, and this development raises the likelihood of them flooding again. The development is also inappropriate development in the Green Belt which is by definition harmful to the Green Belt. These harms should not be permitted to go on for any longer than necessary.
19. Consequently, whilst I acknowledge that the appellant was not responsible for the breach and note their willingness to submit a planning application, I consider the periods of one day to cease the use, two months for the removal of the waste and three and six months respectively for the restoration of the land, as specified in the notice, are proportionate to the breach of planning control that has occurred. The appeal on ground (g) therefore fails.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Felicity Thompson

INSPECTOR