
Appeal Decision

Site visit made on 25 April 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2023

Appeal Ref: APP/Q9495/C/22/3296184

Land at Brocka, Lindale LA11 6LW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Daniel Asplin against an enforcement notice issued by Lake District National Park Authority.
 - The enforcement notice, numbered E/2020/0337, was issued on 25 February 2022.
 - The breach of planning control as alleged in the notice is, without planning permission, the making of a material change of use of the Land from use as agriculture to use for storage (including vehicles, trailers, machinery, equipment, containers, building materials and tyres) and associated operational development, of engineering and other operations, consisting of the spreading of material resulting in an increase in the level of the Land and creating a hard standing to facilitate the use.
 - The requirements of the notice are:
 1. Discontinue the use of the land for storage
 2. Remove all stored items from the land, including vehicles, trailers, machinery, equipment, containers, building materials and tyre
 3. Remove all of the material comprised in the hard standing and that used to raise the level of the area identified on Plan 2 attached to the notice down to a level that corresponds with the immediately adjacent ground levels of the adjoining fields to the north, east and south of the Land
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (d) and (e) of the 1990 Act.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld.

Procedural matters

1. In his appeal form, in relation to the appeal on ground (b), the appellant states that the site has been used for agricultural storage since 2006. That is a point that more properly falls to be considered under ground (d): namely, that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The Authority covers this point in some detail in the Compliance Report submitted with the appeal questionnaire. I am therefore satisfied that I can treat the appellant's point as an appeal on ground (d) without causing injustice.
2. The appellant responds to the reason for issuing the notice relating to highway safety in his appeal statement. That is a matter that falls to be considered under an appeal on ground (a): namely that, in respect of any breach of planning control which may be constituted by the matters stated in the notice,

planning permission ought to be granted. However, the appellant has not appealed on ground (a) and has not paid the requisite fee. Consequently, I am not able to consider the point on highway safety made by the appellant.

The appeal on ground (e)

3. The ground of appeal is that copies of the enforcement were not served as required by Section 172 of the 1990 Act. In summary, Section 172 of the 1990 Act requires that the enforcement notice shall be served on the owner and on the occupier of the land to which it relates, and on any other person having an interest in the land.
4. The courts have held that service at an address stated in a Land Registry entry is to be regarded as proper service of a notice if a Local Planning Authority has not been given another address. The Authority has provided a copy of the Land Registry entry that it relied upon in serving the notice. The appellant himself does not appear on that document but the evidence provided by the Authority does confirm that all those who were recorded on the Land Registry entry at the relevant time were served with a copy of the notice. In accordance with settled case law, that is sufficient to comply with the requirements of section 172 of the 1990 Act.
5. In completing the appeal form, the appellant states that he owns the land. However, the appellant has not provided any documentary evidence to support the claim that he was the landowner at the time the notice was issued. I must therefore also rely on the Land Registry entry.
6. Furthermore, section 176(5) of the 1990 Act provides that, where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
7. In this case, it is apparent that the appellant received a correct copy of the notice and in good time. He was able to lodge his appeal on appropriate grounds. Consequently, even if the appellant had not been served with a copy of the notice as required by section 172 of the 1990 Act, it would make little difference because I am bound to conclude that he was not substantially prejudiced. Section 176(5) of the 1990 Act therefore comes into play.
8. Accordingly, the appeal on ground (e) fails.

The appeal on ground (b)

9. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. It is relevant that ground (b) is expressed in the past tense: the use of the land does not have to be ongoing and it is not necessary for any operational development to still be on the land. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.
10. There are two main elements to the breach of planning control alleged in the notice: these may be summarised as a material change in the use of the land

for storage and operational development culminating in an increase in the level of the land. It is convenient to consider the alleged material change of use in the first instance. The material change of use alleged in the notice is from use as agriculture to use for storage (including vehicles, trailers, machinery, equipment, containers, building materials and tyres).

11. At the time of my site visit, there were a number of vehicles and trailers on the land, including a JCB with a large tanker attached. There were two containers on the land and, just outside of the appeal site, numerous tyres. There was a second JCB equipped with a hydraulic actuating arm, plus a tractor unit with a low-loader trailer attached. There were lengths of pipework on the ground, and a mound of stones/gravel within a breeze-block revetment. The presence of the vehicles, the trailers, the pipework and the containers on the land at the time of my site visit are all consistent with the breach of planning control that is alleged to have occurred.
12. Furthermore, photographs of the site submitted by local residents show that the use of the site has been much more intensive than at the time of my site visit. These photographs show numerous containers on the site, including two of very similar appearance to those on site at the time of my site visit, if not the same ones. The photographs also show piles of building material/rubble, including one photograph dated 11 November 2021 (submitted as part of the Authority's evidence) that shows a significant quantity of sand/gravel on the site.
13. Other photographs submitted by local residents show JCBs and a tractor on the site that are very similar to those present on the site at the time of my site visit, and possibly the very same vehicles: one photograph appears to show the same tractor unit with a low-loader trailer attached, and another the JCB equipped with a hydraulic actuating arm. Another photograph shows tipper trucks/bodies and again the tractor unit with a low-loader trailer attached. It is not possible to discern from these photographs what these vehicles/trailers are being used for, but in every photograph the vehicles and trailers are unoccupied and unattended, and consequently have the appearance of being stored there rather than actually being used there. Indeed, there is no obvious purpose for which a JCB with a large tanker attached, a JCB equipped with a hydraulic actuating arm or a tractor unit with a low-loader trailer attached could be used on the appeal site itself unless just being stored there for use elsewhere.
14. The appellant explains that his father has begun building works on the main house and has stored building materials on the appeal site as it is the only space available to do so. I have great difficulty in reconciling that explanation with the type of vehicles/trailers that were present at the time of my site visit, and which are shown in the photographs submitted by local residents. It seems to me that a JCB with a large tanker attached, a JCB equipped with a hydraulic actuating arm and a tractor unit with a low-loader trailer attached are not the type of vehicles normally associated with works to a residential property. I am also mindful that the quantity of sand/gravel on the site evident in photographs taken in November 2021 exceeds what may normally be expected for works to a residential property. I therefore consider the appellant's explanation to be less than plausible.

15. The appellant's claim that the land levels have not been raised is simply not credible. It is immediately apparent when standing on the site that ground levels have been raised. This is particularly apparent around the edges of the site, from where the difference in height to the adjoining land is obvious. Comparison with a photograph taken in September 2019 (submitted as part of the Authority's evidence) clearly shows that ground levels have been raised in relation to the adjoining land. Another photograph provided as part of the Authority's evidence, taken in September 2020, appears to show the work involved in raising ground levels in progress.
16. I conclude on the balance of probabilities that the breach of planning control alleged in the notice has occurred.
17. Accordingly, the appeal on ground (b) fails.

The appeal on ground (d)

18. The appeal on this ground can only relate to the matters stated in the notice, in this case (in part) the material change of use of the land from agriculture to storage. In that context, I accept that 'agricultural storage' qualifies as storage. The time limits for taking enforcement action are set out at Section 171B of the 1990 Act, with a material change of use falling within the category of 'any other breach of planning control' under section 171B (3), whereby no enforcement may be taken after the end of the period of ten years beginning with the date of the breach.
19. On that basis, if the appellant is correct in his assertion that the site has been used for agricultural storage since 2006, the use would be immune from enforcement action. However, the evidence to the contrary provided by the Authority is compelling. This includes an aerial photograph dated 26 May 2017 that shows a small area of hardstanding by the entrance gate being used for storage or parking. The rest of the land subject the notice has the appearance of a grazing field. The Compliance Report records that it was not until September 2020 that the Authority received complaints about material being imported onto this land. A photograph taken at that time (from ground level) then shows material having been spread beyond the former hardstanding, extending into the adjacent field.
20. It therefore seems to me whilst agricultural storage may have taken place on a small part of the land since 2006 as the appellant claims, it is more likely than not that the breach of planning control alleged in the notice commenced much later than that, probably in or around September 2020, and extended across a much larger area. Further evidence of this is provided by a local resident who, in a representation dated 9 June 2022, describes "building materials storage and processing site over the *last couple of years*" (emphasis added). It is therefore likely that the breach of planning control commenced well within the ten-year period specified in section 171B (3) of the 1990 Act, and consequently is not immune from enforcement action.
21. I conclude on the balance of probability that, at the date on which the notice was issued, the Authority was in a position to take enforcement action against the breach of planning control that has occurred.
22. Accordingly, the appeal on ground (d) fails.

Conclusion

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

Formal Decision

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

Paul Freer
INSPECTOR