



Appeal Decision

Site visit not required

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2023

Appeal Ref: APP/X4725/C/22/3310323

**Land at Longley Edge, Doncaster Road, Wragby, Wakefield, WF4 1QX
shown edged red on the attached plan ("the Land")**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Gurdeep Chahal against an enforcement notice issued by City of Wakefield Metropolitan District Council.
 - The enforcement notice was issued on 30 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised development by the erection of a detached garage and workshop on the Land.
 - The requirements of the notice are to demolish the unauthorised garage and workshop building and remove all materials from the Land.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) 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 as amended have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

Ground (d) appeal

2. The appeal on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
3. The evidence indicates that a notice for the same breach of planning control was issued on 16 November 2020. This remains extant, but the local planning authority (LPA) has not proceeded to prosecute for non-compliance as the evidence indicates that the ownership of the land had recently changed when the notice was issued. The evidence is that the appellant that is the subject of this appeal had not been served with a copy of the notice and hence was denied the opportunity to appeal. I am not entirely certain why the LPA did not

note the fact that ownership of the Land had changed, although the appellant states '*it is acknowledged that there have been some considerable delays with transfers of land being picked up by the Land Registry*'. This perhaps explains why in respect of the first notice, the appellant that is the subject of this appeal was not served with a copy of it.

4. It is in the context of the above, that the LPA decided to issue a further notice on 30 September 2022. This relates to the same breach of planning control and is the subject of this appeal. There is no dispute between the main parties that the breach of planning control was substantially completed in 2017. The evidence is ambiguous in terms of a month in 2017, although the LPA does not dispute that '*enforcement investigations commenced on 12 May 2017*' and that the appeal development was substantially completed before this time. The month in 2017 is not, however, a determinative issue for the reasons explained below.
5. Section 171(1) of the Act states that '*where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed*'. To this extent, the breach of planning control would be immune from enforcement action in so far that the notice that is the subject of this appeal was issued on 30 September 2022 and hence a period of more than four years has passed since the start of 2017.
6. Notwithstanding the above, section 171(4) of the Act states '*the preceding subsections do not prevent taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach*'. The LPA issued a notice in respect of the breach of planning control within the appropriate four years period, i.e., on 16 November 2020. It had a further four years to issue another notice in respect of the same breach. It did this, and while the appellant was not served with a copy of the first notice, the LPA nonetheless '*purported*' to take enforcement action in respect of the breach of planning control.
7. For the above reasons and, on the balance of probability, I conclude that the breach of planning control is not therefore immune from enforcement action. Therefore, the ground (d) appeal fails.

Ground (g) appeal

8. The appeal made on ground (g) is that the period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
9. The appellant claims that twelve months is needed to comply with the requirements of the notice to secure funds to employ a demolition contractor and so that the demolition could be undertaken in the summer when most building contractors are available for such work. He states that more time would be needed as he intends to reuse building materials elsewhere on the site in association with a policy compliant development.

10. I have some sympathy with the appellant in so far that he did not carry out the unauthorised development. The evidence is that it was completed by the previous owner. I do not know what happened at conveyancing stage and whether the first issued notice was highlighted as part of a local land search. Nonetheless, there is no objective evidence before me from the appellant to substantiate his claim about the need for more time to source additional funds or that a period of twelve months would be needed to find and instruct a building contractor. Furthermore, there is nothing before me to indicate that discussions have taken place with the LPA in respect of erecting a different form of development that would reasonably enable use of materials from the breach of planning control.
11. While an appeal has not been lodged on ground (f) of section 174(2) of the Act, it is nevertheless noteworthy, in any event, that the notice requires all materials to be removed from the Land. The purpose of the notice is to remedy the breach of planning control. Hence, the removal of materials from the Land is necessary as it remedies the breach of planning control.
12. I conclude that the evidence is that a compliance period of six months is reasonable and proportionate. Consequently, the ground (g) appeal fails. If circumstances were to change, and it transpires that it can be justified that a longer period is needed to deal with the requirements of the notice, then under section 173A(1)(b) of the Act the LPA can "*waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9)*".

Conclusion

13. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR