
Appeal Decision

Site visit made on 23 May 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2023

Appeal Ref: APP/A4710/C/3309095

Land known as St Giles Stoneworks, St Giles Road, Halifax HX3 8BN

- 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 Spring Lodge Stone Services against an enforcement notice issued by Calderdale Metropolitan Borough Council.
 - The enforcement notice was issued on 16 September 2022.
 - The breach of planning control as alleged in the notice is:
 - (1) Without planning permission, the undertaking of engineering operations on the Land namely the excavation of previously restored land and extraction of mineral waste including stone, hardcore and soil using 360-degree excavators substantially altering the ground levels as shown on the attached photographs in Appendix 2 (Breach 1).
 - (2) Without planning permission, the material change of use of the Land from a use for the purchase of natural stone, both new and second hand; the storage, working, cutting, sawing and dressing of the stone, the selling and transportation of the finished stone to a mixed use for the purchase of natural stone, both new and second hand, the storage, working cutting, sawing and dressing of the stone, the selling and transportation of the finished stone, the excavation and extraction of mineral waste and the depositing and sorting of extracted mineral waste on the Land as shown on the attached photographs in Appendix 2 (Breach 2).
 - The requirements of the notice are:
 - (i) Stop the excavation of previously restored land on the Land.
 - (ii) Stop the extraction of mineral waste on the Land.
 - (iii) Cease the use of the Land for the depositing of extracted mineral waste.
 - (iv) Cease the use of the Land for the sorting of the extracted mineral waste.
 - (v) Restore the Land using the extracted waste materials to its original contours.
 - The period for compliance with the requirements in for Steps (i) – (iv) is 4 weeks and for Step (v) is 6(six)months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Appeal on ground (c)

2. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. The notice alleges both operational development and a material change of use of the Land. On this legal ground of appeal the onus of proof is on the appellant to make his case and the test is the balance of probability.

3. The appellant's case is that the excavation works that he has carried out have been undertaken in connection with an existing planning application for residential development. The works are exploratory, undertaken as part of site investigations into former mine workings and remediation works and do not therefore require planning permission. In addition, the appellant does not consider a material change of use has occurred. He states that no materials from the excavations have been sold, the materials excavated are being stored and sorted to refill the holes they came out of.

Operational Development

4. The main issue is whether operational development has taken place, and if so whether what is alleged complies with the terms and conditions of a planning permission.
5. Section 55(1) of the Town and Country Planning Act 1990, as amended (the Act) states that "*development*" for the purposes of the Act, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
6. The planning history of the site indicates that the Land was formerly a quarry, disused and subsequently restored. In September 1992 a Lawful Development Certificate was granted which determined that the use of the land for "*the purchase of natural stone, both new and second hand, the storage, working, cutting, sawing and dressing of the stone, the selling and transportation of the finished stone*" was lawful¹.
7. The works which have been undertaken on the Land to excavate previously back filled material are extensive. The operations have been carried out by machine excavators and significant holes have been created. The material which has been excavated has been deposited in large mounds on the Land. From the evidence before me, including observations on my site visit, the works undertaken comprise engineering or other operations which are development, as defined by S55(1) of the Act and for which planning permission is required.
8. I have had regard to the appellant's contention that the works are required in relation to a planning application for residential development on the site. In support of his appeal, Phase 1 and 2 Desk Top Studies prepared in 2012 by jnpgroup consulting engineers have been submitted, together with a more recent quotation for works to carryout a method statement and prepare a final validation report relating to remediation and earthwork specifications for the site².
9. The Council has advised that in February 2020 an application for outline planning permission was considered by the Council for the demolition of buildings to facilitate construction of 14 houses on the appeal site, with access off St Giles Road³. The Council resolved to approve the application subject to the completion of a Section 106 planning obligation. The S106 obligation has not been completed and no planning permission has been issued.

¹ Local Planning Application Ref: 92/1806.

² Engineering Quotation, Haigh Huddlestone & Associates, dated November 2020.

³ Local Planning Authority ref: 19/00878/OUT

10. In the absence of any grant of planning permission for residential development on the Land, the development that has taken place cannot be development undertaken to comply with the terms or conditions of a planning permission. Furthermore, from the evidence before me there is nothing that would lead me to conclude that the operations undertaken are required in relation to any site investigations, or indeed recommendations in the Phase 1 or Phase 2 Desktop Studies or in the consultation responses from The Coal Authority.
11. There is no record of planning permission being granted for the engineering operations alleged in Breach 1. In the alternative, the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO) in Article 3 grants planning permission for classes of development described as permitted development. None of the classes provide for the development alleged in Breach 1.
12. My conclusion is that operational development took place for which no planning permission was granted by the local planning authority. This development is not permitted under the provisions of the GPDO. A breach of planning control has occurred.

Material Change of Use

13. The issue is whether as a matter of fact and degree there was a material change in the use of the Land such as would amount to development requiring planning permission⁴. A main consideration is whether there is a significant difference in the character of the activities from what has gone on previously.
14. From the evidence before me, the last use of the site was for the purchase of natural stone, both new and second hand; the storage, working, cutting, sawing and dressing of the stone, the selling and transportation of the finished stone. The key characteristics of the new use of the Land is that mineral waste is also now being excavated, extracted and deposited on the Land. There is evidence of a screener on the site and the appellant's evidence is that the excavated material is graded and compacted.
15. The evidence of the activities associated with the new use, in relation to noise, disturbance and dust associated with the scale of excavations and deposition and screening of waste materials on the Land leads me to conclude that there is a significant difference in the character of the use of the Land from its previous use. A material change of use has occurred and there is no record of a specific permission being granted for that change of use.
16. My conclusion is that the change in the character of the use has materially changed it from a use for the purchase of natural stone, both new and second hand; the storage, working, cutting, sawing and dressing of the stone, the selling and transportation of the finished stone to a mixed use for the purchase of natural stone, both new and second hand; the storage, working, cutting, sawing and dressing of the stone, the selling and transportation of the finished stone, the extraction of mineral waste and the depositing and sorting of extracted mineral waste on the Land. Development took place for which no planning permission was granted by the local planning authority and a breach of planning control occurred.

⁴ In the terms of s55(1) of the 1990 Act.

Overall Conclusion

17. For the reasons given above breaches of planning control occurred and the appeal on ground (c) fails.

Elizabeth Pleasant

INSPECTOR