



Appeal Decision

Site visit made on 19 July 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 JULY 2023

Appeal Ref: APP/R1038/C/22/3302565

Land north west of 21 Mansfield Road, Killamarsh S21 2BW

- 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 Mr Jeremy White against an enforcement notice issued by North East Derbyshire District Council.
 - The enforcement notice, numbered 16/00100_COU, was issued on 31 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, material change of use of Land to use for the storage of building and construction materials and equipment including engineering works comprising the formation of a hardstanding. Herein after referred to as the 'storage use'.
 - The requirements of the notice are a) cease the use of the Land edged red for the storage of building materials, construction materials and equipment and permanently remove from the Land all materials and equipment, including but not limited to, stone, reclaimed construction materials, pallets, concrete blocks, bricks, aggregate, portacabins, shipping containers, plastic drainage pipes, plastic containers, pre-cast cylindrical concrete drains, trailers, machinery, fencing, scrap etc; b) take up the hardstanding and remove all resultant materials from the Land, and c) following compliance with step a) and b) above, reseed the ground with an agricultural grass seed mix sown at a rate of 25g/m².
 - The period for compliance with the above requirements is a) one month, b) two months and c) during the first seeding season after the completion of steps a) and b) above. A seeding season is between 1 February and 30 April or 1 October and 30 November each year during a period of no ground frost or areas of standing water.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). 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.

Reasons

Ground (f) appeal

2. An appeal on ground (f) makes the claim that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
3. The appellant's claim under ground (f) is that the enforcement notice is '*ambiguous and contradictory*' and hence is not clear on its face. He states that

as the notice relates to a material change of use of the land, it is not then possible in law to also include operational development. In essence, this is not a ground (f) claim, but rather one relating to whether the notice is either invalid or a nullity. The allegation refers to the material change of use of the land and then states, *'including engineering works comprising the formation of a hardstanding'*. The courts have held¹ that a notice that relates to an alleged material change of use can also attack operations or works that facilitated such an alleged material change of use. This is clearly how the notice is framed. In this regard, the notice can be clearly understood, and it is neither invalid nor a nullity. Furthermore, as the notice relates to a material change of use of the land it therefore correctly refers to the ten years immunity period with reference to section 171B(3) of the Act.

4. The second claim made by the appellant under ground (f) is that the hardstanding was not formed to facilitate the alleged breach of planning control. The appellant claims that hardstanding was laid to facilitate an earlier use of the land as a garden centre. The evidence indicates that in the past an enforcement notice was issued by the Council, dated 25 July 2005, which related to the same land and was the subject of an appeal². Such an enforcement notice related to a timber building and base on the appeal land. In respect of this appeal, the Inspector commented that the land *'appeared to be in use for the display and sale of garden plants'* and was *'surrounded by a hard surfaced, fenced compound along the frontage'*. The enforcement notice was upheld on appeal, but it did not require the removal of the hard surfaced area. I have not been provided with precise details of the extent or appearance of the said hard surfaced area in 2005, although there is no dispute between the main parties that some form of hard surfaced area did exist within the vicinity of the timber building and base at this time.
5. The Council's Google Earth images dated 2013 and 2015 show a marked contrast in the appearance of the appeal site relative to earlier years such that it has the appearance of being grass/earth. There is no obvious presence of a hardstanding on the whole of the appeal site. In 2017, the Google Earth image shows a very distinctive change to the appearance of the appeal site. It has the appearance of including a hardstanding.
6. A Planning Contravention Notice, dated 2 November 2017, states that a previous owner *'stripped the site of bushes to put it back to a grass field'*. Based on the historic Google Earth images, which do not appear to show bushes on the appeal site, I am persuaded that this comment related to a different part of the wider site. However, the appellant asserts that a new hardstanding has not been formed and that vegetation has *'grown through the hardcore over time'*. However, this is not reasonably corroborated with sufficient and persuasive evidence. There is little information from the appellant to explain the very clear differences between Google Earth images in 2013/2015 and 2017 and what specifically took place, and by whom, to account for the distinctive change in the appearance of the site.
7. Even if the appellant had provided sufficient and unambiguous evidence that the remains of a former hard surface still existed on the land, in my judgement the evidence is not sufficiently certain or persuasive in terms of demonstrating

¹ *Murfitt v SSE & East Cambridgeshire District Council* DC (1980) JPL 598 and *Somak Travel v SSE & Brent LBC* (1987) JPL 630

² Appeal Ref APP/R1038/C/05/2003559

that a substantially different hardstanding was not formed for the purpose of use of the appeal land for storage purposes. Furthermore, the appellant does not provide sufficient justification that the new hardstanding area was not integral to, or part and parcel of, the material change of use of the land.

8. The appellant has submitted a letter from a former enforcement officer of the Council, dated 23 February 2022. The letter includes an inaccuracy. Indeed, the previous enforcement notice was issued by the Council in July 2005, but the former enforcement officer states his retirement was in 2014 and *'a couple of years prior to my retirement I was involved in enforcement action against land at that time in the ownership of Paul Mangham, who had laid a hard surface area'*. Given this inaccuracy, it casts doubt about claims relating to the extent and position of the historic hardstanding area. Furthermore, the evidence does not in itself mean that a new hardstanding area was not formed (e.g., a substantially new engineering operation) prior to the subject appeal notice being issued, even accounting for the possibility of some of the remains of former aggregate being under or part of such a new hardstanding. In any event, the onus is on the appellant to make his case in terms of such a matter and the evidence submitted is neither persuasive nor compelling.
9. On the balance of probability, and, as a matter of fact and degree, I find that the evidence from the appellant is not sufficiently precise or unambiguous to counter the Council's view that a new hardstanding area was laid and that this took place to facilitate the unauthorised use of the land for storage purposes.
10. For the above reasons, I conclude that the requirements of the notice are not excessive. The purpose of the notice is to remedy the breach of planning control by ceasing the use of the land for storage purposes. Taking up the hardstanding area is not an excessive requirement as there is insufficient and precise evidence before me to demonstrate that it was not laid to facilitate the unauthorised use of the land for storage purposes. Therefore, the ground (f) appeal fails.

Ground (g) appeal

11. 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.
12. The appellant claims that a period of 12 months is needed to cease use of the land for storage purposes and to find and instruct a contractor and dispose of, or recycle, the stored materials and equipment. The claims made by the appellant are not supported by reasonable or objective evidence. On this basis, I do not find that the appellant has reasonably substantiated why the prescribed timescales to ensure compliance with the requirements of the notice would be unreasonable. I therefore conclude that the ground (g) appeal fails.
13. It is noteworthy, however, that the local planning authority has referred to section 173A(1)(b) of the Act which states that it can *"waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9)"*. If the appellant did find it difficult to comply with the requirements of the notice and was able to provide actual objective evidence relating to such a matter, then this could be raised with the local planning authority.

Conclusion

14. For the reasons given above, I consider that the appeal should not succeed.

D Hartley

INSPECTOR