The Planning Inspectorate

Appeal Decision

Site visit made on 19 July 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 9th August 2023

Appeal A Ref: APP/H1840/C/22/3305807
Appeal B Ref: APP/H1840/C/22/3305808
North East Side of Green Lane, Adjacent to Firs Farm, Bevere, Worcester WR3 7RH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mark Harris and Appeal B is made by Hilda Harris against an enforcement notice issued by Wychavon District Council.
- The notice was issued on 21 July 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, operational development comprising of the erection of wooden poles.
- The requirements of the notice are
  Permanently remove all the erected wooden poles (approximately marked blue on the attached plan from the Land and as shown on the photo P1 on the plan attached) and restore the land to its original condition that of grass land.
- The period for compliance with the requirements is 30 days.
- The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 (the Act) as amended.

Decision

1. It is directed that the enforcement notice is varied by the deletion of '30 days' as the time for compliance and substitution with '45 days'. Subject to the variations, the enforcement notice is upheld.

Preliminary Matters

2. An unaccompanied site visit took place. There is now a zip wire and a seat attached to the pole arrangement. The tallest telegraph pole is now leaning rather than being vertical. There was also a handwritten poster at the front of the poles asking to keep the zip wire. However, the appeals are made under the limited grounds of (f) and (g). In the absence of a ground (a) appeal, I am not considering as part of this appeal granting planning permission for the development.

3. The appellants refer in their evidence to the notice not being properly served but have not made an appeal under ground (e) which relates to 'the notice not being properly served on everyone who has an interest in the land.' The appellants were subsequently asked if they wished to pursue a hidden ground (e) and indicated that they did not but stated that it was impossible to comply with the timeframe which I have addressed in ground (g).

An appeal under ground (f)

4. Section 174(2)(f) of the Act states that an appeal may be made on the ground 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. As the requirement of the notice is to remove the poles, the purpose of the notice is to remedy the breach.

5. Section 173(4)(a)of the Act defines how the breach can be remedied namely "*by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.* The requirement of the notice in requiring the removal of the poles and restoration of the land to its former condition clearly falls within Section 173(4)(a).

6. The appellants propose laying down the poles rather than removing them. The poles would be stored on the appeal site in an unidentified location until such time as the appellants decide what to do with them. No specific time scale is proposed for any re-use. The appellants have referred to other possible uses including gates and fencing for construction and agricultural purposes or being a landscape feature within a domestic curtilage. However, there is no certainty as to what the telegraph poles would be used for or when or whether consents would be required for any particular purpose.

7. The appellants states that the poles would no longer be visually prominent structures in a horizontal position. Whilst the appellants refer to a 'few telegraph poles' there are at least 10 poles which the Council states are around 4.6 metres tall above ground with 1 metre below ground. The northern part of the appeal site where the poles are located is a field and the southern part has some residential use. The Council indicated it was concerned about where storage would take place in its statement and the appellants have not proposed a suitable location either directly to the Council or as part of this appeal. In the absence of any details, whether or not the poles would be visually prominent if they were allowed to remain on site is simply not known.

8. The appellants have referred to other poles stored on nearby land and states that the Council is being inconsistent in allowing those poles to remain. However, whether or not the storage of other poles outside the appeal site are breaches of planning control is a matter for the Council. There is no dispute in this case that the erection of poles is a breach of planning control, the notice does not allege the storage of poles. The appellants have issues with the suggestion that the poles could be cut up into smaller pieces but that is not part of the wording of the requirement.

Conclusion on ground (f)

9. Any alternative requirement would need to be precise as the appellants could face criminal prosecution for non-compliance. It would need to state where the poles were being stored and for how long. Whilst the appellants are willing to comply with a 'sensible reworded enforcement notice,' no alternative wording has been suggested by the appellants. The appellants have not proposed an alternative requirement to removal from the site that provides any certainty as to what would happen to the poles. The existing requirement of the notice falls squarely within the purposes of Section 173(4)(a) and is not excessive. The appeal under ground (f) fails.

An appeal under ground (g)

10. An appeal under ground (g) is that the time for compliance with the notice is too short. The Council has allowed a period of 30 days and the appellants have asked for more time to comply but have not suggested an alternative compliance period. Whilst the appellants state that the Council was not prepared to consider a longer period of compliance, no alternative time frame has been proposed as part of this appeal.

11. The appellants refers to issues with service reducing time to comply with the tight time frame for compliance. However, matters have been overtaken by the appeal and the appellants have had the opportunity within their evidence to put forward arguments with regard to the time for compliance under this ground.

12. Although the enforcement notice was issued some time ago, as the appellants has also appealed under ground (f), they are entitled to assume success on that ground. I therefore have to assess whether the period of 30 days is reasonable. The reasons for issuing the notice refer to the visually obtrusive nature of the development when viewed from nearby properties and nearby occupiers support the upholding of the notice. I therefore have to balance the public interest in achieving compliance with the circumstances of the appellants.

13. The appellants states that the removal of the poles will require specialist equipment including transport and time to arrange. Whether or not specialist transport will be required once the poles are uprooted will depend upon whether the appellants choose to remove the poles from the appeal site as they are or cut them up for removal. How the notice is complied with is up to the appellants. However, the appellants referred to problems with complying in peak holiday season when suppliers, equipment and consultants are on holiday when the appeal was lodged last August. On balance, a compliance period of 45 days would take compliance beyond the peak holiday season into September whilst achieving compliance within a reasonable period. The ground (g) succeeds to that extent. I will vary the notice accordingly.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed other than the variation to the notice with regard to ground (g). I will vary the notice prior to upholding it.

E Griffin

INSPECTOR