



Appeal Decision

Site visit made on 14 August 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2023

Appeal Ref: APP/W4223/C/23/3318977

Land to the south of Knarr Mill, Oldham Road, Delph OL3 5RQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Hargreaves (Knarr Mill Holdings Ltd) against an enforcement notice issued by Oldham Metropolitan Borough Council.
 - The notice was issued on 15 February 2023.
 - The breach of planning control as alleged in the notice is the change of use of the land to open storage space (retrospective) and the continued presence of an asphalt surface on the land in the green belt and the siting of vehicles on the land despite the refusal of planning permission under FUL/349141/22.
 - The requirements of the notice are:
 - 1) Permanently remove the asphalt surface from the land and re-seed the land; and
 - 2) Permanently remove all vehicles and associated materials from the land.
 - The period for compliance with requirement 1) is four months.
 - The period for compliance with requirement 2) is one month.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The enforcement notice is quashed.

Application for costs

2. An application for costs was made by Mr John Hargreaves (Knarr Mill Holdings Ltd) against Oldham Metropolitan Borough Council. This application is the subject of a separate decision.

The Enforcement Notice

3. An enforcement notice must, by virtue of Regulation 4(c) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise.
4. The appellant's agent has highlighted that the red line on the plan attached to the enforcement notice does not correctly identify the land which is intended to be the subject of the notice. This is primarily on the basis that the red line has been incorrectly drawn and largely covers an area where no development has taken place, including open pasture land, part of an existing watercourse, and part of the access road to the front of Knarr Mill. I saw during my site visit that these concerns were well founded, and that the red line bears little resemblance to where the development has taken place on the ground.

5. The Council's comments in relation to this matter are somewhat dismissive, stating that as the notice was issued following the refusal of a retrospective planning application¹ the appellant should be under no doubt which area of land the notice relates to. However, it does not necessarily follow that the boundaries of the land to which the notice relates will be strictly the same as those to which the planning application related. In any event, the existence of the retrospective application does not override the requirement for the Council to specify the precise boundaries of the land to which the notice relates.
6. Under section 176(1) of the Town and Country Planning Act 1990 as amended (1990 Act), wide powers are available to me to correct any defect, error or misdescription in the enforcement notice, or to vary the terms of the enforcement notice. This is provided that the correction or variation would not cause any injustice to the appellant or the local planning authority.
7. I have considered whether I can correct the notice using the power under section 176(1)(a) of the 1990 Act, by substituting a corrected plan. The representations indicate that the appellant understands where the alleged breach of planning control is sited, and to that extent no prejudice would be caused.
8. However, under section 172(2) of the 1990 Act an enforcement notice must be served on the owner and occupier of the land to which it relates and on any other person having an interest in the land, being an interest which in the opinion of the local planning authority is materially affected by the notice. In this instance, it is apparent that the majority of the land intended to be subject of the notice falls outside of the area identified by the red line on the plan. Consequently, I do not know with any certainty if any additional person(s) should be served with a copy of the notice given that the area of the land affected would need to be altered and extended.
9. The notice also contains other more minor errors, including the alleged breach of planning control in section 3 referring to matters that are not acts of development and that the requirements in section 5 do not align with the allegation referred to in section 3. In any event I am quashing the notice in view of the error in relation to the plan.

Conclusion

10. For the reasons given above, the enforcement notice does not specify with sufficient clarity the land where the breach of planning control is alleged to have taken place. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act, since injustice would be caused were I to do so. The enforcement notice is therefore invalid and is quashed.
11. In these circumstances, the appeal on the ground set out in section 174(2)(a) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended does not fall to be considered.

David Jones INSPECTOR

¹ Council Ref: FUL/349141/22