



Appeal Decision

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th SEPTEMBER 2023

Appeal Ref: APP/U2235/C/23/3314316

Land to the West of Pear Tree Row, Sutton Road, Langley, Maidstone, Kent ME17 1NF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mrs Pauline Arnold against an enforcement notice issued by Maidstone Borough Council.
- The notice was issued on 7 December 2022.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land for storage and the siting of 2 no. storage containers, 2 no. metal containers with a lean-to timber structure attached, a partly erected building, storage of materials and laying of hardstanding.
- The requirements of the notice are to:
 - (i) Cease the use of the land for open storage and remove all stored materials from the land;
 - (ii) Remove from the land the 2 no. shipping containers located in the green cross hatched area in the northeast corner of the site;
 - (iii) Remove from the land the 2 no. metal containers in the brown cross hatched area in the southeast corner of the site;
 - (iv) Dismantle and remove from the land the lean-to timber structure and the resultant materials located in the brown cross hatched area in the southeast corner of the site;
 - (v) Dismantle and remove from the land the partly erected building and the resultant materials located in the blue cross hatched area at the front of the site;
 - (vi) Remove from the land the hardstanding and resultant materials located in the yellow cross hatched area through the centre of the site.
- The period for compliance with the requirements is: Three (3) months, from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(e), (g) of the Act.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Preliminary Matter

1. Having regard to the evidence it has not been necessary to visit the site. The views of both parties were sought and given the opportunity to comment. There was no dissent, accordingly I have not visited the site.

The Notice

2. The notice as drafted at Section 3, describes the allegation as '*the change of use of the land for storage and the siting of 2 no. storage containers, 2 no. metal containers with a lean-to timber structure attached, a partly erected building, storage of materials and laying of hardstanding*'. However, the requirement at Section 5(i) is to cease the use of the land, for 'open storage' and the requirement at 5(ii) reference is made to '*2 no. shipping containers*'.

3. Therefore, the requirements do not follow logically from the allegation, and the allegation does not include the reference to 'open storage' and 'shipping containers'. However, there is no dispute between the parties on the alleged breach of planning control and it is clear from the evidence before me, including the site plan attached to the notice, that the allegation is correct. For consistency and to bring the steps into line with the allegation, I will vary the requirements of the notice.
4. In addition, whilst the notice also refers to hatched areas and directional compass points in the requirements at Section 5, these appear to be wrongly identified by the Council in terms of those compass points and the hatched areas are approximate. Nevertheless, in any event the notice is clearly directed at the land outlined in red on the plan attached to the notice, and that the requirements are for the use of the land to cease for storage and the removal of the containers, structures, buildings and hardstanding from the land identified within the land outlined red. Thus, for clarity, I will vary the notice accordingly with the deletion of the reference to the compass points and the hatched areas within the requirements at Section 5.
5. The power under section 176(1) of the Act provides that a notice may be corrected and varied provided that no injustice would be caused by doing so. I am satisfied that no injustice would be caused to the appellant or the local planning authority by varying the notice in the above respects.

The appeal on ground (e)

6. An appeal on ground (e) is a claim that a copy of the enforcement notice was not properly served as required by section 172 of the Act.
7. Section 172(2) of the Act requires that a copy of an enforcement notice shall be served (a) on the owner and occupiers of the land to which it relates and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. However, section 176(5) provides that non-service can be disregarded provided that neither the appellant, nor the person who was not served has been substantially prejudiced by the service failure.
8. Effective service of the notice in compliance with section 172(3) of the Act requires the service of the notice shall take place (a) not more than twenty-eight days after its date of issue; and (b) not less than twenty-eight days before the date specified in it as the date on which it is to take effect.
9. The appellant claims that due to a postal strike they did not receive the notice until 23 December 2022, they also do not visit or pass the land regularly and have not had an opportunity to negotiate with the Council as it was so late being received.
10. The notice issue date was 7 December 2022, and the notice was to take effect on 11 January 2023, 35 days after the notice was issued, (unless an appeal is made). The Council has provided a 'Certificate of Service' (COS), addressed to the appellant at two different addresses including the address for the appellant stated on the appeal form 'Oakdene'. The COS identifies that a copy of the notice was sent to the appellant by first class post on the 8 December 2022. The Council also placed copies of the notice at the appeal site affixed to the gate to the site on 8 December 2022 for the owner, the occupier or anyone

with an interest in the land. This is supported by evidence of photographs attached at Appendix 3 to the Council's appeal statement.

11. Section 329(1) of the Act (service of notices) states, at (c), that service includes "sending it" by pre-paid post. Therefore, the key date is the date of postage, not of receipt and the notice was served within the correct timescales. Even, if the Council allowed only four extra days for the Christmas period, from the evidence before me the appellant received the notice prior to this period commencing and was clearly in contact with the Council at least on the 6 January 2023.
12. The appellant clearly received a copy of the notice to have made this appeal, and within time. There is no suggestion that anyone else who has not been should have been served with a copy of the notice. Consequently, the appellant has not demonstrated that the notice was not properly served, or that any such failure gave rise to substantial prejudice. The appeal on ground (e) therefore fails.

The appeal on ground (g)

13. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed. The notice requires compliance for within three months of it coming into effect.
14. The appellant has not specified why three months is not a reasonable period for compliance or what a reasonable timeframe would be. However, the appellant has set out that although the Council have been dealing with the enforcement case for some time, they have not been aware of the action or have an interest in the land, and that they only found out about the enforcement action on the 23 December 2022.
15. The appellant has provided no substantive evidence to support their ground (g) appeal. Nevertheless, I have already set out above, in ground (e) the matters relating to the service of the notice. The appellant's arguments are directed to the quality and handling of enquiries and the enforcement investigations by the Council. Therefore, these matters are not concerned with the period of compliance and as such are not relevant to the ground (g) appeal.
16. Thus, I consider that three months is a reasonable period to comply with the requirements. Consequently, the appeal on ground (g) fails.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

Formal Decision

18. It is directed that the enforcement notice is varied by:
 - In Section 5(i) deleting the word "*open*"; and
 - In Section 5(ii) deleting the words "*shipping containers*" and substituting instead with "*storage containers*" and deleting the words "*located in the green cross hatched area in the northeast corner of the site*"; and

- In Section 5(iii) deleting the words "*in the brown cross hatched area in the southeast corner of the site*"; in 5(iv) deleting the words "*located in the brown cross hatched area in the southeast corner of the site*"; in 5(v) deleting the words "*located in the blue cross hatched area at the front of the site*"; and in 5(vi) deleting the words "*located in the yellow cross hatched area through the centre of the site*".

19. Subject to the variations, the appeal is dismissed, and the enforcement notice is upheld.

K A Taylor

INSPECTOR