



Appeal Decision

by **J Whitfield BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 24 November 2023

Appeal Ref: APP/W1525/C/23/3322931

Land at Field Grid Reference 571030 215770, Hyde Hall Lane, Great Waltham, Chelmsford, Essex

- 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 Mrs Fiona Jacques against an enforcement notice issued by Chelmsford City Council (the LPA).
- The enforcement notice was issued on 5 May 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the construction of a hard surface, wall and fertiliser tank.
- The requirements of the notice are:
 1. Demolish the fertiliser tank and wall (within the approximate area shown outlined in blue on the attached plan) and remove all resulting material from the land.
 2. Break-up and scrape clear the hard surface (within the approximate area shown outline in blue on the attached plan) and remove all resulting material from the land.
 3. Restore the land affected by those works set out at steps (i) and (ii) by reseed with grass seed.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

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

The Enforcement Notice

1. The notice requires the fertiliser tank to be demolished. Taking the ordinary meaning of the word, that would require the appellant to knock down or break up the tank. That would potentially be onerous for the appellant as it could prevent the reuse of the tank. A requirement to remove the fertiliser tank from the Land would leave it open to the appellant to determine the best method for doing so, whilst still remedying the breach of planning control. I will therefore vary the notice accordingly and can do so without injustice to the appellant or the LPA.
2. Likewise, the requirement to scrape clear the hard surface is unduly specific and does not leave the appellant the option of removing it in an alternative manner which has the same effect. On that basis, I can vary the notice to require the removal of the hard surface from the Land. No injustice would arise to the appellant since the requirement would be less onerous than the present wording and no injustice would arise to the LPA as the notice would still remedy the breach of planning control.

The appeal on ground (g)

3. An appeal on ground (g) is made on the basis that the period specified in the notice for the steps required to be taken falls short of what should reasonably be allowed. The notice, as varied, gives three months for the wall to be demolished, the fertiliser tank to be removed and the hard surface to be removed. The appellant indicates a period of nine months would be more reasonable.
4. The appellant says that the tank needs to be emptied, removed and relocated as it is critical to the farming of the surrounding land. It is put to me that the key time for fertiliser application is in September and October and again the following Spring. The first opportunity to use the fertiliser would therefore have been September 2023, four months after the issuing of the notice.
5. However, in pursuing only ground (g), the appellant has appealed for the sole reason of extending the compliance period. Moreover, they have not raised any issues with the wording of the notice. As a result, they would have known that the enforcement notice would be upheld in the form it was issued. The appellant therefore has had around six months since the notice was issued in which they knew they needed to comply with it. If I were to extend the period by a further nine months, the appellant would have had 15 months in total to comply. To my mind, such a period is excessive and does not suitably deal with the planning harm with the necessary expediency.
6. Whilst I recognise the three month compliance period may not give the appellant the opportunity to use the fertiliser in the Spring of next year, they have had the opportunity to use it in September and October of this year due to this appeal. In the absence of evidence which explores alternatives for the use or storage of any remaining fertiliser other than keeping it in situ until the Spring of next year, an extension to the compliance period is not justified.
7. It is also said that a new location for the tank is to be established and that time will be required for an application for planning permission for that relocation to be granted. At the time of the appeal submissions, the LPA indicated that an application for a grain store and fertiliser tank some distance of the north was under consideration¹. However, the parties have since established that planning permission was granted for the grain store and fertiliser tank on 6 October 2023. There is, therefore, no need to extend the compliance period to allow for the consideration of a planning application for a revised location for the tank. It would be open to the appellant to remove the tank in accordance with the requirements of the notice and relocate it in accordance with the permission within the current compliance period.
8. The appeal on ground (g) therefore fails.

Formal Decision

9. It is directed that the enforcement notice be varied by:
 - the deletion of the words, "Demolish the fertiliser tank and wall" from section 5(i) of the notice and their substitution with the words, "Demolish the wall and remove the fertiliser tank from the Land".

¹ LPA Ref: 22/02276/FUL

- the deletion of the words, "Break-up and scrape clear the hard surface" from section 5(ii) of the notice and their substitution with the words, "Remove the hard surface from the Land".

10. Subject to these variations the enforcement notice is upheld.

J Whitfield

INSPECTOR