



Appeal Decision

Site visit made on 2 October 2023

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 January 2024

Appeal Ref: APP/Q2500/C/22/3306042

Lane at Moor Lane, Reepham, Lincoln, Lincolnshire, LN3 4EE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Lincs Grab Ltd against an enforcement notice issued by Lincolnshire County Council.
- The notice was issued on 12 July 2022.
- The breach of planning control as alleged in the notice is without planning permission, material change use of land for the deposit and processing of waste materials; construction of bunds; laying down hardstanding materials; and use of land as a depot for the parking of HGV's/vehicles and storage of plant and equipment.
- The requirements of the notice are: (i) cease the deposit and processing of waste materials; (ii) cease the construction of bunds; (iii) cease the laying down of hardstanding materials; (iv) cease the use of the land as a depot for the parking of HGV's/vehicles and storage of plant and equipment; (v) remove waste materials lying above the level of the pre-existing concrete roadways; (vi) remove bunds; and (vii) except the pre-existing concrete roadways, remove hardstandings and backfill the voids created by the removal of hardstandings with clean topsoils so that the backfilled areas are level with the pre-existing concrete roadways. The clean topsoils referred to above are not to contain any concrete, brick, aggregate or any other solid matter greater than 100mm across any dimension.
- The period for compliance with the requirements is: one day for 5(i), 5(ii), 5(iii) and 5(iv) and twelve weeks for 5(v), 5(vi) and 5(vii).
- The appeal is proceeding on the grounds set out in section 174(2)(f), (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with a variation.

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes those issued on 25 October 2023 and 01 December 2023.

Decision

1. It is directed that the enforcement notice is varied by deleting the wording "so that the backfilled areas are level with the pre-existing concrete roadways." in step 5vii) and replacing it with "so that the backfilled areas do not exceed the height of the ground level which existed prior to the taking place of the unauthorised development."

Subject to this variation, the enforcement notice is upheld.

Background

2. The appeal site was developed as part of the RAF base at Fiskerton during WW2 for use as a bomb store. As such, it was laid out with a concrete roadway and loading bays which had become overgrown after years of non-

use, prior to the unauthorised development which is the subject of the enforcement notice.

The appeal on ground (f)

3. The intention of the enforcement notice is to remedy the breach of planning control. The requirements should be proportionate, which is normally interpreted as the minimum necessary to remedy the breach. The appellant submits that the steps required by the notice to be taken, and some of the activities required by the notice to cease, exceed what is necessary to remedy the breach.
4. The appellants question step i) in that they seek to process materials on site as a part of its restoration. However, step i) quite reasonably only addresses *waste* materials, not materials existing on site prior to the breach of planning control. I have seen no persuasive reason why any remaining waste materials need to be processed prior to their removal from site.
5. Step iv) does not appear to me to prevent vehicles used in the process of complying with the requirements of the notice from being kept on site during the compliance period. This is materially different from the use of the land as a depot for parking and storage of vehicles, plant and equipment, which is rightly required to cease.
6. The requirement in step vi) to remove the bunds is not questioned by the appellants as it is acknowledged that they do not benefit from planning permission. The bunds appear to have been formed at their current height by adding imported waste materials to indigenous materials found on site. There appears to me to be no requirement to remove from the site any indigenous materials which might have been used in the formation of the bunds, merely the imported waste materials lying above the level of the pre-existing concrete roadways, which are referred to in step v).
7. Step vii) only requires the removal of hardstandings which have been formed in breach of planning control by importing materials. The requirement to backfill with clean topsoil appears to be clear. "Clean topsoil" is a commonly used and readily understandable term and such material is readily available. It does not necessarily require the importation of such materials if they are readily available on site. The appellants claim with some justification from the submitted photographs that some of the areas in question were previously at a higher level than that of the concrete roadways. Whilst there are no survey data of the actual height, I accept that the requirement should be varied to refer to the pre-existing ground level prior to the development taking place.
8. In conclusion, I find that the requirements of the notice exceed what is necessary to remedy the breach of planning control in respect of the part of step vii) referred to above. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

The appeal on ground (g)

9. The appellants claim that 12 weeks is inadequate to carry out the requirements of the notice due to the potential for adverse weather conditions, the availability of labour and the volume of work.

10. I saw during my site visit that much of the restorative work had already been carried out, indicating to me that suitable labour had been available to undertake the work. A period of 12 weeks appears to be an adequate time for the remaining works to be carried out.
11. I am aware that the timing of this decision is late in the year and that the site can be susceptible to poor drainage. However, I do not see the need to extend the compliance period. It is always open to the Council to agree an extension of the compliance period if a period of unusually wet weather should inhibit a genuine attempt to comply with the notice.
12. The appeal on ground (g) fails.

B S Rogers

INSPECTOR