



Appeal Decision

Site visit made on 5 February 2024

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 February 2024

Appeal Ref: APP/X1355/C/23/3327792

Land at Harthope Disused Quarry, Harthope Common, Harthope Head, Harthope Road, St Johns Chapel, Bishop Auckland, County Durham

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Sarah Castle against an enforcement notice issued by Durham County Council.
- The notice was issued on 11 July 2023.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the disused quarries and agricultural common land on the Land to a mixed use of the site for motor sport and recreational vehicular activities and agriculture.
- The requirement of the notice is to: a. Permanently cease the use of the Land for motor sport activities and recreational vehicular activities, including trials of speed, trials of skill, endurance, racing and practicing, by any motorised vehicle/cycle (modified or unmodified), travelling over or parking on the land by any vehicles not associated with the lawful use of the land as agricultural common land and the use by registered commoners.
- The period for compliance with the requirement is: 5 days.
- The appeal is proceeding on the ground set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (g)

1. This ground of appeal is that 'any period specified in the enforcement notice (the notice) in accordance with s173(9) falls short of what should reasonably be allowed.' In this instance, the stated period for compliance is 5 days.
2. In considering this ground of appeal, there is a need to balance the public interest in securing the expeditious compliance with the requirement of the notice against the private interest bound up in the development subject to the notice. Additionally, as this appeal is pleaded solely on ground (g), in deciding what period for compliance is reasonable, I have also had regard to the time that has lapsed since the effective date of the notice.
3. The appeal site (the site) is registered as Common Land¹ and thus protected through the Commons Act 2006, which incorporates objectives to preserve the land, enhance biodiversity and conserve wildlife and the landscape. In addition, the site and adjacent land are highly sensitive in nature conservation terms, including nationally and internationally designated sites². There is minimal fencing/barriers around the site, with generally free access onto the land.

¹ Unit No. CL 21.

² North Pennines Area of Outstanding Beauty; Site of Special Scientific Interest; Special Area of Conservation; and Special Protection Area.

4. The Council was alerted to the use of the site for regular motor sport and recreational vehicular activities. Given the potential for adverse effects and harm to designated sites, a Temporary Stop Notice (the SN) was served on 15 June 2023. This took effect on 17 June 2023 and required the cessation of the activities for 28 days. Due to, what the Council state's to be, a lack of evidence or assurance from a representative of the appellant that action would be taken to prevent the unauthorised use continuing on the expiry of the SN, or to protect the appeal site from the identified harm, the notice was issued on 11 July 2023.
5. The appellant sets out that the site is held in undivided shares, subjected to a trust, of which the appellant is the Public Trustee³. They submit that, as they are not personally responsible for carrying out the alleged breach on the land, nor have they knowingly given any other person(s) permission to undertake the alleged breach on the land, they have already complied with the requirement of the notice.
6. Additionally, they state that, due to the nature of their ownership of the legal title to the land on statutory trust for the stint owners, and the statutory constraints placed upon them in requiring the 'leave of the court'⁴, they are unable to comply with the requirement of the notice by taking positive action against the person(s) responsible for undertaking the alleged breach, such as seeking injunctive relief. They also highlight the practical and legal issues of taking any practical action to comply with the requirement of the notice, such as the erection of fencing around the land. On the basis of the above, they request that the notice is quashed.
7. The appellant does not dispute that the matters stated in the notice have occurred. Furthermore, there is no substantive evidence before me from either party which demonstrates that the alleged breach on the land has permanently ceased, such that the requirements of the notice can be said to have been complied with. I do not find the notice to be defective on its face and thus a nullity; nor is it flawed in some way to cause it to be invalid and incapable of correction. Consequently, the notice should not be quashed on these matters. As such, the merits of the appeal on ground (g) require to be assessed which can only result in a variation to the period of compliance should the appeal succeed.
8. The use of the site for motor sport and recreational vehicular activities, causes significant harm to its integrity, directly and/or indirectly affecting nationally and internationally designated sites. It is therefore in the public interest that the breach of planning control is remedied as soon as reasonably possible.
9. In my judgement, the practical requirement of the notice of ceasing the use could reasonably be complied with in a short period of time. The period set out is therefore reasonable. I acknowledge the possible legal/statutory and practical limitations highlighted by the appellant in complying with the notice, as well as the difficulties of providing what they consider to be a reasonable

³ Paragraph 2 of Part V of Schedule 1 of the Law of Property Act 1925, where an open space of land is held in undivided shares by virtue of which each owner has rights of access over the space, the ownership of that land shall vest in the Public Trustee on the statutory trusts. For this reason, it was held in the decision of the Chief Commons Commissioner dated 22 October 1980, that the legal title to the Moor, of which the land forms part, was vested in the appellant on statutory trust for the stint owners.

⁴ Paragraph 2 of Part V of Schedule 1 of the Law of Property Act 1925: '[T]he statutory trusts...shall be executed only with the leave of the court'.

compliance period. However, it has not been demonstrated that obtaining the 'leave of the court' is necessary or the only option of ensuring compliance with the requirement of the notice. Furthermore, it remains that no alternative timescale has been advanced by the appellant, which restricts a meaningful assessment of this matter. I am also mindful that a considerable amount of time has already lapsed since the effective date of the notice. The appellant has therefore already had ample time to start any necessary proceedings.

10. With regard to the above, I note the appellant has drafted, but not sent, a letter addressed to the person(s) alleged to be carrying out the use of the site for motor sport and recreational vehicular activities. The appellant requests that the notice is varied to require the draft letter to be sent to the said person(s). They do not state whether this is instead of, or in addition to, the existing requirement of the notice. Nonetheless, consideration of this matter is not within the remit of an appeal on ground (g) which concerns the reasonableness or otherwise of the period of compliance.
11. Varying the notice in the way requested would be more appropriately considered pursuant to ground (f), namely, that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters.
12. However, an appeal on ground (f) has not been pleaded. In any event, the appellant's evidence on this matter does not argue that the activities required by the notice to cease, exceed what is necessary to remedy the breach; but rather focus on the 'cost' and 'unnecessary use of limited public resources' in order to gain the 'leave of the court'. Furthermore, any alternative would need to also remedy the breach of planning control and the suggested requirement would not achieve that.
13. Given the appeal was only lodged on ground (g), success could only extend the period for compliance rather than no longer require the breach to be remedied. Any costs implications of complying with the notice would remain.
14. Taking all of the above into account, I consider that the stated period of compliance of 5 days is sufficient to comply with the notice and is a proportionate response to the breach of planning control. Extending the period for compliance to what would be an arbitrarily determined time, would unduly perpetuate the breach of planning control and the significant harmful effects.
15. I therefore conclude that the period for compliance with the notice does not fall short of what is reasonable and the appeal on ground (g) fails.

Other Matters

16. I note the appellant's comments regarding the conduct of the Council during the course of the enforcement action, and the time and money they have spent on dealing with the contents of the notice. However, these matters are not within the remit of my considerations as part of this appeal.

Conclusion

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

Formal Decision

18. The appeal is dismissed and the enforcement notice is upheld.

F Cullen

INSPECTOR