



Appeal Decisions

Site visit made on 18 June 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2024

Appeal A Ref: APP/R4408/C/23/3325301

Appeal B Ref: APP/R4408/C/23/3325302

Appeal C Ref: APP/R4408/C/23/3325303

Land to West side of Clayton Lane, Thurnscoe, Rotherham S63 0BG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Andrew Smith, Appeal B by Mr Danny Smith, and Appeal C by Mr/Mrs The Occupiers against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The notice was issued on 5 June 2023.
 - The breach of planning control as alleged in the notice is (i) the undertaking of operational development comprising the creation of a hard surface (shown hatched green on Appendix 1), as well as the erection of fences (shown edged yellow on Appendix 1) and gates (etched blue on Appendix 1) on the Land, (ii) the change of use of the land to use for the residential occupation of caravans and the storage of vehicles, timber huts, gas bottles, a shipping container, and other domestic items association with the residential use of the Land (shown in photographs referenced Appendix 2).
 - The requirements of the notice are:
 - (i) Remove the hard surface and the fence and gates from the land.
 - (ii) Remove from the land any materials or waste arising from the compliance with paragraph 5.1(i).
 - (iii) Restore the land to its previous condition.
 - (iv) Cease the use of the land for the residential occupation of caravans.
 - (v) Remove the caravans and vehicles from the land.
 - (vi) Remove the timber huts, the shipping container, gas bottles and other domestic items from the land.
 - The period for compliance with the requirements is: Four months.
 - The appeals are proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 (as amended).
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Decisions

1. It is directed that the enforcement notice is corrected by:
 - In section 3(ii) inserting the word "material" between the words "the" and "change", and the word "in" between the words "items" and "association".
2. It is directed that the enforcement notice is varied by:
 - In section 6 the deletion of the words "four months" and the substitution of the words "six months".
3. Subject to the above corrections and variation, the appeals are dismissed and the enforcement notice is upheld.

Procedural Matter

4. Appeal C was made in the name of "Mr/Mrs The Occupiers". Despite a request being made for the specific name(s) of the appellant(s) to be provided, no details have been forthcoming.

The Notice

5. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act), or the terms varied, where the correction or variation will not cause injustice to the appellant or the local planning authority.
6. In section 3(ii) the notice alleges the "change of use" of the land which, in itself, is not development requiring planning permission. I shall therefore correct the notice to refer to a "material change of use" of the land as defined in section 55(1) of the 1990 Act. In the same paragraph there is also a minor error with the omission of the word "in" between the words "items" and "association". These corrections can be undertaken as they would not give rise to any injustice to the appellants or the Council.

The appeals on ground (g)

7. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is four months.
8. The main basis of the appellants case is that the Council have not provided them with a suitable site to relocate to. Presumably due to the uncertainty as to where the appellants and their families would relocate, an alternative period of compliance has not been suggested.
9. My immediate difficulty is that Section 173(9) of the 1990 Act requires that an enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased. This therefore dictates that an open-ended period for compliance is not permissible. I must therefore determine what extension to the period for compliance stated in the notice, if any, is justified in terms of a specified period or end date.
10. I am fully aware that upholding the notice would result in the appellants and their families losing their home. This would interfere with their rights under the European Convention of Human Rights (ECHR), as incorporated into domestic law by the Human Rights Act 1998. In particular, their rights under Article 8 (right for respect for private and family life, home and correspondence) would be interfered with. This is a qualified right, and interference with it may be justified where lawful and in the public interest.
11. There is, however, an important distinction to be made where an appeal is made only on ground (g). In such circumstances, the enforcement notice must be upheld with or without an extension to the period of compliance. Consequently, the loss of the appellants home or the need to move from the site is an inevitable outcome, regardless of whether the period of compliance is extended or not. As a result, I must consider the interference of the appellants

rights under the ECHR only in the context of whether the period for compliance is proportionate to the breach of planning control that has occurred.

12. The appeal site is located within the Green Belt, and I recognise there is a need for expediency to ensure that the breach of planning control is remedied and expeditious compliance with the notice secured. Nevertheless, taking into account the fact that the requirements of the notice result in the loss of the appellants home, and given the need to identify an alternative suitable site, I recognise that a period of four months seems short. In weighing that balance, I consider that a period of compliance of six months would be a more reasonable and proportionate time to both comply with the requirements of the notice and find alternative accommodation.
13. Accordingly, the appeals on ground (g) succeed to that extent.

Conclusion

14. For the reasons given above, I conclude that the appeals succeed to the extent indicated under ground (g). I have therefore upheld the enforcement notice as corrected and varied.

David Jones

INSPECTOR