



Appeal Decision

Site visit made on 18 June 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2024

Appeal Ref: APP/P4415/C/23/3318260

Land on the west side of Droppingwell Road, Kimberworth, Rotherham

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Grange Landfill Limited against an enforcement notice issued by Rotherham Metropolitan Borough Council.
 - The enforcement notice was issued on 7 February 2023.
 - The breach of planning control as alleged in the notice is a failure to comply with condition 3 imposed on planning permission ref R57/0182 granted on 23 January 1958.
 - The development to which the permission relates is: "Increase the height and extend the industrial tip at Droppingwell Road".
 - Condition 3 states that: "Tipping operations shall be so arranged that not more than 5 acres of the land referred to shall be out of cultivation at any one period".
 - The notice alleges that the condition has not been complied with in that there is more than 5 acres of land out of cultivation.
 - The requirement of the notice is to: Revert land back into cultivation such that no more than 5 acres of the land is out of cultivation at any one time.
 - The period for compliance with the requirement is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected by:
 - In section 2 the deletion of the word "Lane" and substitute instead the word "Road".
2. Subject to the above correction, the appeal is allowed and the enforcement notice is quashed.

The Notice

3. 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, or the terms varied, where the correction or variation will not cause injustice to the appellant or the local planning authority.
4. The Council has acknowledged that there is an error in the address given in section 2 of the notice, with the land stated as being on the west side of Droppingwell Lane instead of Droppingwell Road. The appellant though is clearly aware what land the notice relates to. I shall therefore correct the address specified in section 2 of the notice, which can be done without causing injustice to either party.

Ground (c)

5. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. The burden of proof is on the appellant.
6. Planning permission was granted on the 23 January 1958 to "*Increase the height and extend the industrial tip at Droppingwell Road*", with several conditions being imposed. This included condition 3 of phase (b) which stated that tipping operations should be arranged so that no more than 5 acres of the land referred to shall be out of cultivation at any one time.
7. Although at the time of my visit no waste had been brought onto the site, other development associated with the use had taken place, including the creation of a landfill cell, bunds, and drainage ditches. Consequently, the relevant planning permission has been implemented and its conditions triggered.
8. The Oxford English Dictionary defines cultivation as "*The action or an act of preparing and using the land for growing crops; tillage*". This is similar to the definitions provided by both the appellant and the Council, which refer to tillage and the preparation of land for growing plants or crops. It is therefore not essential for the land to be in active use (e.g. growing crops), as the preparation for such use would be sufficient. In my view, the grassed areas of land at the appeal site fall into the definition of being "in cultivation". Those areas of the site which are not grassed and are incapable of being used for growing plants or crops are "out of cultivation".
9. The appellant accepts that around 3.27 acres of land is currently out of cultivation, which includes land used for a temporary haul road, storage area, compound, lagoon, drainage ditches and the inner bund walls of the landfill cell. The Council agree that these areas are out of cultivation, with their calculation of the acres covered being very similar to that of the appellant.
10. Nevertheless, the Council contend that in total approximately 7.42 acres are out of cultivation. The difference in figure is largely because the Council consider that the landfill cell and its bund walls should be included in their entirety, and not just the inner bund walls as is the appellant's case. The Council has calculated that the total area of the landfill cell and bunds alone measures 5.34 acres.
11. The Council's case is that even though the bunds have been covered in topsoil and are grassed over, they are not considered to be in cultivation. I accept that whilst the bunds were being constructed the area of land concerned would have been out of cultivation, however I no longer consider that to be the case. The outer and top of the bund walls have been covered in topsoil and grassed over, and there is no discernible difference in terms of their appearance or use to the other grassed areas of the site which are not disputed as being in cultivation.
12. With regards to the area of land in the middle of the landfill cell, the appellant states that this land is undisturbed and remains as a grassed area. The "LPA Plan of land outside of cultivation" produced by the Council supports this position, as the area inside the main tip is referred to as "a grassed area" which "has not been worked upon yet". The Council however consider that this area, which measures approximately 1.37 acres, is out of cultivation since "it is to be filled with waste".

13. Whilst I have no doubt that the appellant intends to fill this area with waste at some point in the future, at present no such waste has been brought onto the site and the area remains as undisturbed grassland. Consequently, I find that this area currently remains in cultivation.
14. The Council have also referred to a topsoil heap to the south of the landfill cell. The presence of a topsoil heap in this location was not immediately obvious during my visit, with the area grassed over and now forming part of the wider grassed field which in my view remains in cultivation. As with the cell bund walls, it is possible that at an earlier point the area may have been out of cultivation for a period. Nevertheless, as the wording of ground (c) is in the present tense, the "*matters do not constitute a breach.*", the appellant is entitled to rely in support of their case at appeal on matters occurring between the date of issue of the notice and my visit.
15. An aerial image taken by a drone is referred to by the Council and includes red areas that are said to be "bare compacted soils" or "hard surfacing", which the Council considers to be out of cultivation. This image was taken in May 2022 some nine months prior to the issue of the notice, and as a result I cannot be certain that the site was in the same condition at the point the notice was issued. The topographical survey submitted by the appellant was undertaken soon after the notice was issued in February 2023, and in my view provides a more accurate representation of the site.
16. Consequently, I am satisfied that the appellant has demonstrated that no more than 5 acres of the land is out of cultivation. Accordingly, the appeal on ground (c) succeeds.

Other Matters

17. A third-party representation alleges that condition 2 of planning permission R57/0182 has not been complied with. However, the enforcement notice only alleges a failure to comply with condition 3, and therefore it is not open to me to review any of the other conditions imposed on the planning permission as doing so would widen the scope of the notice.

Conclusion

18. For the reasons given above, I conclude that the appeal succeeds on ground (c). The enforcement notice is therefore quashed. In these circumstances, the appeal on ground (g) does not fall to be considered.

David Jones

INSPECTOR