



Appeal Decision

Hearing held on 16 July 2024

Site visit made on 16 July 2024

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 25TH JULY 2024

Appeal Ref: APP/E2001/C/23/3317352

Land East of Manor Farm, Withernwick Road, Great Hatfield, HULL, HU11 4AW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by James Gordon against an enforcement notice issued by East Riding of Yorkshire Council.
 - The notice was issued on 17 January 2023.
 - The breach of planning control as alleged in the notice is without planning permission, material change of use to residential, including the siting of wooden outbuildings for residential use, siting of storage container and portable WC, parking and storage of vehicles, and operational development to facilitate the residential use including the erection of a outbuildings for residential use, the erection of a car port, the provision of facilities for power generation, the alteration of gates and fences to increase their height and the erection of fencing within the site.
 - The requirements of the notice are to: (i) Cease the residential use; and (ii) Cease the use of the Land for the storage and parking of vehicles ; and (iii) Remove all buildings from the Land; and (iv) Remove the storage containers and portable structures from the Land; and (v) Remove all the domestic items and chattels from the Land; and (vi) Remove the bin store from the Land; and (vii) Remove the corrugated sheeting from the gates and fencing as shown on photographs 1 and 2.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

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

The Site and Planning History

2. The site had previously been used as a garden centre. It was sold to a new owner who installed the living accommodation and associated development and began the residential use in 2018. The appellant subsequently purchased the land in October 2019 and continued the residential use.
3. The Council issued the First Notice on 24 September 2021. This was withdrawn with the Second Notice (which is the subject of this appeal) issued on 17 January 2023.

Ground (e)

4. An appeal on this ground is that copies of the notice were not served as required by the 1990 Act. However, in this case the First Notice relating to the same development was withdrawn because the Council had not served it on the

owner of part of the land and then re-issued and served the Second Notice to remedy this error. There is no evidence before me to contradict the Council's case that the Second Notice has been properly served.

5. I am therefore satisfied that the notice has been served on the owners, occupiers and any other person having an interest in the land, being an interest which is materially affected by it, and the appeal on ground (e) fails.

Ground (b)

6. This ground is that the matters alleged have not occurred. However, the appellant accepts that the description of development in the notice was accurate when the notice was served (notwithstanding that some of the matters listed in the allegation have since been removed from the site). The appeal on ground (b) cannot therefore succeed.

Ground (c)

7. The appellant accepts that the matters stated in the notice do constitute a breach of planning control. As I am satisfied that the matters alleged do constitute development, and there is nothing before me to suggest that it either has planning permission or does not require it, the appeal on ground (c) does not succeed.

Ground (d)

8. An appeal on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of the alleged breach, i.e. that the development was immune from enforcement action.
9. Operational development gains immunity after 4 years, and material change of use of land becomes immune after 10 years. The parties agree that the residential use began in June 2018 when the log cabin was brought onto the site (although there is no agreement as to whether the cabin constituted operational development in its own right). This is more than four years before the date of the Second Notice which was issued on 17 January 2023.
10. However, section 171B(4)(b) provides for the taking of further enforcement action in respect of the breach of planning control within four years of the previous enforcement notice in respect of the same breach. The First Notice was issued on 24 September 2021, which is therefore within 4 years from the operational development and material change of use which occurred in 2018.
11. This is also less than four years prior to the date of the issue of the Second Notice. This 'second bite' provision means that none of the development (both the operational development and the material change of use) can have gained immunity as this ground is determined on the basis of whether the development was lawful on the date of the First Notice.
12. The appeal on ground (d) therefore fails.

Ground (f)

13. This ground is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control. The purpose of the notice was to remedy the breach, and the requirements did not therefore exceed what was necessary as they sought to bring the use to an end and the removal of

the operational development. This would have the effect of restoring the land to its condition before the breach took place, and the Council has confirmed that the notice was not intended to target operations which were on the site before the change of use took place.

14. As I am satisfied that the requirements would restore the land to its condition before the breach took place the appeal on this ground does not succeed.

Ground (g)

15. The appellant accepted that the 9 months compliance period was sufficient in terms of undertaking the actions set out in the requirements. His concern regarding the period for compliance was regarding the restriction on the land title held by the CPS.
16. Where a prosecution brought under section 179 of the 1990 Act for being in breach of an enforcement notice it is a defence for a person to show that they did everything that they could be expected to so to secure compliance with the notice. In addition, the Council have powers under section 173(1)(b) to extend the period for compliance although this is entirely at their discretion.
17. I therefore conclude that 9 months is reasonable in all of the circumstances.

Conclusion

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

Zoë Frank

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

James Gordon, Appellant

Deborah Campbell

FOR THE LOCAL PLANNING AUTHORITY:

Hazel Walsh, Enforcement Team Leader