



Appeal Decision

Site visit made on 30 August 2024

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2024

Appeal Ref: APP/B2355/C/24/3340105

Site known as Former Albert Mill, Albert Street, Whitworth, Rossendale OL12 8PJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
 - The appeal is made by Spenside Developments Limited against an enforcement notice issued by Rossendale Borough Council.
 - The notice was issued on 5 February 2024.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, operational development has taken place on the Land comprising earthworks; the importation of construction materials and plant machinery; the formation of a new access ramp; the crushing of old construction materials; site clearance and the excavation of the Land.
 - The requirements of the notice are to:
 1. Remove all machinery from the Land.
 2. Remove all imported construction materials and plant machinery from the Land.
 3. Remove all imported and construction waste from the Land.
 4. Restore the Land back to its original state that it was in before the unauthorised works commenced as shown in the photograph enclosed herewith marked "Photograph 1".
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Act.
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Decision

1. The enforcement notice is quashed.

Applications for costs

2. An application for costs was made by Spenside Developments Limited against Rossendale Borough Council. An application for costs has also been made by Rossendale Borough Council against Spenside Developments Limited. These applications are the subject of separate Decisions.

Preliminary matter

3. The appeal form detailed that the appeal was to be made on grounds (a), (b), (c), (f) and (g). Through the course of the appeal, grounds (a), (b) and (c) have fallen away, therefore the appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Act.

The Enforcement Notice

4. Section 173(2) of the Act states that an enforcement notice complies with section 173(1)(a) if it enables any person on whom a copy of it is served to know what those matters are – these being the matters alleged to constitute

the breach. The established test in case law is whether the notice tells the recipient fairly what they have done wrong and must do to remedy it (the 'Miller-Mead'¹ test).

5. The breach of planning control in section 3 of the notice includes, amongst other things, earthworks, the formation of a new access ramp, crushing of old construction materials, site clearance and the excavation of land. These matters are not detailed in section 5 of the notice and therefore it is unclear as to what is required to remedy the breach of these specific matters.
6. The requirements in section 5 of the notice include the removal of all imported construction materials and waste and to restore the land back to its original state as shown in Photograph 1. Photograph 1 shows piles of construction material on the site. At my site visit, I saw numerous piles of material situated all over the site. The appeal site is now different to that shown in Photograph 1 of the notice.
7. The enforcement notice requires construction materials and waste to be removed from the site, yet it also requires the land to be restored back to its original state as in Photograph 1 which shows material piled on the site. The notice only requires the removal of imported construction materials and does not require anything of the crushing of old construction materials. There is significant lack of clarity with the notice, as it is not clear whether the material piled in Photograph 1 is imported construction material or crushed old construction material, and therefore is it required to be removed from the site. There is also no specific distinction between what on site is imported material and what is crushed old material. Given the notice only requires the removal of imported construction materials and waste, it is not clear what exactly has to be removed from the site.
8. I have the power to vary or correct the terms of the notice, but in doing so must cause no injustice. In light of the identified confusion, amending the allegation and the requirements on the basis of incomplete information would cause injustice to the appellant.

Conclusion

9. For the reasons set out above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and what is required to remedy the breach. I am unable to understand what corrections might be appropriate without them resulting in injustice to any party. As such, I am unable to correct the notice in accordance with my powers under section 176(1)(a) of the Act. The enforcement notice is invalid and will be quashed.
10. In these circumstances, the appeal on the grounds (f) and (g) set out in section 174(2) of the Act do not fall to be considered.

Chris Baxter

INSPECTOR

¹ Miller Mead v MHLG [1963] 2 WLR 225