



Appeal Decision

Site visit not required

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 DECEMBER 2024

Appeal Ref: APP/J3720/C/24/3345393

2 Parkway, Forsbrook, Stoke-on-Trent, ST11 9DG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr S Wareham against an enforcement notice issued by Staffordshire Moorlands District Council.
 - The notice was issued on 7 May 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a wind turbine on the site.
 - The requirement of the notice is to restore the site to its condition before the breach took place by removing the wind turbine from the site.
 - The period for compliance with the requirement is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) 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.

Reasons

Ground (c) appeal

2. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The appellant accepts in his evidence that the wind turbine does not comply with the limitation in I.2 (f) of Class I of Part 14 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) which states that development is not permitted if *'any part of the stand-alone wind turbine (including blades) would be located in a position which is less than a distance equivalent to the overall height (including blades) of the stand-alone wind turbine plus 10% of its height when measured from any point along the boundary of the curtilage'*.
3. The appellant does not dispute the Council's evidence that the overall height of the wind turbine, including blades, is 6.7 metres and the distance between the wind turbine and the boundary of the curtilage, at its nearest point, is 1.6 metres. Therefore, the wind turbine is not permitted development given the restriction imposed in I.2 (f) of Class I of Part 14 of Schedule 2 of the Order.
4. I therefore conclude that the ground (c) appeal fails.

Ground (d) appeal

5. An appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an

enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.

6. The appellant claims that the wind turbine pole has been erected since 2017. He refers to this as '*stage 1*'. He comments that the wind turbine was installed in February 2023, and he refers to this as '*stage 2*'. The appellant's evidence corresponds with the Council's dated photographs which on 19 November 2021 shows only a pole on the land, and on 23 March 2023 shows the wind turbine attached to the said pole.
7. In this case, and as the evidence indicates that the wind turbine was substantially completed by 24 April 2024 (i.e., the transitional arrangement date relating to amendments made to section 171(B) of the Act), it is necessary for the appellant to show that the wind turbine had been substantially completed for four years before the notice was issued.
8. The need for the development to have been '*substantially completed*' for enforcement action immunity purposes is outlined in section 171(B) of the Act. As a matter of fact and degree, I do not find that the erection of the pole constituted the substantial completion of the wind turbine. Based on the appellant's evidence, I find that the wind turbine was not substantially completed until February 2023, i.e., the completion of stage 2. The notice was issued on 7 May 2024. Consequently, the wind turbine was not substantially completed for four years prior to the notice being issued.
9. I therefore conclude that the ground (d) appeal fails.

Other Matter

10. I note that the occupier of the neighbouring property has raised concern about the wind turbine from a living conditions point of view. A ground (a) appeal and deemed planning application is not before me and so it has not been necessary for me to consider the planning merits of the breach of planning control. However, it is noteworthy, in any event, that the planning merits of the breach of planning control have been separately considered by a different Inspector as part of the determination of an appeal made under section 78 of the Act. This appeal was dismissed on 8 January 2024.¹

Conclusion

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

D Hartley

INSPECTOR

¹ Appeal reference APP/B3438/D/23/3330729