



Appeal Decisions

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th March 2025

Appeal A Ref: APP/Y3940/C/24/3348270

Appeal B Ref: APP/Y3940/C/24/3348271

Kingsdown Farm, Longbridge Deverill, Warminster, BA12 7DY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Julian Phillips (Appeal A) and Mrs Kate Phillips (Appeal B) against an enforcement notice issued by Wiltshire Council.
 - The enforcement notice was issued on 20 June 2024.
 - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref PL/2022/01141 granted on 26 October 2022.
 - The development to which the permission relates is: variation of condition 3 (timescale for deposit of waste materials) on 17/09988/VAR.
 - The condition in question is no 3 which states that:
Within 1 month of the granting of this permission, a detailed phased landscaping scheme to include full planting stock specification and a detailed planting programme for the next 3 years shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the landscaping shall be carried out during the associated planting and seeding season(s), for each phase. Any trees or plants which die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species.
 - The notice alleges that the condition has not been complied with in that: A detailed phased landscaping scheme, to include full planting stock specification and a detailed planting programme for the next 3 years has not been submitted to and approved in writing by the Local Planning Authority.
 - The requirements of the notice are: Submit a detailed phased landscaping scheme, to include full planting stock specification and a detailed planting programme for the next 3 years, to be approved in writing by the Local Planning Authority.
 - The period for compliance with the requirement is 1 month.
 - The appeals are proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 (as amended).
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Decisions: Appeals A and B

1. The appeals are allowed and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Mr Julian Phillips and Mrs Kate Phillips against Wiltshire Council. This application is the subject of a separate Decision.

Procedural Matter

3. Appeals A and B relate to the same site and the same enforcement notice. I shall therefore deal with them together.

Background

4. Planning permission was granted in October 2010 under ref. W/10/02377/FUL for the erection of 2 livestock buildings, straw storage building, dung store, hardened tracks and passageways and the reprofiling of adjacent land to facilitate the new buildings on an area of land at Kingsdown Farm. The permission was implemented in August

2011. A condition of that permission required the deposit of waste and all earthworks associated with the development to be completed within 3 years of the development commencing, that is by August 2014. The Council granted a variation of that condition in June 2017, with a replacement condition which extended the period to complete the deposit of waste and earthworks to June 2022.

5. An application to vary the approved plans in respect of the 2 livestock buildings to provide 1 building instead of 2, was granted with a condition (no 3) which maintained the requirement for the deposit of waste and earthworks to be completed by June 2022. However, it became apparent that these works would not be completed by that date. The appellants therefore applied to vary condition 3, which was granted by the Council on 26 October 2022 under planning permission ref. PL/2022/01141, subject to a replacement condition (no 2) requiring the deposit of waste and earthworks to be completed by 31 December 2025.
6. A landscaping scheme condition (no 3) was imposed upon the new permission in order to ensure a satisfactory landscaped setting for the development, the protection of important landscape features and in the interests of the character of the area, which is within an Area of Outstanding Natural Beauty. The alleged failure to comply with this condition is the subject of the enforcement notice.

The enforcement notice

7. The notice alleges that condition 3 is not being complied with because a detailed landscaping scheme has not been submitted to and approved in writing by the Local Planning Authority. The notice requires the appellants to submit a detailed phased landscaping scheme, to include full planting stock specification and a detailed planting programme for the next 3 years, to be approved in writing by the Local Planning Authority, within 1 month from the date the notice takes effect.

The appeals on ground (b)

8. An appeal on ground (b) is made on the basis that the matters comprising the alleged breach have not occurred as a matter of fact. This is a legal ground of appeal and the onus of proof lies with the appellants.
9. There are three parts to condition 3. The first part requires a detailed phased landscaping scheme, to include full planting stock specification and a detailed planting programme for the next 3 years, to be submitted to and approved in writing by the Council within 1 month of the granting of the permission. The second and third parts of the condition relate respectively to implementation of the landscaping and any subsequent replacement planting as may be necessary.
10. The appellants contend that they complied with the condition by submitting a landscaping scheme. It is argued that they are not in breach of the condition as the permission was for development that had already been implemented, and the condition does not set out what should or would happen if the scheme is refused. They say the condition does not accord with the wording of the 'model' condition for retrospective cases which includes a sanction for non-compliance with the terms of the condition. The appellants therefore contend that the refusal of the submitted scheme does not preclude the continued implementation of the planning permission.
11. The Council's position is that condition 3 not only requires the approval in writing of a submitted landscaping scheme, but also that the approved landscaping scheme be

carried out; and that any trees or plants which die, are removed, or become seriously damaged or diseased, be replaced.

12. The National Planning Policy Framework and Planning Practice Guidance set out that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
13. Caselaw¹ has established that a planning condition is only void for uncertainty if it can be given no meaning or no sensible ascertainable meaning, and not merely because it is ambiguous or leads to absurd results. The starting-point – and usually the end-point – is to find “the natural and ordinary meaning” of the words of the condition, viewed in their particular context and in the light of common sense.
14. The natural and ordinary meaning of the first part of condition 3 is that a landscaping scheme is required to be submitted to the Council for approval within 1 month of the date of the planning permission. The evidence indicates that the appellants submitted a scheme in compliance with the time frame set out in the first part of the condition, and the Council has not disputed that the scheme contained all the required elements, and there is nothing before me to show otherwise. However, the Council found the scheme unacceptable on the basis that the proposed phasing plan lacked appropriate triggers considered essential to achieving an acceptable landscape scheme and so fail to deliver the required mitigation in a timely manner. Therefore, the Council refused to discharge the condition.
15. The Council refers to several landscaping conditions in the Planning Inspectorate suite of suggested planning conditions. These conditions do not contain a sanction for non-compliance because they relate to proposed development, rather than retrospective development, as is the case here. The Council has changed the standard wording of the condition so that it deviates from these ‘model’ conditions in that it does not include a ‘prior to commencement’ or ‘prior to occupation’ clause. However, when requiring works to be carried out by condition in retrospective cases, it is necessary for the condition to carry a sanction for non-compliance and a strict timetable for compliance as permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place.
16. In this case, condition 3 does not address a scenario where the landscaping scheme is submitted but not approved. The condition cannot require the appellants to approve the scheme as that is not within their control. Rather, it imposes an obligation on the Council to either approve or refuse that scheme within the tight time frame set out in the first part of the condition. There is no mechanism to require the appellants to resubmit a revised scheme if the earlier one is refused. Nor does the condition carry a sanction in the event the scheme is refused, or there is an approved scheme but it is not implemented in accordance with an approved timetable. The condition does not allow for an appeal to be made under section 78 of the Act if the submitted landscaping scheme is refused. The absence of these necessary components means that condition 3 fails to achieve its intended purpose.
17. The second and third parts of the condition require the landscaping to be carried out during the associated planting and seeding season(s), for each phase, and any trees

¹ Fawcett Properties Ltd v Buckinghamshire Country Council [1961] AC 636, [1960] 3 All ER 503, and Trump International Golf Club Scotland Limited v The Scottish Ministers [2015] UKSC 74.

or plants to be replaced as necessary. The condition does not state that the landscaping shall be carried out in accordance with an approved scheme. However, construed objectively and sensibly, it is clear that the second and third parts of the condition are supplementary to the first part and that their purpose is to ensure that the landscaping is carried out in accordance with an approved scheme and maintained thereafter. Even so, since there is not an approved scheme to carry out, there has not been a breach of these parts of the condition either.

18. The appellants have demonstrated that they have done what the condition required of them by submitting a scheme and have complied with the condition. The lack of a strict timetable for action and a sanction for non-compliance render the condition ineffective and unenforceable. Therefore, even though the submitted landscaping scheme was refused by the Council, I find that there has been no failure to comply with condition 3 of permission PL/2022/01141 and the breach of planning control alleged has not occurred. The appeals on ground (b) therefore succeed and the notice will be quashed.

Other Matters

19. The appellants have not appealed on ground (c), which is that the matters stated in the notice do not constitute a breach of planning control. However, some of the appellants' submissions under ground (b) represent a hidden ground (c) appeal. Because of my conclusion above, there has been no need for me to consider this hidden ground.

Conclusion

20. For the above reasons, I conclude that the appeals on ground (b) succeed and I shall quash the enforcement notice.

M Ollerenshaw

INSPECTOR