



Appeal Decision

Site visit made on 17 March 2025

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2025

Appeal Ref: APP/P2365/C/24/3339918

Land at West Quarry, a former landfill site

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ian McLeod on behalf of AHML Limited against an enforcement notice issued by West Lancashire Borough Council.
- The notice was issued on 2 February 2024.
- The breach of planning control as alleged in the notice is without planning permission, the undertaking of engineering operations on the Land, consisting of:
 - the clearance, excavation and movement of soil and earth the purpose of which appears to the Council is to level and regrade the soil and earth within the Land (the Engineering Operations).
- The requirements of the notice are to:
 - (i) Cease the stripping of soils and excavation of the Land.
 - (ii) Grade out all mounds of soil located on the Land and restore the Land to its previous contours ensuring that all landfill gas collection and monitoring infrastructure located within the Land are protected from damage and/or impairments of their function.
 - (iii) Remove from the surface of the Land any brick, concrete, metal, plastic or other material injurious to the future use of the Land as agricultural land (the Cultivation Works). The Cultivation Works shall create a graded surface suitable for seeding.
 - (iv) Seed the graded surface of the Land with an appropriate agricultural grass seed mix.
 - (v) Undertake landscaping to include tree and shrub planting across the Land that replaces with 'like for like' the vegetation that has been removed, to include the complete restoration of the hedgerow along the full length of the Land's boundary to Appley Lane North (the Landscape works).
 - (vi) The Landscape Works shall be retained and thereafter maintained.
- The periods for compliance with the requirements are:
 - (i) Within a period of one day from the date on which this notice takes effect.
 - (ii) Within a period of two months from the date on which this notice takes effect.
 - (iii) Within a period of two months from the date on which this notice takes effect.
 - (iv) Within a period of four months from the date on which this notice takes effect.
 - (v) In the first planting season (the period between 1st October and 31st March) following the completion of the Cultivation Works.
 - (vi) For a period of seven years following the completion of the Landscape Works..
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

The ground (b) appeal

1. In appealing on ground (b) the burden of proof is firmly on the appellant to demonstrate that the alleged breach of planning control has not occurred as a matter of fact.
2. Whether or not the works described in the alleged breach of planning control under section 3 of the enforcement notice (the notice) amount to development is irrelevant in the consideration of the ground (b) appeal. That is a matter for consideration under the ground (c) appeal.

3. There is no dispute that works involving the clearance, excavation and movement of soil and earth on the appeal site have taken place. Therefore, the alleged breach of planning control has occurred as a matter of fact.
4. The ground (b) appeal therefore fails.

The ground (c) appeal

5. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is upon the appellant.
6. It is not permissible to separate out parts of one development and to argue that those do not fall within the definition of development and that other parts of the same development are to be assessed separately. As one building operation, falling within the meaning of development as set out in section 55 of the Town and Country Planning Act 1990, either the whole of the operation is development or none of it is development.
7. The breach of planning control as alleged in the notice was clearly carried out as a single operation. The trees and shrubs were cleared, the land excavated and soil and earth moved. The clearance of the trees and shrubs were clearly carried out as part of the overall development of the site. Therefore, the clearance of the trees and shrubs cannot be separated from the rest of the development.
8. The appellant contends the earth mound that was removed as a result of the works was created around 2020 and was apparently unlawful. They further argue that the land levels now match those that were the subject of previous planning permissions. However, there is no evidence before me to support the appellant's contention that unauthorised works took place around 2020. The Council confirm the land prior to the works taking place benefitted from planning permission as part of the restoration of the landfill site. The previously approved land levels can be seen on the plan forming planning permission 08/80/1151/6. The existing land levels do not match the contours on this plan.
9. Notwithstanding the above, the works that have been carried out to excavate and move soil on the site comprise engineering operations that require planning permission, regardless of the lawfulness of the previous condition of the site. As planning permission has not been carried out for these works, including the clearance of the trees and shrubs that form part of the overall development, a breach of planning control has occurred.
10. The ground (c) appeal therefore fails.

The ground (f) appeal

11. This ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
12. Having regard to section 173(4) of the 1990 Act as amended and the stated requirements of the notice, it is reasonable to conclude that the purpose of the notice is to remedy the breach of planning control.

13. The appellant contends the works do not harm the Green Belt and there is no damage to the pollution control infrastructure. However, as no ground (a) appeal has been made, I cannot take the planning merits of the development into consideration under the ground (f) appeal.
14. With regard to the Landscape Works, as I have set out in in my consideration of the ground (c) appeal, the loss of the trees formed part of the breach of planning control. Therefore, in order to remedy the breach of planning control, it is reasonable to require the trees to be replaced. There is no evidence before me that the condition of the trees had safety implications on the users of the adjacent highway. In order to ensure the breach is remedied, it is reasonable to require on-going maintenance of the Landscape Works to ensure the trees and shrubs fully establish to satisfactorily match the extent of vegetation that was there previously.
15. I find therefore the steps required by the notice to be taken do not exceed what is necessary to remedy the breach of planning control.
16. The ground (f) appeal therefore fails.

Formal Decision

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

A Walker

INSPECTOR