



Appeal Decision

Site visit made on 19 February 2025

by **Richard S Jones BA (Hons), BTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 April 2025

Appeal Ref: APP/H0520/C/23/3322025

Land South of Hill Place, Brington, Huntingdon, Cambridgeshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Toby Markham (Brington North LLP) against an enforcement notice issued by Huntingdonshire District Council.
 - The enforcement notice was issued on 12 April 2023.
 - The breach of planning control as alleged in the notice is failure to comply with conditions imposed on planning permission ref 15/01700/S73 granted 25 February 2016 and amended by ref 17/02250/NMA granted on 31 October 2018.
 - The development to which the permission relates is: Variation of condition 27 of Planning Permission: 1300679FUL to substitute plans as listed in table, and variation of condition 4 (soft landscaping) to allow for reinforced planting along the boundary of plots 9-16.
 - The conditions in question are Nos 4 and 13 which state that:
 - 4. The development shall be undertaken in accordance with the soft landscaping details approved 28.8.15, and the 10 year landscape management plan approved on 16.7.15 (condition 4 of 1300679FUL under 1408243COND) and revised 'Detailed Planting Plan – boundary reinforcement' (drawing 317-04) submitted 9.10.15 submitted under this S73 application (as amended by Non-Material Amendment planning reference 17/02250/NMA).
 - 13. The boundary treatment shall be carried out in accordance with details approved under condition 14 of 1300679FUL on 16.7.15 (under 1408243COND).
 - The notice alleges failure to comply with Condition 4 (Soft Landscaping scheme) of Planning Permission 15/01700/S73 as amended by 17/02250/NMA and Condition 13 (Boundary Treatments) of Planning Permission 15/01700/S73.
 - The requirements of the notice are to:
 - (i) Restore the Land to its original levels as shown on drawings CL01 and CL03 submitted on 30th October 2014 under reference 1408243COND and complete all soil preparation according to the soft landscaping scheme approved under Condition 4 of Planning Permission 15/01700/S73 as amended by 17/02250/NMA.
 - (ii) Complete all planting on the Land in accordance with the soft landscaping scheme approved under Condition 4 of Planning Permission 15/01700/S73 as amended by 17/02250/NMA.
 - (iii) Complete planting on the land to the rear of plots 9 – 16 as shown on drawing 317-02 received on 4th February 2015 under reference 1408243COND approved under Condition 13 of Planning Permission 15/01700/S73.
 - The period for compliance with the requirements is by 31 December 2023.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is varied by:

- the deletion of requirement (i) in section 5 and its substitution with “Complete all soil preparation according to the soft landscaping scheme approved under Condition 4 of Planning Permission 15/01700/S73 as amended by 17/02250/NMA.”

- the deletion of “will be by 31st December 2023” as the time for compliance in section 6 and its substitution with “is eight months from the date this notice takes effect.”

2. Subject to the variations, the enforcement notice is upheld.

Background

3. Planning permission was granted on 23 October 2014 for the erection of 56 dwellings (including 12 affordable units) following demolition of 40 existing dwellings, access and landscaping works and formation of public open spaces (ref 1300679).
4. Permission was subsequently granted on 25 February 2016 for a “Variation of condition 27 of Planning Permission: 1300679FUL to substitute plans as listed in table, and variation of condition 4 (soft landscaping) to allow for reinforced planting along the boundary of plots 9-16” (ref 15/01700/S73). On 31 October 2018, an application for a non-material amendment was granted for an “Amendment to bund and planting scheme for north and east of the development approved under 15/01700/S73” (ref 17/02250/NMA).

The Appeal under Ground (f)

5. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or the injury to amenity caused by the breach.
6. The enforcement notice explains that the purpose of the notice is to remedy the breach by making the development comply with the terms (including conditions and limitations) of planning permission 15/01700/S73 as amended by 17/02250/NMA.
7. The appeal is made in relation to the first part of requirement (i) only, which requires the restoration of the land to its original levels as shown on drawings CL01 and CL03 submitted on 30 October 2014 under reference 1408243COND.
8. Both parties also refer to a previously withdrawn enforcement notice, which included a requirement to “Restore land to its original levels in the area marked in blue on the attached plan...”.
9. The Council state that in an appeal against that notice the appellant claimed the requirement was not specific enough as there were no details of original levels in the notice nor within the approved plans for the site.
10. In an attempt to be more precise with the current enforcement notice, the Council says it found drawings CL01 and CL03 submitted in October 2014 in relation to Condition 2 (finished floor levels and threshold details and levels of roads, gardens, paths and gradients) of planning permission 1300679FUL, as amended, which appeared to show original levels of the land subject to this appeal. The drawings were therefore included in the requirement with the intention of being as clear and precise as possible.
11. However, the appellant explains that drawings CL01 and CL03 include levels of the site in 2014 following pre-determination archaeological investigation, demolition and site clearance. The appellant states that the drawings are not a

correct representation of the levels of the land prior to works commencing and requiring them to be returned to those levels exceeds what is necessary to remedy the breach of planning control.

12. In response the Council states that it could not have known that the existing levels marked on drawings CL01 and CL03 were not original levels, and, had it been aware of the date and circumstances, it would not have included reference to them in the requirements.
13. The Council therefore requests that the first part of requirement (i) be varied by deleting the words “as shown on drawings CL01 and CL03 submitted on 30th October 2014 under reference 1408243COND”. The first part of the requirement would therefore read as “Restore the Land to its original levels...”.
14. The appellant’s position is that would revert back to the wording of the original enforcement notice, which was withdrawn prior to the appeal against it being heard. The previous grounds of appeal are therefore repeated that there are no details of original levels in the notice or within the approved plans for the site. It is argued that because original levels are not specified in the notice, it is unclear what works are required for compliance and that it is unreasonable to expect unspecified works to be carried out. The appellant’s view is that the steps required to remedy the breach must be clearly specified and that the vague and ambiguous wording of the requirement does not achieve that.
15. The Council’s position is that it would expect the appellant to hold details of original land levels and, because it has now become evident that the Council does not, it is unreasonable to expect it to provide such detail in the requirements of the enforcement notice.
16. The Council explains that the requirement to restore land levels arises from the developer confirming, in response to a planning contravention notice issued in December 2020, that land levels in the orchard area had been altered since the development was commenced.
17. In the circumstances, I agree that it would be the appellant who is best placed to know what the previous or original land levels would have been. Nevertheless, a notice must be drafted fairly to tell a recipient what he has done wrong and what he must do to remedy it¹. A notice may be a nullity if it is “hopelessly ambiguous and uncertain”².
18. In this case the matters which appear to constitute the breach of planning control is the “Failure to comply with Condition 4 (Soft Landscaping scheme) of Planning Permission 15/01700/S73 as amended by 17/02250/NMA and Condition 13 (Boundary Treatments) of Planning Permission 15/01700/S73”. A change in land levels does not therefore form part of the allegation, nor is it explained how Conditions 4 and 13 have not been complied with. The latter is explained in the reasons for issuing the notice, but there is no reference therein to land levels. Nevertheless, the relevant planning permissions are recited, and the relevant conditions are identified and set out as part of the alleged matters.
19. Condition 4 states that “The development shall be undertaken in accordance with the soft landscaping details approved 28.8.15, and the 10 year landscape

¹ S173 of the 1990 Act

² *Miller-Mead v MHL* [1963] 2 WLR 225

management plan approved on 16.7.15 (condition 4 of 1300679FUL under 1408243COND) and revised 'Detailed Planting Plan – boundary reinforcement' (drawing 317-04) submitted 9.10.15 submitted under this S73 application (as amended by Non-Material Amendment planning reference 17/02250/NMA)."

20. The identified aims of the Landscape Management Plan are to maintain and enhance the landscape setting for the development and residents and to maintain existing trees where appropriate and enhance biodiversity. I have not been directed to any part of that document which deals with the original levels of the land. That is also the case for the "Softworks Specification" document referred to in the Council's condition discharge letter of 28 August 2015.
21. The drawings referred to in the title of the Landscape Management Plan (THP drawing No's 317-02, 03 & 04) are planting plans and do not provide details of land levels either. That is also the case with the revised 'Detailed Planting Plan – boundary reinforcement' (drawing 317-04).
22. Condition 13 states that "The boundary treatment shall be carried out in accordance with details approved under condition 14 of 1300679FUL on 16.7.15 (under 1408243COND)". The aforementioned Council letter of the 28 August 2015 states that the boundary treatments to plots shown on drawing number -02r.5 are acceptable (subject to exceptions), and the condition can be considered discharged upon completion of the works in accordance with the submitted details. That drawing does not include details of land levels.
23. None of the above findings are surprising given that the Council acknowledges it does not hold details of the original ground levels in approved drawings. Although the requirement cannot therefore be specified with precision in terms of the levels to be achieved, it is not hopelessly ambiguous and uncertain, as similarly oft-used standard wording "to restore the land to its condition before the development took place" is usually sufficient for validity purposes.
24. Nevertheless, the requirements of an enforcement notice should logically follow from the allegation. In this case, there is no reference to levels in the allegation or Conditions 4 and 13, nor is it shown that the approved details of those conditions require the land to be restored to original levels.
25. The Council does not therefore show that remedying the breach by making the development comply with the terms of the permissions granted (including the relevant conditions and limitations), includes the restoration of the land to its original levels. I therefore find that part of the requirement is excessive for the purposes of remedying the breach of planning control. Requirement (i) should therefore be varied by deleting reference to the same.
26. The appeal on ground (f) succeeds.

Other Matters

27. As the enforcement notice is to be varied, prior to upholding it, it is necessary to correct the period of compliance, which refers to a date which has now passed. Based on that date, and the date when the notice would have taken effect, the period of compliance given in the notice is around seven and a half months. I will therefore round that up to eight months.

28. I note the submissions supporting the reasons for issuing the enforcement notice, but I am unable to consider such matters, insofar as they relate to the planning merits, because the appellant has not made an application for planning permission through a ground (a) appeal.
29. I also note the representation submitted in support of the appeal, which suggest a better solution to the issues the Council are attempting to resolve by issuing an enforcement notice. However, such matters are beyond the scope of the appeal before me, which is restricted to ground (f) and for part of requirement (i) only.

Conclusion

30. For the reasons given above, I conclude that the requirements of the notice are in part excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds.

Richard S Jones

INSPECTOR