
Appeal Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 12 August 2025

Appeal Ref: APP/K1128/C/24/3340837

Land at SX686436, Easton Court Farm, Thurlestone

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Norman Gillan of EE Limited against an enforcement notice issued by South Hams District Council.
 - The enforcement notice was issued on 14 February 2024.
 - The breach of planning control as alleged in the notice is a breach of condition 3 of planning permission 3321/20/FUL – failure to comply with planting and landscaping referenced in Planting Plan Drawing No 410 PP 01 Rev B revision C.
 - The requirements of the notice are to comply in all respects with the requirements of Condition 3 of Planning Decision 3321/20/FUL.
 - The period for compliance with the requirements is nine months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the enforcement notice is quashed

Procedural matters

1. Planning permission for the Installation of 12.97m high replica telegraph pole accommodating trisector antenna within GRP shroud, satellite dish, installation of metre cabinet, generator, 3 equipment cabinet and ancillary equipment within compound surrounded by 1.8m high mesh fence was granted on 5 August 2021 (Council Ref: 3321/20/FUL). That permission was subject to a total of four conditions, one of which (Condition 3) required that all proposed landscaping and planting as detailed within plan reference 'Planting Plan Drawing No. 410_PP_01_Rev B revision C' shall be undertaken and planted in the next planting season following the commencement of the development and completed in full prior to the completion of the works. There is no dispute that the appellant has failed to comply with that condition.
2. I understand that as a result of the landscaping survey results, it has been discovered that the landscaping plan as approved is not capable of being implemented due to the landform, the development as built and ongoing discussion about what was agreed with the landowner. That (i.e when the landscaping survey results were first known) would have been the appropriate time to hold discussions with the Council about an amended landscaping scheme and not once the planning permission had been implemented, thereby resulting in Condition 3 taking effect.
3. The Council would have been fully entitled to require the removal of the telecommunication mast as a result of the non-compliance with Condition 3, if

it was considered expedient to do so. In my view, that is still an option that is open to the Council. However, as it is perfectly entitled to do, the Council elected to under-enforce and to require compliance with Condition 3.

4. The difficulty is with the requirement at paragraph 5 of the notice, which simply requires the recipient of the notice to comply in all respects with the requirements of Condition 3. There is no attendant consequence for the recipient of the notice should that requirement failed to be complied with: i.e. the notice does not go on to require the removal of the telecommunication mast and the land restored to its condition before the breach took place. The landscaping scheme approved (Planting Plan Drawing No. 410_PP_01_Rev B revision C) shows the telecommunication mast in situ irrespective of whether the attendant landscaping is provided or not.
5. The appellant is very clear that the approved landscaping scheme shown on Planting Plan Drawing No. 410_PP_01_Rev B revision C cannot now be implemented due to the changes made to land, partly as a result of the installation of the telecommunication mast. The Council does not challenge that with evidence of its own. The salient point is that the appellant is now in a position (albeit entirely of his own making) that he is not able to comply with the requirement at paragraph 5 of the notice.
6. It follows that non-compliance with the notice would have no consequence for the appellant beyond being technically in breach of an enforcement notice: the telecommunication mast could remain in situ but without the attendant landscaping to soften its appearance. The notice as drafted would not secure the landscaping scheme approved under Planting Plan Drawing No. 410_PP_01_Rev B revision C and does not require the removal of the telecommunications mast. For that reason, the notice as drafted serves no purpose.
7. Section 176(1)(b) of the 1990 Act provides that a notice may be varied where the Inspector is satisfied that doing so will cause no injustice to the appellant or the Local Planning Authority. I have considered whether I could vary the notice to require the telecommunication mast to be removed and the land restored to the to its condition before the breach took place should Condition 3 of Planning Decision 3321/20/FUL not be complied with.
8. However, in those circumstances the appellant may have elected to appeal against the notice on different grounds and/or raise different arguments in relation to the grounds of appeal on which the appeal has been made. Consequently, the appellant would be caused injustice were I to do so, such that it is not open to me to vary the notice in those respects. In these circumstances, I have no option other than to find that the notice is invalid and to quash the notice.
9. I recognise that the appellant has advanced an alternative landscaping scheme but even if that revised scheme (or a variation of it) was approved, it would still not achieve the purpose of the notice, which was to remedy the breach of planning control that has taken place. It is of course open to the appellant to explore other means of implementing an alternative landscaping scheme that would be acceptable to the Council. For example, the submission of an application under Section 73 of the 1990 Act to vary condition 3 imposed upon planning permission 3321/20/FUL. However, that would need to take place outside of this appeal process.

Conclusion

10. For the reasons given above, I conclude that the enforcement notice as drafted does not serve a useful purpose. It is not open to me to correct the error in accordance with my powers under section 176(1)(b) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeals on the grounds set out in section 174(2) (f) and (g) of the 1990 Act as amended do not fall to be considered.

Formal Decision

11. The enforcement notice is quashed.

Paul Freer
INSPECTOR