

Appeal Decision

Site visit made on 3 July 2019

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Appeal ref: APP/F4410/C/18/3207741

Land adjacent to Burgar Road/Tudworth Road, Thorne, Doncaster DN8 5RB

- The appeal is made by Miss Jodie Martin under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Doncaster Metropolitan Borough Council.
- The notice was issued on 26 July 2018; reference No. 18/00021/ENFNOT.
- The breach of planning control was: Without planning permission:
 - (i) the change of use of the Land from countryside to a mixed use of domestic and storage use by the siting of a mobile home, shipping/van bodies, storage containers, storage of vehicles, horse boxes and the siting of a portable office unit.
 - (ii) the unauthorised engineering operations including the formation of an internal roadway and a hardstanding compound area.
- The requirements of the notice are to:
 - (i) Cease the residential occupancy of the mobile home;
 - (ii) Remove the mobile home;
 - (iii) Remove the office unit, storage containers, vehicle box bodies, vehicles, and horse transporters and all other domestic impedimenta;
 - (iv) Remove the internal roadway and hardcore compound;
 - (v) Restore the area where the internal roadway and hardcore compound was located to countryside by re-seeding with grass or wild meadow seed mix within an appropriate period in the planting season October 2018 - March 2019.
 - (vi) For one year following reseeded date, allow the area to be restored to a semi-natural condition by:
 - a. Not applying any topsoil, non-native wildflower/grass seed or fertilisers;
 - b. Not allowed grazing in the first spring and summer; and
 - c. Control agricultural weeds (creeping thistles, broad-leaved and curled dock and common ragwort) through up-rooting, cutting, or (if required) knapsack spraying or weed-wiping (in accordance with Natural England advice <https://www.gov.uk/guidance/prevent-the-spread-of-harmful-invasive-and-non-native-plants#spray-plants-with-chemicals>)
 - d. Allowing the regrowth by securing the area from grazing for one year from the date of re-seeding.
- The periods for compliance with the requirements are:
 - Requirement (i) – within one month of the effective date of the notice.
 - Requirement (ii) – within one month of the effective date of the notice.
 - Requirement (iii) – within 3 months of the effective date of the notice.
 - Requirement (iv) – within 3 months of the effective date of the notice.
 - Requirement (v) – within 9 months of the effective date of the notice.

- The appeal was made on grounds (a) and (b) as set out in the amended Act. As the fees payable for the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended were not paid, the appeal on ground (a) falls away and the application is not considered.

Summary of decision: The enforcement notice is varied and upheld

Appeal site

1. The appeal site is a 0.62ha narrow strip of land immediately to the south of the railway, a short way west of Thorne South station. Some of the land is covered by a stone hardcore surface and an access track. At the time of the appeal visit, there was a mobile home and storage units on the land.

The appeal on ground (b)

2. An appeal on ground (b) asserts that the alleged breach of planning control has not, as a matter of fact, occurred. In an appeal on legal grounds, as here, the burden of proof to show there has not been a breach of planning control lies with the appellant. The case of *Nelsovil v MHLG [1962] 1 WLR 404* is authority for that position.
3. The first part of the notice's allegation states: "(i) the change of use to a mixed use of domestic and storage use by the siting of a mobile home, shipping/van bodies, storage containers, storage of vehicles, horse boxes and the siting of a portable office unit.". It is not possible to know whether the stationing of the mobile home amounts to a material change of use without knowing the purpose for which it was used, and whether that purpose fitted in with the existing use of the land, (*Restormel BC v SSE and Rabey [1982] JPL 785*). Here, use of the term "mixed use of domestic and storage use" as applied to the mobile home lacks precision.
4. The notice's first requirement clarifies matters. From that, it may be seen that the Council concluded the mobile home was being used for residential purposes. However, Miss Jodie Martin, the Appellant, said the caravan had not been occupied residentially. No services, such as water or electricity were connected. Nor was the mobile home plumbed in to a drainage system. It was used for storage, not lived in. That would appear to be conceded by a Council Officer's site visit report that said: "*the caravan did not appear to be occupied, no water or gas supply was present and having looked through the windows of the caravan, it did not indicate that the caravan was being used for residential purposes*". The Council produced no evidence of a residential use of the caravan, (described as a mobile home in the notice), on the appeal site. The residential use of the mobile home as part of a mixed storage use of the land was not demonstrated. I will delete requirement 5(i) from the enforcement notice.
5. Miss Martin's said some of the stone and hardcore surfacing had been placed on the site in 2002. That could be part of an implied ground (d) appeal, that in the case of operational development, it would be immune from enforcement action after a period of 4 years following substantial completion of works, (s.171B(i) of the Act). The Council had said aerial photographs taken at intervals over the period 2002 to 2015 showed the site to be undeveloped. But this is not a matter before me and I cannot deal with it in the context of a ground (b)

appeal. If Miss Martin considers there is evidence available to support her view, it could be the subject of an application to the Council for a certificate of lawfulness under section 191(1)(b) of the Act.

6. My conclusion is that no evidence of a residential use of the mobile home was produced. The appeal on ground (b) therefore succeeds for that part of the alleged breach of planning control. But the appeal fails in respect of the storage uses and the engineering operations. The enforcement notice is varied by the deletion of that part of the allegation dealing with the residential use and the deletion of the requirement 5(i). I also delete reference to "countryside" in the first part of the allegation. In my view, "countryside" does not describe a use of land. Also, an enforcement notice does not need to set out a previous lawful use. That variation also helpfully removes the word "domestic". If it had been appropriate, "residential" would better describe such use. Finally, the use of a specified date for compliance is inappropriate, as it may not allow for a suitable period for compliance in the event of an appeal against the notice. I will substitute a period of time, reflecting the Council's intention that re-seeding takes place in the succeeding planting season.

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7. The enforcement notice is varied by the deletion of the words "from countryside to a mixed use of domestic and" in lines 1 and 2 in paragraph 3(i) on page 1 of the notice and the substitution therefor of the words "to a". The enforcement notice is also varied by the deletion of the words "residential occupancy" in line 5(i) on page 2 of the notice and the substitution therefor of the words "the storage use". The enforcement notice is also varied by the deletion of the words "planting season October 2018 – March 2019" in lines 3 and 4 in paragraph 5(v) on page 2 of the notice and the substitution therefor of the words "next planting season following the restoration of the former internal road way and hardcore compound". Subject to the foregoing, the varied enforcement notice is upheld.

John Whalley

INSPECTOR