



Appeal Decision

Site visit made on 13 January 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 30 January 2020

Appeal Ref: APP/T2405/C/19/3232404

Land to the West side of Forest Road, Huncote, Leicestershire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Clive Harris against an enforcement notice issued by Blaby District Council.
- The enforcement notice was issued on 5 June 2019.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised material change of use of the Land from agriculture to a use for storage of soils, building materials, plant/equipment, and general refuse/waste.
- The requirements of the notice are: -
 - a) Cease the use of the Land for the storage of building materials, soils, logs, timber, bricks, blocks, drainage piping, plant, equipment as well as general waste and refuse.
 - b) Remove all building materials, soils, logs, timber, bricks, blocks, drainage piping, plant, equipment as well as general waste and refuse.
- The period for compliance with the requirements is 30 days.
- 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 (the 1990 Act). Since the prescribed fees have not been paid within the specified period, an appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act have lapsed.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
2. The steps required to remedy the breach should, to ensure clarity, be consistent with the description of the alleged breach. The requirements in this case contain additional items to those cited in the description. Moreover, the additional items are superfluous to the requirements as they are covered by the overall description of the alleged breach. As such, I intend to correct the notice by deleting the wording '*logs, timber, bricks, blocks, drainage piping,*' from both requirements a) and b). I can carry out these corrections without injustice to the parties.

Procedural Matter

3. The appellant initially stated that his appeal only related to the ground (f) appeal. However, when validating the appeal, it was noted that the evidence also related to a ground (g) appeal. The appellant confirmed that he did wish to include a ground (g) appeal and the parties have had a chance to comment on this matter. As such, no injustice would be caused to either party and I have dealt with the appeal on this basis.

The ground (f) appeal

4. The 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 (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
5. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).
6. The Council has not specifically identified which of these purposes it seeks to achieve. Nonetheless, in requiring cessation of the storage use and removal of all the materials associated with that use, it is evident that the Council seeks to remedy the breach.
7. The appellant suggests that the removal of all of the materials/plant stored on the site is excessive as some of them are required for operations associated with his agricultural holding. I acknowledge that the soil could be used to fill in undulations on the land within that holding and that it is possible that the building materials could be used within the developments cited by the appellant if planning permission was granted for them.
8. In any case, I have no evidence to indicate that planning permission has been granted for any of the developments referred to above. Moreover, in relation to the soil the requirements of the notice only entail that it is to be removed from the land. Those requirements do not stop the appellant from using it to fill in undulations on other land within his agricultural holding as part of that removal or after its removal from the land. It was apparent from my site visit that an appreciable amount of material appears to have recently been removed from the land.
9. Furthermore, there is little evidence before me to indicate that the plant/equipment is required for the purposes of agriculture or why it has to be stored on this site rather than other parts of the agricultural holding.
10. In any event, the suggested alternative would not remedy the breach of planning control alleged. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The appeal on ground (f) fails.

The ground (g) appeal

11. That any period specified in the notice in accordance with section 173(9) of the 1990 Act falls short of what should reasonably be allowed. The appellant has not specified what period of time he considers is reasonable. However, he does state that it would have needed to have been after the hay had been cut on his agricultural holding and when the weather permitted. I have little evidence to indicate that 30 days in itself is not a reasonable time to comply with the requirements of the notice. Nevertheless, given the time of year, the winter, I consider that the weather and associated conditions on the site could hamper the removal of materials such as soil.
12. Taking into account all of the above, a reasonable period for compliance would be 90 days and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

13. It is directed that the enforcement notice be corrected by deleting the wording '*logs, timber, bricks, blocks, drainage piping,*' from both requirements a) and b) and varied by the deletion of 30 days and the substitution of 90 days as the period for compliance. Subject to these corrections and variations the appeal is allowed on ground (g) and the enforcement notice is upheld.

D. Boffin

INSPECTOR

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990 (as amended by the Planning and Compensation Act 1991)

ENFORCEMENT NOTICE

ISSUED BY: Blaby District Council

1. **THIS NOTICE** is issued by the Council because it appears to it that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the Land described below. The Council consider that it is expedient to issue this notice, having regard to the provisions of the Development Plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. **THE LAND TO WHICH THE NOTICE RELATES**

Land to the West side of Forest Road, Huncote, Leicestershire as shown edged red on the attached plan ("The Land").

3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission the unauthorised material change of use of the Land from agriculture to a use for storage of soils, building materials, plant/equipment, and general refuse/waste.

4. **REASONS FOR ISSUING THIS NOTICE**

It appears to the Council that the above breaches of planning control have occurred on the Land to which this notice relates within the last ten years.

The Land is located in a prominent location at the junction of Enderby Road and Forest Road on the outskirts of the village of Huncote. The Land is in an area of Countryside as defined on the Policies Map of the Blaby District Local Plan (Delivery) Development Plan Document 2019, where policy CS18 Countryside of the Blaby District Local Plan (Core Strategy) Development Plan Document 2013 ('Local Plan Core Strategy') and policy DM2 Development in the Countryside of the Blaby District Local Plan (Delivery) Development Plan Document 2019 ('Local Plan Delivery DPD') apply.

Policy CS18 of the Local Plan Core Strategy states that within areas designated as Countryside, planning permission will not be granted for built development, or other development which would have a significantly adverse effect on the appearance or character of the landscape.

Policy DM2 of the Local Plan Delivery DPD provides further detail on development that is appropriate in the Countryside and the criteria that should be taken into account when determining planning proposals. Policy DM2 states that development proposals consistent with Local Plan Core Strategy Policy CS18 will be supported where the following criteria are met:

'General

a) The development is in keeping with the appearance and character of the existing landscape, development form and buildings.....; and,

b) The development provides a satisfactory relationship with nearby uses that would not be significantly detrimental to the amenities enjoyed by the existing or new occupiers, including but not limited to, consideration of:

i. overdevelopment of the site due to factors including footprint, scale and mass;

ii. privacy, light, noise, disturbance and overbearing effect; and,

iii. vibration, emissions, hours of working, vehicular activity.'

The District Planning Authority considers that the unauthorised use of the Land for the storage of soils, building materials, plant/equipment, and general refuse/waste is readily visible from the highway and is not in keeping with the appearance and character of the existing landscape. In addition this form of development provides no satisfactory relationship with nearby uses and adversely affects the amenity of other occupiers in the surrounding area to a significant level. As such the development conflicts with Local Plan Core Strategy policy CS18 and Local Plan Delivery DPD policy DM2.

5. WHAT YOU ARE REQUIRED TO DO

- a) Cease the use of the Land for the storage of building materials, soils, logs, timber, bricks, blocks, drainage piping, plant, equipment as well as general waste and refuse.
- b) Remove all building materials, soils, logs, timber, bricks, blocks, drainage piping, plant, equipment as well as general waste and refuse.

6. TIME FOR COMPLIANCE

The period of compliance shall be 30 days after this notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 3rd July 2019 unless an appeal is made against it before that date.

Dated: 5th June 2019

Signed:

Jonathan Hodge
Senior Enforcement Officer
Blaby District Council
Council Offices
Narborough
Leicester
LE19 2EP

Annex

YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Secretary of State before the date specified in paragraph 7 of the notice. Please read the attached note from the Planning Inspectorate which accompanies this notice.

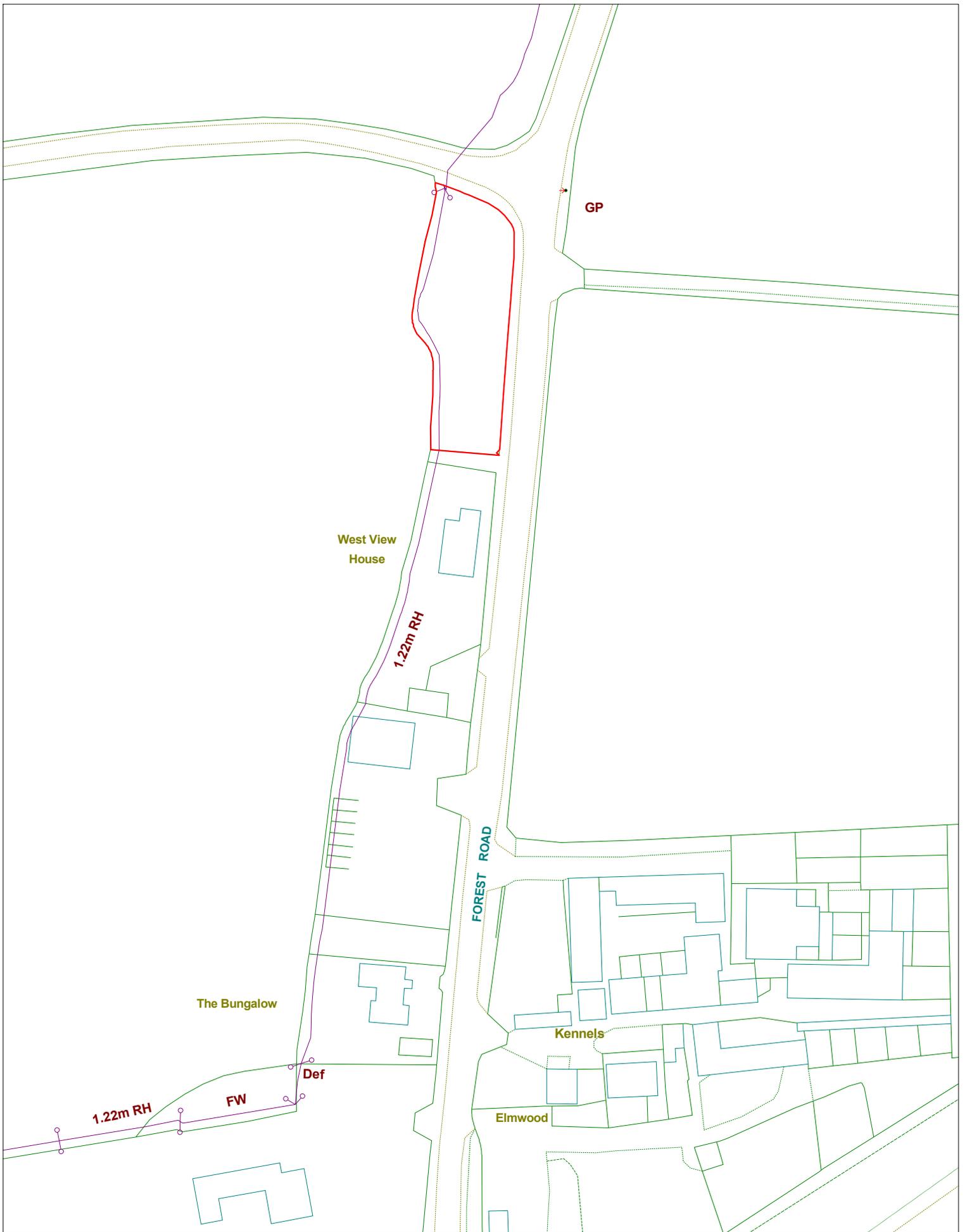
WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council

PERSONS SERVED WITH ENFORCEMENT NOTICE

**Town and Country Planning (Enforcement Notices & Appeals) (England)
Regulations 2002 Part 2, 5(c)**

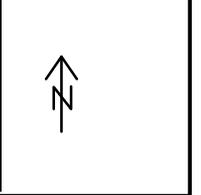
Mr Clive Harris
2 Sandpit Cottage
Croft Road
Thurlaston
Leicestershire
LE9 7TB



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Land shown edged in red

O. S. Map Ref. :- SP5199SE
 Scale :- 1:1250



Customer Support Team
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Direct Line 0303-444 5000
Email enquiries@planninginspectorate.gov.uk

THIS IS IMPORTANT

If you want to appeal against this enforcement notice you can do it:-

- on-line at the Appeals Casework Portal (<https://acp.planninginspectorate.gov.uk/>); or
- sending us enforcement appeal forms, which can be obtained by contacting us on the details above.

You MUST make sure that we RECEIVE your appeal BEFORE the effective date on the enforcement notice.

Please read the appeal guidance documents at <https://www.gov.uk/appeal-enforcement-notice/how-to-appeal>.

In exceptional circumstances you may give written notice of appeal by letter or email. You should include the name and contact details of the appellant(s) and either attach a copy of the Enforcement notice that you wish to appeal or state the following:

- the name of the local planning authority;
- the site address; and
- the effective date of the enforcement notice.

We MUST receive this BEFORE the effective date on the enforcement notice. This should immediately be followed by your completed appeal forms.