



Appeal Decision

Site visit made on 11 June 2019

by **D H Brier BA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 June 2019

Appeal Ref: APP/B3030/C/18/3214820

Land on the south-east side of Fosse Road, Farndon, Newark, Nottinghamshire

- 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 P I Hardy against an enforcement notice issued by Newark & Sherwood District Council.
- The enforcement notice was issued on 27 September 2018.
- The breach of planning control as alleged in the notice is:
 - A. The material change of use of the land from agricultural to a mixed use including the storage of vehicles, storage containers, waste products and scrap materials.
 - B. The creation of earth bunds surrounding the north-eastern and north-western boundaries of the land.
- The requirements of the notice are:
 - A. Cease using the land for any purposes other than agriculture.
 - B. Remove from the land all items not associated with agricultural use of the land.
 - C. Remove the earth bund from the north-eastern and north-western boundaries of the land.
 - D. Remove all hard surfacing and road planings from the ground and return the land to its former agricultural condition.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2), (a), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the notice is quashed.

The Appeal Site and Background

1. Although the enforcement notice refers to land south east of Fosse Road, the appeal site is set back some way from this road and access to it is gained from Hawton Road via Hardy's Business Park, Corner House Farm. To the south, the 'L' shaped appeal site borders onto the Business Park which accommodates a variety of commercial uses. Immediately to the east is an open area of land flanked to the north and east by bunds for which a Lawful Development Certificate (LDC) was issued in 2018. The LDC covers a number of uses including storage, the siting of shipping containers, the parking of lorries and trailers and items of plant and machinery. There is no physical boundary between this area and the appeal site, most of which appeared to be being put to similar uses.
2. The appeal site is flanked to north east and north-west by bunds, but there is a gap in the south-west corner of the site where part of the site extends in a north-westerly direction parallel to a row of conifer trees. Unlike the rest of the

land, the outer sides of this part of the site are not flanked by bunds; this area simply forms part of a large field which also extends beyond the north-east boundary of the rest of the site. At the time of my site inspection, no storage was occurring on this area.

Appeal on Ground (e)

3. The section of the Council's statement addressing this point is headed 'Appeal under Ground (e) – that the breach has not occurred'. As the appellant points out, this is incorrect. But, as the Council's submissions under this heading clearly address matters appertaining to Ground (e), I am not inclined to attach any significance to this apparent slip.
4. The main issue concerning the appeal on this ground under this heading is:
 - a) whether copies of the enforcement notice were served as required by section 172 of the Act; and
 - b) if not, whether the appellant, or the person who was not served as required, have been substantially prejudiced by the failure to do so.
5. The main thrust of the appellant's case is that the notice was not served on Frank Hardy & Sons (Farndon) Limited, the company that operates the Business Park. It is pointed out the company rents both the appeal site and the Business Park from the appellant and another party. It is also stated that the company rents out storage containers on the appeal site to various third parties. None of this evidence has been called into question by the Council who accept that the notice was not served on Frank Hardy & Sons (Farndon) Limited.
6. The Council also point out though that the appellant is listed as a person with 'significant control' of Frank Hardy & Sons (Farndon) Limited and is also listed as a director and secretary of the company. It is also stated that copies of the notice were delivered to the company's registered office at Corner House Farm and at the appellant's residence, both in the presence of the appellant. None of this has been challenged by the appellant.
7. Given Frank Hardy & Sons (Farndon) Limited's interest in the land, the failure to serve a copy of the notice on the company is a clear indicator that it was not properly served. However, having regard to the extent of the appellant's apparent involvement with the company, I find it almost inconceivable that the best interests of the company would not have been overlooked. In particular, the procedural shortcoming has not prevented the appellant from lodging an appeal and putting forward a full and comprehensive case in support of it. In the light of this, I am not satisfied that either the appellant or the company in question has been substantially prejudiced.
8. On the face of it, the above finding ought to lead to the failure of the ground (e) appeal. However, although the front sheet of the enforcement notice indicates that it was issued to "Any Owner or Occupier" of the land in question, the Council's comments strongly suggest that copies of the notice were not actually served on any of the individual tenants of the land. Instead, the Council indicate that a copy of the notice was displayed at the "*primary vehicular entrance to the wider industrial site*"¹.

¹ Council's appeal statement, paragraph 4.22.

9. It may well be that the display of the notice was intended to be for the benefit of people entering the land, as the Council indicate. But, as the wider Business Park contains what the Council describe as a “*vast array of businesses*”², and as the particular vehicular entrance referred to is some distance away from the actual appeal site itself, from which it is separated by the main body of the Business Park, there is a strong likelihood that tenants may not have appreciated the relevance or significance of the notice insofar as they were concerned as they passed through the entrance to the Business Park.
10. Despite the practical difficulties of displaying the notice on the actual appeal site, as described by the Council, my view is that the manner in which the notice was displayed fell well short of what can reasonably be regarded as its proper service under the provisions of section 172. As a result, the possibility that some or all of the tenants affected may not have been aware of the notice and the possible consequences for their businesses, and so would not have had the opportunity to exercise their right of appeal against it, if they so chose, cannot be discounted. In these circumstances I find that there has been substantial prejudice.
11. For the reasons given above, I conclude that the appeal should succeed on ground (e). Accordingly, therefore, the enforcement notice will be quashed. As a result, the appeal under the various grounds set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) do not need to be considered.

Formal Decision

12. I allow the appeal and direct that the enforcement notice be quashed.

D H Brier

Inspector

² Ibid, third un-numbered paragraph after 4.4.