



Appeal Decision

Inquiry Held on 17 December 2019

Site visit made on 17 December 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2020

Appeal Ref: APP/H4315/C/18/3212452

The Function Room, 2B North Road, St Helens WA10 2TL

- 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 Martin John Allen against an enforcement notice issued by St. Helens Metropolitan Borough Council.
- The enforcement notice was issued on 11 September 2018.
- The breach of planning control as alleged in the notice is the carrying out of operational development on the land comprising (i) the unauthorised erection of numerous telegraph poles to a height in excess of six metres such telegraph poles being situate in the approximate position as shown by the line of blue dots on the attached plan and (ii) the erection of a roller shutter to a height in excess of 2 metres together with telegraph poles situate above the roller shutter the approximate position of the roller shutter being shown by the line of green dots on the attached plan.
- The requirements of the notice are to reduce the height of all of the telegraph poles and roller shutter erected on the land to a maximum height of 2 metres and remove any resulting cut material from the land.
- The period for compliance with the requirements is 56 days.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Applications for costs

1. At the Inquiry applications for costs were made by St Helens Metropolitan Borough Council against Mr Martin John Allen and by Mr Martin John Allen against St Helens Metropolitan Borough Council. These applications are the subject of a separate Decision.

Procedural Matters

2. I have noted that there are some minor errors in the wording of the enforcement notice which should be corrected. Firstly, in the header of the enforcement notice the word "property" is incorrectly spelt. Secondly, the word "situate" is used in paragraphs 2 and 3 of the notice. Although this may not technically be incorrect, I consider that the use of the word "situated" would be clearer and ensure that there is a full and correct understanding of the alleged breach of planning control in this case. These can all be corrected without causing injustice to parties.
3. In order to deal with the appeals on grounds (d) and (g) it is important to firstly determine exactly what was on site at the time the enforcement notice

was served. Specifically, were the telegraph poles the subject of the notice a single operation or a series of individual building operations?

4. Firstly, Mr Allen himself described how each of the telegraph poles was set and fixed together to create what was described in his planning application form dated 20 August 2015 as a "a boundary for a courtyard". In addition, in his oral evidence, Mr Allen described it as a structure as opposed to a set of individual structures. He also confirmed that when he received the enforcement notice he believed that it referred to a "structure of telegraph poles as a complete unit".
5. Therefore, in my opinion and based on the evidence presented to me, both as a matter of fact and in legal terms, the telegraph pole structure was single structure at the time the enforcement notice was served and therefore also a single building operation in legal planning terms. As such, the next key question to answer is whether a complete unit, single structure or a continuous barrier should be viewed in planning terms as a single operation or a series of multiple operations.
6. From his oral evidence given at the Inquiry Mr Carr clearly considers the structure was a series of individual telegraph poles which were pegged together and therefore a series of multiple building operations. He also accepted that the structure is a building under the definition of development in section 336 of the 1990 Act and therefore the erection of the telegraph pole wall would be a building operation under s55 of the 1990 Act. Therefore, by definition, the erection of this building is a single building operation and it cannot be logically reasoned otherwise.
7. The clear understanding of the appellant, Mr Allen, with respect to this matter and as expressed in his 2015 planning application is that the telegraph pole boundary wall is a building and a single building operation. Therefore, on this matter I am in agreement with the Council's view that as a matter of fact and in legal terms a single breach of planning control has occurred which is the erection of numerous telegraph poles to a height in excess of six metres.
8. Given my conclusion with respect to the above matters, the next logical step is to determine whether or not the enforcement notice is valid. The appellant is concerned that the breach of planning control alleged in paragraph 3 of the enforcement notice is too vague. A key test of whether or not an enforcement notice is valid is set out in case law¹ which states that the key question is '*does the notice tell him fairly what he has done wrong and what he must do to remedy it?*'. Furthermore, in the Oates case² it states that "*provided the essential steps to be taken were clear enough that would suffice even if there was some uncertainty at the margins*". It is important not to look at just one part of the enforcement notice but to look within the four corners of the Notice.
9. On the basis of case law it is clear to me that the Notice was sufficiently clearly worded and as confirmed by Mr Allen himself, it told him within reasonable certainty what he had done wrong in planning terms and what steps he must take to remedy it. The Notice was clear on its face, it directs the recipient or reader to where the unauthorised development is on a plan and it also refers to the previous planning application and a previous appeal. Consequently, I am

¹ Miller-Mead v MHLG [1963] 2 WLR 225

² Oates v SSCLG [2017] EWHC 2716

satisfied that the enforcement notice told the reader what he has done wrong and how it must be remedied. Indeed, it is also clear that Mr Allen fully understood what the breach was when he received it and, it appears that, until he changed his opinion, Mr Carr also understood what the notice concerned and what needed to be done to remedy it.

10. The enforcement notice the subject of this appeal is clear and valid and other than some minor corrections, does not need amending.

The appeal on ground (d)

11. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary to show that the numerous telegraph poles and the erection of the roller shutter with telegraph poles above was substantially completed four years before the notice was issued, and therefore the material date is 11 September 2014.
12. The Council's photographic evidence dated 12 February 2015 shows that the telegraph poles were in the process of being erected and were not substantially complete. In addition, the application form for planning application reference P/2015/0764/FUL which is signed and dated 20 August 2015 shows that the appellant had started the works but at the time of submission the building, work had not been completed.
13. The Planning Contravention Notice response from the appellant dated 6 May 2016 includes details relating to the method of construction of the telegraph poles and it states that the construction started in June 2012. It goes on to state that construction carried on for a period of two and a half years. As such, this evidence suggests that the construction was not completed until December 2014.
14. As such, there is insufficient evidence before me to prove that on the balance of probabilities the telegraph poles and associated roller shutter had been substantially complete by 11 September 2014. The appeal on ground (d) fails.

The appeal on ground (g)

15. The ground of appeal is that the time given to comply with the requirements is too short. The 56 days given would be sufficient to reduce the height of the telegraph poles and roller shutter erected on the land to a maximum height of 2 metres and remove any resulting cut material from the land. No evidence is presented by the appellant with respect to ground (g) and no alternative time periods are suggested. On that basis the appeal on ground (g) must fail.

Conclusion

16. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decision

17. It is directed that the enforcement notice be corrected by:
 - a) The deletion from the heading of the enforcement notice the word "Proprty" and the substitution therefor of the word "Property"; and

- b) The deletion in line 1 of paragraph 2 and lines 4 and 6 of paragraph 3 of the enforcement notice the word "situate" and the substitution therefor of the word "situated".

18. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Mike Carr
He called

Mr Martin John Allen

FOR THE LOCAL PLANNING AUTHORITY:

Piers Riley-Smith of Counsel instructed by Mark Fisher of St Helens
Metropolitan Borough Council

He called

Tom Cummings St Helens Metropolitan Borough Council

INTERESTED PERSONS:

Beverley Kavaney
Nicola Hamilton
Stacey Leith
Barbara Silcock
Adam Cartwright
Mark Howells

St Helens Metropolitan Borough Council
Kings Chambers