



Appeal Decision

Site visit made on 12 February 2019

by **A A Phillips BA(Hons) Dip TP MTP MRTPI**

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

Decision date: 22 February 2019

Appeal Ref: APP/B3410/C/18/3202861

Land on the south east side of Newton Road, Burton upon Trent, Staffordshire DE15 0TX

- 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 against an enforcement notice issued by East Staffordshire Borough Council.
- The enforcement notice was issued on 9 April 2018.
- The breach of planning control as alleged in the notice is:
 1. The creation of a vehicular access from the Land onto a classified road (B5008) and
 2. The associated earth works conducted in order to create the vehicular access.
- The requirements of the notice are:
 - i. Cease the use of the Land for the purposes of vehicular access and egress from, or to, the classified road (Newton Road).
 - ii. At the site of the vehicular access, return the embankment to the height, gradient and profile that it was immediately prior to the unauthorised earth works that were undertaken to create the access.
- The period for compliance with the requirements is:
 - i. With regard to requirement (i) above, immediately once the notice takes effect;
 - ii. With regard to requirement (ii) above, 30 days beginning with the day on which this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: No further action is taken.

Reasons

1. The enforcement requires: at 6(i) the requirement to (i) Cease the use of the Land for the purposes of vehicular access and egress from, or to, the classified road (Newton Road) to be complied with "*immediately once this notice takes effect*".
2. A notice which contains no period whatsoever for compliance is a nullity as would one which specifies "immediately" since that is not a "period" for the purpose of s173(9) of the 1990 Act as amended. The courts have held¹ that even if there are a series of requirements only one of which must be carried out "immediately", the enforcement notice is a nullity.
3. Consequently, the Council's failure to specify an actual period of time within which the first requirement of the Notice should be complied with means that the enforcement notice is a nullity.

¹ R (oao Lynes & Lynes) v West Berkshire DC [2003] JPL 1137

Formal Decision

4. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the local planning authority should consider reviewing the register kept under section 188 of the Act. By virtue of section 171B(4)(b) of the 1990 Act the Council is not prevented from taking further enforcement action on this matter.

A A Phillips

INSPECTOR