

Appeal Decisions

Hearing held on 16 November 2016

Site visit made on 16 November 2016

by Katie Peerless Dip Arch RIBA

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

Decision date: 14 December 2016

6 Appeals at Dumfries Farm, Rochdale Road East, Heywood OL10 1QU

Appeal A: APP/P4225/C/16/3146952

Appeal B: APP/P4225/C/16/3146953

Appeal C: APP/P4225/C/16/3146954

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Alison McGuigan (Appeal A), Noel McGuigan (Appeal B) and Melvin Cordwell (Appeal C), against an enforcement notice issued by Rochdale Metropolitan Borough Council.
 - The enforcement notice, numbered 16/00013/ENF, was issued on 10 February 2016.
 - The breaches of planning control as alleged in the notice are (i) The unauthorised change of use of that part of the Land shown edged orange on the Plan to use for domestic purposes comprising the following pieces of development; a) the erection of a boundary fence, brick wall, brick pillars and wooden gates in excess of 1m high adjacent to a public highway (Rochdale Road East) (shown with a thick black line on the Plan attached to the Enforcement Notice); b) the creation of a lawn with a boundary wall to the lawn (shown respectively cross hatched green and by a blue line on the Plan attached to the enforcement Notice) and its use for domestic purposes; c) the creation of a hardstanding and its use for domestic purposes (shown hatched purple on the Plan attached to the Enforcement Notice); d) the erection of part of a detached brick building (shown cross hatched black on the Plan attached to the Enforcement Notice). (ii) The erection of part of a detached brick building (shown cross hatched black on the Plan attached to the Enforcement Notice) on the Land outside the Land edged orange on the Plan. (iii) the erection of a boundary fence, brick wall, brick pillars and wooden gates in excess of 1m high adjacent to a public highway (Rochdale Road East) (shown with a thick black line on the Plan).
 - The requirements of the notice are (i) Cease the use of that part of the Land edged orange for domestic purposes, and; (ii) either; demolish the boundary fence, brick wall, brick pillars and wooden gates identified by the thick black line on the Plan and remove the resultant materials following demolition. Or reduce the height of the same to a height not in excess of 1 metre from the ground level and remove the resultant materials from the partial demolition as aforesaid, and; (ii) Demolish the unauthorised detached brick building shown cross hatched black on the Plan in its entirety and remove all the resultant materials from the Land, and return the Land to its former state; (iii) Remove the lawn (shown cross hatched green on the Plan) and remove its boundary wall (shown by a blue line on the Plan attached to the Enforcement Notice) from the Land and remove all the resultant materials from the Land, and return the Land to its former state. (iv) remove the Hardstanding (shown hatched purple on the Plan) and remove all the resultant materials from the Land and return the Land to its former state.
 - The period for compliance with the requirements is 56 days.
 - The appeals are proceeding on the grounds set out in section 174(2) (a), (b), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended.
-

Appeal D: APP/P4225/C/16/3146956

Appeal E: APP/P4225/C/16/3146957

Appeal F: APP/P4225/C/16/3146958

- The appeals are 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 Alison McGuigan (Appeal D), Noel McGuigan (Appeal E) and Melvin Cordwell (Appeal F) against an enforcement notice issued by Rochdale Metropolitan Borough Council.
 - The enforcement notice, numbered 16/000013/ENF, was issued on 10 February 2016.
 - The breach of planning control as alleged in the notice is c) the importation of crushed hardcore and tarmac planings which have been deposited on the Land; and, the carrying out of engineering works to the Land to create a compacted hardstanding/tarmacadam expanse. d) the importation and deposit of soil materials, and the carrying out of engineering operations to significantly alter the level and contours of the Land.
 - The requirements of the notice are (i) Remove from the Land the tarmacadam surface, the tarmac planings, the crushed compacted hardstanding formed on the site and the associated fixed kerb edgings within the area shown hatched blue on the Plan and return the Land to its former agricultural state using suitable grass seed or turf. (ii) Remove from the Land all the imported soil materials that have been deposited on that part of the Land hatched blue on the Plan and reinstate the Land to its original levels and contours and return it to its former agricultural state using suitable grass seed and turf.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended.
-

Decisions

Appeals A, B and C:

APP/P4225/C/16/3146952, 3146953 and 3146954

1. It is directed that the enforcement notice be varied by the inclusion of the words '*Or alter the fence to comply with the details approved under permission 15/00241 and remove all the resultant materials from the Land*' after '*as aforesaid*' in requirement (ii), the deletion of requirement (iii) and the substitution of the following requirement: *Remove the boundary wall (shown by a blue line on the Plan attached to the Enforcement Notice) from the Land and remove all the resultant materials from the Land.* Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Appeals D, E and F:

APP/P4225/C/16/3146956, 3146957 and 3146958

2. It is directed that the enforcement notice be varied by the deletion of the word '*significantly*' in the allegations, the deletion of requirement (ii) in its entirety and the insertion of the words '*and brought onto the site after June 2011*' after '*formed on the site*' and '*apart from the hardstanding forming the authorised access driveway*' after '*hatched blue on the Plan*' in requirement (i). Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Procedural matters

3. Although the appeals on ground (a) originally lapsed because the requisite fee was not received, at the Hearing the appellants said that they had sent a cheque for the fees with the appeal forms and the Council's representative said that she was under the impression that the fees had been paid.

4. The appellants produced a copy of an email, written in response to a query from the Planning Inspectorate, saying that they had sent the fees to the Council. The cheque had not, however, been cashed and the appellants confirmed that they have now cancelled the cheque. The Council confirmed that neither the cheque nor the paper copies of the appeal forms had been received and their questionnaire, dated 10 May 2016, states that the fees had not been paid.
5. I have no reason to doubt that the appellants did send the cheque but it appears that it was never received. The Planning Inspectorate has now agreed to reinstate the appeal on ground (a) made in respect of appeals A, B and C. For the avoidance of doubt, the matters that the appellants wish to have considered under ground (a) are the fence, wall and lawn and there was no appeal made on ground (a) on appeals D, E and F. The matters relating to ground (a) were discussed at the Hearing in the anticipation that the appeals on this ground might be reinstated.
6. The appellants also made appeals on ground (e), that the enforcement notices had not been properly served on all those with an interest in the land. The Council accepts that this was the case and the mistake arose because the ownership changed in the period between the Council consulting the Land Registry about the ownership of the site and the issue of the notices; it has now revised its procedures to prevent such misunderstandings in future. However, the appellants confirmed at the Hearing that they are taking no further point on the issue and the appeals on ground (e) are not being pursued.

Planning History

7. Planning permission¹ was granted in 2014 for the conversion and extension of a detached garage at the farm to form a separate dwelling. Conditions attached to this permission were discharged² in April 2015. A further application³ for a farm store was refused in December 2015.
8. The application for the conversion of the garage relocated the original field entrance to form a new access to the converted building from the corner of the site to a point about 20m (to its mid-point) from the corner. The plans show the 'red line' on the application plan running around the entrance drive and excluding a rectangular area of land that is the area of lawn, partly bordered by a brick wall, that is enforced against in the notice that is the subject of Appeals A, B and C.

Main Issues

9. I consider that the main issues in these cases are:

Appeals A, B and C:

On ground (b): whether the creation of the hardstanding has been carried out as a matter of fact.

¹ Ref: 14/01325/FUL

² Ref: 15/00241/DOC

³ Ref: 15/01231/FUL

On ground (c): whether the disputed area of hardstanding and the garage lie within the curtilage of the original farmhouse and consequently benefit from permitted development rights and whether the wall around the lawn is authorised by Part 2 of Schedule 2 of the General Permitted Development Order 2015 (GPDO).

On ground (a): (i) whether the proposed development represents inappropriate development within the Green Belt and, if so, whether there are any material considerations that outweigh the harm caused by such development, and any other harm, and are sufficient to justify the proposal on the grounds of very special circumstances.

(ii) the effect of the fence, wall and lawn on the character and appearance of the surroundings.

On ground (f): whether the requirements of the notice exceed what is necessary to remedy the breach of planning control or the injury to amenity.

Appeals D, E and F

On ground (b): whether the creation of the hardstanding and the alteration of the ground levels have been carried out as a matter of fact.

On ground (c): whether the disputed area of hardstanding benefits from permitted development rights under Parts 1 and 6 of Schedule 2 of the GPDO.

On ground (f): whether the requirements of the notice exceed what is necessary to remedy the breach of planning control or the injury to amenity.

Site and surroundings

10. The appeal site is part of a smallholding, now in 2 ownerships, in Green Belt countryside on the outskirts of Heywood. The site included on the enforcement notice subject of appeals A, B and C, described by the Council as relating to 'domestic use' contains the converted garage, the lawn and wall within the site, the wall and fence running along the road frontage and the newly constructed garage building.
11. The farmhouse at Dumfries Farm can be accessed from Dumfries Hollow to the south east, and the two properties are in the ownership of members of the same family. The new entrance is, at present, used to access the converted dwelling and the area of hardstanding and field included on the enforcement notice described by the Council as relating to 'earth moving' that are the subject of appeals D, E and F. The field is the land to the southeast of the red line of the planning application for the conversion. It is laid to rough grass and part of it has been fenced off to prevent access to land on which an electricity pylon is located. The stable block shown on the plans has been removed.

Reasons

Appeals A, B and C: EN1

Ground (b)

12. Although contained on the appeal form relating to the 'domestic use' enforcement notice (EN1), the area of hardstanding referred to by the appellants as having been in existence appears to be that included in the 'earth moving' notice (EN2). As noted above, I will deal with that under the appeals on ground (f) relating to that notice. Otherwise, all the works referred to in EN1 have been carried out as a matter of fact.

13. Although not specifically mentioned on the appeal form, at the Hearing the appellants submitted that the area of lawn was not, in fact, being used for domestic purposes but was an area of land that was effectively 'left over' after the authorised works had been carried out. I saw at the site visit that the piece of land has been laid out as a lawn rather than a field and the presence of the brick wall that partly surrounds it gives it the distinct appearance of being part of the garden of the converted dwelling.
14. This impression is compounded by the expanse of hardstanding that surrounds it which is comprised of the areas enforced against and the authorised driveway. The appellants say that the land is not used as garden, and has been planted with fruit trees to form an orchard, but the tarmac and wall have effectively isolated the land from the remainder of the agricultural holding and it is now visually and functionally associated with the domestic usage of the converted building.
15. I appreciate that this small area of land would, on its own, have little practical use as agricultural land but, without the wall and unauthorised areas of tarmac, it could possibly become part of the wider land holding that includes the area shown on the plan attached to EN2. I therefore conclude that the alleged change of use has occurred as a matter of fact.
16. In relation to the hardstanding, the appellants' comments appear to relate to the hardstanding covered by the 'earth moving' enforcement notice and will be dealt with under my consideration of those appeals. The hardstanding referred to in the 'domestic use' notice is that which the Council claims encroaches beyond the 'red line' of the planning application and has been constructed as a matter of fact. Whether it is authorised will be considered in the appeals on ground (c) and the appeals on ground (b) must therefore fail.

Ground (c)

17. On this ground of appeal the appellants claim that the area of hardstanding hatched purple on the plan attached to the notice was within the curtilage of the original farmhouse and was shown as such on the 'as existing' site plan that accompanied the planning application. They believe it is consequently permitted by class F of Part 1 of Schedule 2 of the GPDO. They also submit that this is the case with the new garage building that has been erected to the north of the converted building and that this falls within permitted development criteria as set out in class E of Part 1 of Schedule 2 of the GPDO.
18. The appellants have based their judgements on their claim that there was a stock fence running at right angles to the road that originally defined the curtilage of the farmhouse. Aerial photographs seem to show that this was the case, but the plans that accompanied the planning application and the subsequent application to discharge the conditions are not very clear and, at the site visit, the relevant dimensions were measured on the ground.
19. From the photographs⁴ and those dimensions, it seems that the line of the previously existing fence is shown in approximately the correct position on the plans but also that the expanse of tarmac that is now in this part of the site extends beyond this line, as shown on the enforcement notice plan.

⁴ Figs. 1 and 3 in the Council's statement

20. I have already found that the alleged change of use on this land has occurred as a matter of fact and there is no claim that the land outside the red line is not in agricultural use; in fact, the appellants' case is that the land is an orchard. The area of hardstanding is not, therefore, authorised by the permitted development rights relating to development within the curtilage of a dwelling. Neither have I been given any reason to consider that this hardstanding would be reasonably necessary for the purposes of agriculture and so it would not be authorised by Class B of Part 6 of the GPDO.
21. Turning to the garage, part of it extends into the agricultural land between the authorised area of tarmac and the access drive and the remainder is within the red line of the conversion permission. The part of the building on the agricultural land cannot be development permitted under Class A which relates only to that within the curtilage of a dwellinghouse and the remainder is on land that had permitted development rights under Class E of Part 1 of Schedule 2 (curtilage buildings) withdrawn under condition 9 of planning permission 14/01325/FUL. The development that has been carried out is consequently unauthorised.
22. The appellants also claim that the wall around the lawn is development permitted under Part 2 of Schedule 2 of the GPDO. However the Council maintains that it is development that facilitates the material change of use and can therefore be required to be removed even if, otherwise, it would be permitted development. The Council's view is, in my opinion, correct as, for the reasons set out under my findings on ground (b), the wall is part of the change to a domestic use and can therefore be required to be removed. The appeals on ground (c) consequently fail.

Ground (a)

23. New building in the Green Belt is (apart from some limited exceptions) is considered to be inappropriate development which is classified in the National Planning Policy Framework (the Framework) as being inherently harmful. The fence and wall that have been constructed do not benefit from permitted development rights and whilst they may not be a typical 'building' they have nevertheless be constructed through a building operation and, in my view, therefore fall within the category of inappropriate development. They also reduce the openness of the Green Belt by enclosing the site with a man-made boundary treatment. Very special circumstances will therefore be needed to justify the grant of any planning permission for them.
24. The fence and wall are prominent in local views along Rochdale Road East and enclose the vista across the farmland beyond. Although the opposite side of the road has development that is the beginning of the more suburban surroundings of Heywood, on the side where the boundary treatment has taken place this has not yet occurred. The majority of the fence and wall are not enclosing a domestic garden but otherwise open agricultural land. They are, in my view, detracting from the character of the surroundings through this intrusion.
25. Although the appellants say that neighbouring occupiers consider the development to be an improvement on the previous situation, and that they might be disturbed by further building works, I do not find this to be a material consideration sufficient to indicate that very special circumstances exist.

26. In respect of the lawn, in subsequent paragraphs I explain why I consider that there should be no requirement to replant the grass, but I nevertheless find no justification for a change to a residential use from the current agricultural use. Once again, changes of use are considered to be inappropriate development and there are no material considerations that outweigh the substantial weight that the Framework requires should be given to the harm caused by such development. Therefore, the appeals on ground (a) fail and planning permission will not be granted for the development.

Ground (f)

27. Under this ground of appeal the appellants firstly submit that the requirement to reduce the height of the fence and wall on the boundary with the highway is excessive as it would cause disproportionate inconvenience to neighbouring occupiers and is more than is necessary to address the injury to amenity.
28. The Council confirmed at the Hearing that the enforcement notice is intended to remedy not only the injury to amenity but also the breach of planning control and the requirements do not go beyond what would be necessary to achieve this. The requirements could have called only for the fence and walls to be removed in their entirety. However, in this respect the Council has effectively under-enforced by only requiring the height of the fence and walls to be reduced to 1m high, which would then be development permitted by the GPDO. There is no remit for me to consider the planning merits of the retention of the existing development under an appeal on ground (f). As noted above I do not have an appeal on ground (a) before me and, in these circumstances, for the reasons set out in preceding paragraphs, I do not consider this requirement to be excessive.
29. Nevertheless, the Council has also approved details of a 1.5m picket fence along the boundary as part of the grant of discharge of conditions and I will include an option of complying with the details approved by this permission.
30. I also consider that it is not excessive to require the removal of the wall around the lawned area. I have explained that it is development that facilitates the unauthorised change of use and, again there is no planning application for it for me to consider.
31. I do, however, take a different view on the requirement to take up the lawn and return the land to its former state, which was grassed. It seems excessive to require the replacement of grass with another type of grass; the requirement to remove the wall and tarmac on the land and cease its domestic use as a garden would be sufficient to remedy the breach of planning control. The appeal on ground (f) succeeds to these limited extents and I will vary the enforcement notice accordingly.

Appeals D, E and F: EN2

Ground (b)

32. The second enforcement notice relates to the area of tarmac to the north east of the access drive and the remainder of the land in agricultural use. There was previously a small area of hardstanding close to the entrance from the road that has now been overlaid and extended and can be seen on the aerial photographs and the appellants ask that the original hardstanding should be able to remain. This would normally be considered under an appeal on ground (d) but as the appellants have not formally made such an appeal I will consider the merits of the claim in this section.

33. I agree that the original area of hardstanding has clearly been in existence for more than 4 years prior to the issue of the enforcement notice and is therefore immune from enforcement action. Therefore, only the material brought onto the site since the appellants purchased the property can be required to be removed and I will vary the notice accordingly.
34. The appellants also submit that the area hatched on the enforcement notice plan is inaccurate and covers the new access road that has planning permission under 14/01325/FUL. This appears to be the case and I will therefore again vary the wording of the notice to make clear that there is no requirement to remove the authorised driveway. However, the remainder of the alleged work in respect of the laying of the hard surface has been carried out as a matter of fact; whether it is a breach of planning control will be considered under the appeals on ground (c).
35. In respect of the appellants' claim that there has been no significant alteration to the levels and contours of the land, they do not deny that they have carried out work to part of the agricultural land to the south of the dwellings. However, they say that the work was to drain a particularly wet portion of the site to allow it to be used for keeping sheep. It involved the laying of pipework to achieve this and, at the time the enforcement notice was issued, the work was in progress and did not reflect the final level of the field which, now the work is complete, has not changed to any significant extent.
36. There is no claim that the works have not been carried out, nor that imported material has been brought onto the site, but, in my judgement the works have not 'significantly' altered the levels and contours of the land as alleged. The appeal on ground (b) succeeds to this extent and I will vary the allegation accordingly. Nevertheless, works have been carried out on the land and whether these activities amount to unauthorised development will again be considered under the appeals on ground (c).

Ground (c)

37. In respect of the hardstanding, the appellants claim that it is permitted development under Class B of Part 6 of Schedule 2 of the GPDO. Class B(e) allows for the provision of a hard surface on agricultural land forming a unit of between 0.4 and 5 hectares.
38. However, this is subject to a limitation under B.1(c) which states that such development is not permitted if any part of the development would be within 25 metres of a metalled part of a trunk road or a classified road. In this case the area of hardstanding is within this distance from Rochdale Road East (A58) and would not therefore be permitted development.
39. Turning to the earth moving allegation, the photographs taken by the Council taken at the time the works were being carried out show quite extensive operations, albeit over only part of the land included on the enforcement notice plan. However, as noted above, now the works are complete it is difficult to tell where, or indeed if, there has been any alteration in levels and there is little impact on the appearance of the land. The reason for issuing the enforcement notice in relation to the earth moving relates to the impact on the openness of the Green Belt and I find this to be minimal.

40. In any event, I consider that the works that have been carried out amount to development permitted by Class B (c) of Part 6 of the GPDO which allows, amongst other things, for the provision of pipework where the development is reasonably necessary for the purposes of agriculture within the unit. The appeals on ground (c) succeed in respect of this part of the development, but otherwise fail.

Ground (f)

41. The appellants submit that removal of the tarmac, which they consider serves to neaten the original hardstanding, would be excessive. I find no reason to conclude that this would be so; aerial photographs show a relatively small area of unstructured hard surface and what has been constructed is a much more intrusive and formal area that extends and consolidates the development over most of the upper part of the site.
42. At the Hearing, they also submitted that the surface treatment would be needed for further agricultural development that they are hoping to carry out. Nevertheless, there is no planning permission presently in place for any such development and, if an area of hardstanding is needed, it should be incorporated into any future application. For these reasons, the appeals on ground (f) in respect of the hardstanding fail. As I have found that the earth moving works are authorised, there is no need to consider the appellants' submissions on ground (f) on this topic.

Conclusions

Appeals A, B and C

43. For the reasons given above, I conclude that some of the requirements are excessive, the appeals on ground (f) succeed in part and I am varying the enforcement notice accordingly, prior to upholding it.

Appeals D, E and F

44. For the reasons given above, I conclude that some of the allegations in the notice are incorrect, in that the Plan covers some areas of hardstanding that are authorised. Also, the earth moving that has been carried out is authorised by the GPDO and these parts of the development succeeds under the appeals on grounds (b) and (c). I am therefore varying the enforcement notice accordingly, prior to upholding it.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANT:

Alison McGuigan	Appellant
Noel McGuigan	Appellant
Melvin Cordwell	Appellant
Linda Cordwell	Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Alison Truman	Rochdale Metropolitan Borough Council
John Holmes	Rochdale Metropolitan Borough Council

DOCUMENTS

- 1 EN1 Plan with colours shown accurately
- 2 Photograph of NE corner of site