
Appeal Decisions

Site visit made on 25 July 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 13 August 2019

Appeal A Ref : APP/Y9507/C/18/3201898

Appeal B Ref : APP/Y9507/C/18/3201899

Land at Lords, School Lane, Sheet, Petersfield, GU32 2AS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Fraser Castle and Appeal B is made by Mrs Castle against an enforcement notice (Enforcement Notice 1) issued by East Hampshire District Council.
- The notice was issued on 27 April 2018.
- The breach of planning control as alleged in the notice is without planning permission and within the last 10 years the change of use of the land to domestic garden.
- The requirements of the notice are to cease the use of the land shown hatched black on the plan attached to the notice for residential domestic use.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: the appeals are dismissed and the enforcement notice is upheld

Appeal C Ref : APP/Y9507/C/18/3201901

Appeal D Ref : APP/Y9507/C/18/3201902

Land at Lords, School Lane, Sheet, Petersfield, GU32 2AS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal C is made by Mr Fraser Castle and Appeal D by Mrs Castle against an enforcement notice (Enforcement Notice 2) issued by East Hampshire District Council.
- The notice was issued on 27 April 2018.
- The breach of planning control as alleged in the notice is without planning permission and within the last 4 years, the erection of a swimming pool and decking in the approximate position shown cross-hatched black on the plan attached to the notice.
- The requirements of the notice are to dismantle and remove the swimming pool and decking from the land shown hatched black on the plan attached to the notice.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: the appeals are dismissed and the enforcement notice is upheld

Appeal E Ref : APP/Y9507/W/18/3201402

Land at Lords, School Lane, Sheet, Petersfield, GU32 2AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990

against a refusal to grant planning permission;

- The appeal is made by Mr & Mrs Castle against the decision of East Hampshire District Council;
- The application ref SDNP/17/04532/FUL dated 29 August 2017 was refused by notice dated 7 November 2017.
- The development proposed is change of use of land to residential garden and retention of swimming pool and timber decking.

Summary of Decision: the appeal is dismissed

Appeals A,B,C,D Ground (a) appeals and deemed applications and Appeal E

Main Issue

1. The main issue in the determination of each appeal is the same, namely the effect of the development on the character and appearance of the surrounding area with particular regard to its location in a National Park.

Character and appearance

2. The appeal site is located close to the settlement of Sheet, outside the settlement policy boundary and in the countryside. It is located within the South Downs National Park (the SDNP). The dwellinghouse known as Lords sits opposite a primary school and residential development with fields adjacent. The development the subject of Enforcement Notice 1 (Appeals A and B) is a change of use of agricultural land to residential garden. The development the subject of Enforcement Notice 2 (Appeals C and D) is a swimming pool and decking. The section 78 appeal (Appeal E) concerns both the garden and pool.
3. At the time of the issue of the notice the development plan comprised the East Hampshire District Local Plan : Joint Core Strategy and the East Hampshire District Local Plan: 2nd Revision 2006. Since then the South Downs Local Plan (the Local Plan) has been adopted and I shall determine these appeals in accordance with that plan unless material considerations indicate otherwise. The National Planning Policy Framework (the Framework) has been revised since the issue of the notice and I shall apply the revised version in this determination. The parties comments have been sought on the application of the revised version to this case and I have taken their comments into account.
4. National Parks have the highest status of protection in relation to landscape and scenic beauty and the Framework recognises the intrinsic character and beauty of the countryside. The Local Plan mirrors the Framework in providing that great weight is to be given to conserving landscape and scenic beauty in national parks. The statutory purposes of the SDNP are to conserve and enhance the natural beauty, wildlife and cultural heritage and to promote opportunities for the public understanding and enjoyment of the special qualities of their area. Policy SD5 of the Local Plan provides that development proposals will only be permitted where they adopt a landscape-led approach and respect the local character, through sensitive and high quality design that makes a positive contribution to the overall character and appearance of the area.

Garden

5. The land is part of an agricultural field adjacent to the residential garden of the dwelling known as Lords. It is outside the residential curtilage of the dwelling. It forms part of an agricultural paddock used for the grazing of alpacas, goats and other livestock and surrounds the unauthorised swimming pool and decking. It is bounded by fencing. There are further paddocks to the north east, west and south and the land rises to the south.
6. The Appellant argues that the development is an effective use of land with no adverse impact on landscape character. I disagree. The change of use introduces a domestic appearance into a rural landscape which has a designation as a National Park. It introduces an alien domestic element into the open landscape in which it sets. The site is not part of the residential curtilage but agricultural land set in open countryside nationally designated for its landscape and scenic beauty. I do not agree that the appeal site has a domestic feel and connectivity with the curtilage of the house. The fact that it is not readily visible from the highway does not mitigate this harm to the landscape and scenic beauty of the surrounding area. I note that livestock will continue to graze but this does not alter my concerns.
7. I have taken into account the benefits that weigh in favour of the proposal including the use of land for multiple purposes and the potential social benefits of outdoor recreation space. But these benefits are modest and do not outweigh the harm to the character and appearance of the area with particular regard to its location in the SDNP.
8. For the reasons given I conclude the change of use causes harm to the character and appearance of the area and fails to conserve and enhance the landscape and scenic beauty of the area. It fails to make a positive contribution to the overall character and appearance of the area contrary to relevant policies in the development plan (including policy SD5 of the Local Plan) and the Framework. Planning permission should not be granted.
9. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. I have considered the landscaping condition proposed by the Council in the event that the appeal is allowed. But I do not consider that any such condition would overcome the intrinsic harm to the character of the area.
10. For the reasons given I conclude that planning permission should not be granted on the deemed application the subject of Appeals A and B nor in respect of the change of use the subject of Appeal E.

Swimming pool

11. The swimming pool and timber decking sit in the area of land which has been the subject of the unauthorised change of use from agriculture to residential garden. The swimming pool is relatively large in size and is elevated off the ground accessed by timber decking along the southern edge.
12. Its domestic appearance stands in stark contrast to the scenic beauty of the open countryside of the surrounding area. It does not conserve or enhance the landscape and scenic beauty of its surroundings and fails to make a

positive contribution to the character and appearance of the area. It is out of keeping and alien to its setting.

13. For the reasons given I conclude the erection of the swimming pool and decking causes harm to the character and appearance of the area and fails to conserve and enhance the landscape and scenic beauty of the area. It fails to make a positive contribution to the overall character and appearance of the area contrary to relevant policies in the development plan (including policy SD5 of the Local Plan) and the Framework. Planning permission should not be granted.
14. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. I have considered the landscaping condition proposed by the Council in the event that the appeal is allowed. But I do not consider that any such condition would overcome the intrinsic harm to the character of the area.
15. For the reasons given I conclude that planning permission should not be granted on the deemed application the subject of Appeals C and D nor in respect of the retention of swimming pool and decking the subject of Appeal E.

Other matters

16. The Appellants refers to a potential land swap whereby they gift a separate area of land to compensate for the loss of SDNP land that would arise from the appeal being allowed. But there is no draft planning obligation before me in these appeals and insufficient detail to enable me to take this into account.

Formal Decisions

Appeal A : APP/Y9507/C/18/3201898

- 17.The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/Y9507/C/18/3201899

- 18.The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C: APP/Y9507/C/18/32010901

- 19.The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D: APP/Y9507/C/18/3201902

- 20.The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal E: APP/Y9507/W/18/3201402

- 21.The appeal is dismissed.

S.Praill

Inspector