



Appeal Decisions

Site visit made on 3 December 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2020

Appeal A Ref: APP/M1710/C/18/3211382

Appeal B Ref: APP/M1710/C/18/3211386

Land at Hill House Hill, Liphook, Hampshire GU30 7QB

- The appeal is 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 Andrew Holden and Appeal B is made by Mrs Julie Holden. The appeals are against an enforcement notice issued by East Hampshire District Council.
- The enforcement notice was issued on 10 August 2018.
- The breach of planning control as alleged in the notice is without planning permission and within the last 4 years, engineering operations consisting of the formation of hard surfaced areas and the erection of gates and a fence.
- The requirements of the notice are:
 1. Cease the carrying out of all unauthorised engineering operations on the Land outlined in red on the attached plan 1
 2. Remove all imported hardcore and materials used to create the hard surfaces from the Land as approximately marked in the 2 areas hatched black on the attached plan 1
 3. Remove the fence and gates from the land, situated approximately in the position marked with a heavy blue line on the attached plan 2
 4. Restore the Land to its previous condition prior to the breaches of planning control shown above in paragraphs 1, 2 and 3.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (appeal A only), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. Plan 1 attached to the enforcement notice shows two large areas hatched black that the Council suggest form the areas of hard surfacing alleged within the breach of planning control. However, the appellants suggest this is larger than the area over which hard surfacing was spread and, in any event, some of the hard surfacing has been scraped back such that it is now over a smaller area than originally laid. I have limited information as to the smaller area that should be marked. In any event, the requirements of the notice describe these areas as approximate. Similarly, the location of the fence and gates is approximately marked, but it is clear as to what fence and gates it relates. Consequently, I do not consider it necessary to correct the notice in this instance.

2. I note that the gates were constructed to form access to a field. I understand that there was an area of hardstanding linking these gates to the highway. However, that has been removed and replaced with grass verges and a ditch, linking the verges and ditches to either side.
3. The appellant suggests that the enforcement action is not in the public interest. However, such a consideration does not fall within the statutory grounds of appeal. As a result, that is not a matter for me in these appeals.

The Appeals on Ground (b)

4. An appeal on this ground is that the matters described in the notice have not occurred.
5. The appellants suggest that there are no engineering operations being undertaken on the land. However, it is clear from the Council's evidence that they consider the laying of the hardstanding was an engineering operation. Although the extent of the hardstanding has been questioned by the appellant, they accept it has been laid. As a result, I consider that an engineering operation has taken place, such that the matters described in the notice have occurred.
6. Other matters put forward in support of this ground of appeal are better considered under ground (f), so I will return to them later in my decision.
7. For these reasons, I conclude that the appeals under ground (b) should fail.

The Appeals on Ground (c)

8. An appeal on this ground is that "those matters" (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
9. There is no dispute that the gates, fence and hardstanding constitute development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for the gates, fence or hardstanding.
10. Evidence supplied by the appellants on this ground of appeal relates to the gates and fence. That indicates that they accept the hardstanding does constitute a breach of planning control, so I will not consider that further under this ground of appeal.
11. The appellants suggest that the fence and gates benefit from the planning permission available within Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This states that fences and gates constructed adjacent to a highway used by vehicular traffic must not exceed 1 metre above ground level. If they are away from the highway, they must not exceed 2 metres above ground level. As the fence and gates exceed 1 metre in height, but not 2 metres, the issue in this case is whether the fence and gates are located adjacent to the highway.
12. In this case, the fence and gates are separated from the tarmac roadway by a grass verge, ditch and further verge which is grass directly outside the gates but treed to either side. The fence extends a short distance parallel to the

highway to either side of the gates and returns a short distance alongside the boundary with the neighbouring garden.

13. The Council suggest that the fence and gates are located 4.8m from the edge of the highway. Nevertheless, they consider the fence and gates should be considered to be adjacent to it. This is disputed by the appellants.
14. The term "adjacent" is not defined in the GPDO or in the Act. There is no set minimum distance from the highway where a fence would no longer be "adjacent" to it; it is a matter of judgement, and of fact and degree in each individual case, as to whether a fence is "adjacent" to the highway. Consequently, it is not unreasonable for the Council to suggest the fence and gates are adjacent to the highway.
15. However, when viewed from the highway the fence and gates are separated from it by the grass and treed verge and ditch. The fence and gates are clearly visible over the verge and ditch. Nevertheless, the verge and ditch provide a considerable visual separation between the fence and gates and the highway. This results in a lack of proximity of the fence and gates to the highway. Consequently, as a matter of fact and degree in this instance I find the fence is not "adjacent" to the highway. As such, it benefits from the planning permission within the GPDO and hence does not constitute a breach of planning control.
16. For these reasons, I conclude that the appeals under ground (c) should succeed insofar as they relate to the fence and gates. I will vary the notice to remove reference to the fence and gates from the breach of planning control and the requirements of the notice. However, the appeals under ground (c) fail insofar as they relate to the hardstanding.

The Appeal on Ground (a) and the Deemed Planning Application

17. Given my conclusions in the ground (c) appeal that the fence and gates already have planning permission, I have not considered these further in the ground (a) appeal.

Main issues

18. The main issues are:

- The effect of the hardstanding on the intrinsic character and beauty of the landscape;
- The effect of the fence, gates and hardstanding on the living conditions of occupiers of neighbouring houses with particular regard to outlook.

Reasons

Landscape

19. The National Planning Policy Framework (the Framework) recognises the intrinsic character and beauty of the countryside. The land at Hill House Hill is located in a rural area of open fields and dispersed development, including Hill House and dwellings along Dryden Way adjacent. The appeal site is also adjacent to the A3.

20. Although the areas spread with hardstanding are substantial, they are largely located behind hedges fronting the highway. Since the notice was served, grass has covered over much of the hardstanding such that it is not prominent in the landscape. Nevertheless, hardstanding, particularly spread over such substantial areas, do alter the appearance of the fields such that they harm the character and beauty of the countryside.
21. For these reasons, I conclude that the hardstanding harms the character and appearance of the landscape. As such, it is contrary to Policies CP19 and CP29 of the East Hampshire District Council: Joint Core Strategy (CS) and the Framework that seek sustainable development in the countryside, including development that makes a positive contribution to the appearance of the area and respects the character, identity and context of the countryside.

Living conditions

22. The hardstanding is located in the part of the largest field closest to the rear gardens of properties on Dryden Way, along with a smaller field visible from the front of Hill House. As such, these locations are visible from those houses and their gardens.
23. The hardstanding is spread over the ground and has grassed over to a large extent. As a result, whilst visible from those dwellings, the hardstanding is not prominent and does not cause material harm to the living conditions of occupiers of those dwellings.
24. For these reasons, I conclude that the hardstanding does not materially affect the living conditions of occupiers of neighbouring dwellings by reason of outlook. As such, it does not conflict with relevant parts of Policies CP19 and CP29 of the (CS) and the Framework that seek sustainable development in the countryside that is sympathetic to its setting and relationship to adjoining buildings.

Other matters

25. The fields are intended to be used for grazing horses. The hardstanding would provide parking and turning space for a car and trailer used to transport horses as well as hard ground to place a hayrack for feeding. However, the hardstanding adjacent to the fence and gates subject of the enforcement notice in the larger field is a substantial distance from the current access to the field. Consequently, it is not well placed for access and turning, or deliveries to a hayrack. In addition, it is unclear how much hardstanding would be required in the two fields for the purposes suggested, such that it is likely to be excessive in size. Consequently, I consider that the hardstanding provided is not necessary for grazing horses and this factor would not outweigh the harm I have found to the character and appearance of the landscape.
26. My attention has been drawn to Policy CP6 of the CS that I understand is supportive of equine enterprises. However, that would not outweigh the conflict I have found with Policies CP19 and CP29 of the CS.

Conclusion

27. While I have found that the proposal would not result in harm to the living conditions of occupiers of neighbouring dwellings, that and the other matters identified is not sufficient to outweigh the harmful effect the works would have

on the character and appearance of the landscape. Given that results in conflict with development plan policies, I conclude that the proposal would be contrary to the development plan as a whole. The appeal on ground (a) therefore fails.

The Appeals on Ground (f)

28. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to remove the materials used to create the hard surfaces, in order to restore the land to its condition before the breaches took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
29. The hardstanding has, to a large extent, grassed over such that its extent is disguised. The notice requires that the land be restored to its previous condition, but that is not described. As the appellants would be aware of the condition of the land prior to carrying out the works, such a description is not necessary. As a result, the requirements of the notice are proportionate and do not exceed what is necessary to remedy the breach of planning control.
30. For these reasons, I conclude that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control. The appeals under ground (f) therefore fail.

The Appeals on Ground (g)

31. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
32. The appellants suggest that the removal of the hardstanding would be unwise as the ground is wet. They suggest that a period of nine months would be necessary to comply with the notice, taking account of likely weather conditions. Nevertheless, it is unclear why removal of the hardstanding would take more than three months to complete.
33. For these reasons, I conclude that the appeal under ground (g) should fail.

Formal Decision

34. It is directed that the enforcement notice is varied by:
- Deleting the words "and the erection of gates and a fence" from the description of the breach of planning control;
 - Deleting paragraph 3 under section 5 "what you are required to do";
 - Renumbering paragraph 4 to paragraph 3 and revising the text to read "Restore the land to its previous condition prior to the breaches of planning control shown above in paragraphs 1 and 2"; and
 - Removing plan 2 from the notice.
35. Subject to the variations, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

AJ Steen INSPECTOR