
Appeal Decision

Site visit made on 21 January 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2020

Appeal Ref: APP/M4320/C/19/3222580

Land at 88 Bull Cop, Formby L37 8BZ

- 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 John Stewart Clayton against an enforcement notice issued by Sefton Metropolitan Borough Council.
 - The enforcement notice was issued on 10 January 2019.
 - The breach of planning control as alleged in the notice is: Engineering works to raise land levels to rear garden area resulting in overlooking and privacy issues for neighbouring properties.
 - The requirements of the notice are:
 - A. Profile the rear garden in order to return it to its original levels by removing the imported spoil from the point of line A – A in the garden, as shown on the attached site plan, and grade the garden so that the levels reduce from that point down towards the bottom of the garden so that it mirrors the levels on the adjacent neighbouring property at 86 Bull Cop and so that the rear boundary fence measures at least 2.1 metres from the adjacent ground level once the imported spoil has been removed.
 - B. Remove all excess spoil from the property and dispose of in an appropriate manner once the garden has been re-profiled as required.
 - The period for compliance with the requirements is 56 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. It is directed that the enforcement notice be varied in paragraph 5B by deleting the wording “and dispose of in an appropriate manner”. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

The Enforcement Notice

2. Paragraph 5B of the notice requires all excess spoil from the property to be removed and disposed of in an appropriate manner once the garden has been re-profiled as required. However, the requirements can only go so far as remedying the breach of planning control and must be restricted to the Land. The requirement to dispose of in an appropriate manner is therefore excessive. I shall vary the terms of the notice by deleting the wording “and dispose of in an appropriate manner”. I am satisfied that this variation would not cause any injustice the appellant or the local planning authority as it does not alter the

purpose of the notice and it is no more onerous than the requirements of the original notice.

Appeal on ground (f)

3. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
4. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose of the notice is to remedy the breach of planning control.
5. The appellant considers that the imported spoil should be retained on the site. He suggests that a higher fence could be constructed along the rear boundary and planting take place to provide further screening. However, in the absence of an appeal on ground (a), general planning considerations cannot be considered when determining an appeal on ground (f) and the notice cannot therefore be varied to attack its substance. It is not therefore open to me to substitute lesser steps that would leave the raised grounds levels in place. Those lesser steps would not remedy the breach of planning control.
6. I have taken into consideration the appellant's view that the original ground levels are unknown. However, for the appeal to succeed on ground (f) it must be demonstrated that the requirements of the notice are excessive.
7. The appellant does not appear to dispute that spoil has been brought onto the site, and from my own observations on my site visit it was clear that the ground levels at the bottom of the garden and adjacent to the fence have been raised. In particular, I could see that spoil to a depth of approximately 0.5metres is being retained adjacent the fence panels. The change in levels is also evident when you take into consideration the levels of the adjoining gardens at 86 and 90 Bull Cop, and the relationship of all of these garden areas to the common boundary fence which separates them from the gardens of properties Burlington Avenue.
8. The requirements of the notice are clear and precise. They require the land to be graded from a point level with the rear of No 88's garage, so that it slopes down to the bottom of the existing rear fence. The ground levels at this point would thus generally align the adjoining gardens and the regraded levels would have a profile mirroring that of No 86 along their common boundary.
9. The purpose of the notice is to remedy the breach of planning control and I have not been provided with any substantive evidence that would lead me to conclude that the requirements in paragraph 5A of the notice are excessive. Only the complete removal of the imported spoil and regrading would remedy the breach and there are no lesser steps available to me which would achieve the statutory purpose behind the notice. The appeal on ground (f) therefore fails.

Conclusion

10. For the reasons give above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Elizabeth Pleasant

INSPECTOR