



Appeal Decisions

Site visit made on 18 February 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2020

Appeal A: APP/Q1153/C/19/3237396

Appeal B: APP/Q1153/C/19/3237397

Land to the east of Summer Green, Lamerton, Devon PL19 8FJ

- 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 appeals are made by Mr S Bassett (Appeal A) and Mrs J Aldridge (Appeal B) against an enforcement notice issued by West Devon Borough Council.
 - The enforcement notice was issued on 23 August 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the carrying out of engineering operations including the scraping of the Land, the laying of a membrane and depositing/covering with a layer of hardcore to create an access track in the approximate position shown on the attached plan edged and hatched green.
 - The requirements of the notice are: (i) Remove the access track. (ii) Remove from the land all building materials and rubble arising from compliance with requirement (i) above, and restore the land to its condition before the breach took place by levelling the ground and re-seeding it with grass.
 - The periods for compliance with the requirements are: 12 weeks from the date this notice takes effect for requirement (i) and 24 weeks from the date this notice takes effect for requirement (ii).
 - The appeals are proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decisions

1. The appeals are dismissed and the enforcement notice upheld.

Preliminary Matters

2. An appeal was lodged on ground (a), which is to say that planning permission should be granted for what is alleged in the enforcement notice. However, the appellants were advised¹ that under Section 174 (2A) of the Act an appeal on ground (a) could not be brought. I have therefore not considered an appeal on ground (a) and furthermore there is no appeal against the refusal of any planning permission before me.
3. The parties were notified in advance of my intended site visit however neither the appellants nor a representative on their behalf were in attendance. Nevertheless, as the appeal is proceeding on grounds (f) and (g) I am satisfied that I was able to observe the site sufficiently and that injustice to the parties would not arise from determining the appeals on this basis.

¹ Letter from the Planning Inspectorate dated 24 October 2019

Appeals A and B

The ground (f) appeal

4. The purpose of the enforcement notice is to remedy the breach of planning control, as opposed merely remedying injury to visual amenity, for example by means of under-enforcement. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellants to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives.
5. The appellants are proposing a bund or screening in the form of a hedge to the southern side of the track in order to address concerns about its visual impact. However, this is not a lesser alternative, but an additional proposal, the merits of which would need to be considered as part of a wider ground (a) appeal or an appeal against a refusal of planning permission. However, no such appeals are before me.
6. Consequently, there are no lesser alternatives put forward by the appellants that would remedy the breach of planning control, which namely is the construction of an access track as described in the breach of planning control.
7. The appeal on ground (f) accordingly must fail.

The ground (g) appeal

8. The appellants contend that the time given to comply with the requirements of the enforcement notice are too short as it would be reasonable to suggest that work should be completed in the planting season of 2020/2021. However, the only planting required relates to the re-seeding of the ground with grass and I am not persuaded on the very limited evidence before me that a longer period to wait for the next planting season is necessary in this regard.
9. I am also not persuaded that the weather or ground conditions are such that a longer period is required and note that the compliance period would now fall during the spring and summer period. The enforcement notice also does not require the importation of materials to reinstate the land.
10. The appeal on ground (g) consequently fails.

Conclusion

11. For the reasons given above I conclude that the appeals should not succeed. I shall therefore uphold the enforcement notice.

Formal Decisions - Appeals A and B

12. The appeals are dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR