
Appeal Decision

Site visit made on 2 June 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2020

Appeal Ref: APP/L3815/C/19/3237802

Land at Coombe House, Marley Heights, Fernhurst, Haslemere, West Sussex GU27 3LU

- 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 Mr Richard Gray against an enforcement notice issued by Chichester District Council on behalf of the South Downs National Park Authority.
- The enforcement notice, numbered FH/27, was issued on 28 August 2019.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the Land to use as garden land in association with the dwelling house known as Coombe House.
- The requirements of the notice are:
 - (i) Discontinue use of the land as garden land in association with the dwelling house known as Coombe House,
 - (ii) Remove all of the vehicles which are parked on the Land,
 - (iii) Remove the timber retaining sleepers and shingle hardstanding in the approximate positions shown on the attached plan from the Land,
 - (iv) Remove the entrance gates, glasshouse, raised vegetable beds, log store and fruit cage in the approximate positions shown on the attached plan from the Land,
 - (v) Remove the compost bin and plant pots from the Land, and
 - (vi) Following compliance with (i), (ii), (iii) (iv) and (v) above level the Land and reseed with grass.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (d) 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 appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr Richard Gray against Chichester District Council, who are acting on behalf of the South Downs National Park Authority. This application is the subject of a separate Decision.

The Appeal on Ground (c)

2. 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.

3. There is no dispute that the change of use of the land to garden land constitutes 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 that change of use.
4. The requirements of the notice include the removal of a number of items and structures on the site. The appellants suggest that these, in particular the vegetable beds, fruit cage, compost bin and plant pots, do not meet the definition of development set out in Section 55 of the Town and Country Planning Act 1990. Irrespective of whether they constitute development requiring planning permission, a notice directed at a material change of use may require the removal of works that facilitate that use.
5. For these reasons, and having regard to all other evidence before me, I conclude that, on the balance of probability, the change of use has taken place. The placing of items, including vegetable beds, fruit cage, compost bin and plant pots, comprise part of that change of use.
6. Since no planning permission has been granted for the development it thereby constitutes a breach of planning control.
7. For these reasons, I conclude that the appeal under ground (c) should fail.

The Appeal on Ground (d)

8. An appeal under this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability. Case law indicates that evidence does not need to be corroborated by independent evidence to be accepted, but does need to be precise and unambiguous, even if there is no evidence to contradict it.
9. The notice alleges the change of use of land to use as garden land. The change of use of land would become lawful were it to have been carried on continuously for a period of 10 years beginning with the date on which the use began. However, in their grounds of appeal and Statement, the appellant does not dispute that the change of use of the land is unlawful as it has not continued for a period of 10 years prior to issue of the notice.
10. I understand that the glasshouse was erected in 2011 and aerial photographs have been supplied showing it on site in 2013. They suggest that the log store has also been on the land for a period in excess of 10 years prior to issue of the notice. This has not been disputed by the Council. A building would normally become lawful were it to have been substantially completed for a period of 4 years beginning with the date on which the operations were substantially completed. However, in this case the glasshouse and log store are in residential use as part and parcel of the change of use of the land. As it has been accepted that the change of use occurred within the last 10 years, the glasshouse and log store have not become lawful through the passage of time.
11. For these reasons, I conclude that the appeal under ground (d) should fail.

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

Main issue

12. Whether the use of land as part of the garden conserves and enhances the landscape and scenic beauty of the South Downs National Park.

Reasons

13. The land at Coombe House is located within the South Downs National Park (SDNP) where the Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty. Marley Heights comprises a road that slopes up the hillside with dwellings to either side on much of its length. Coombe House is located on the west side of the road between other dwellings and with an open grassed area to the opposite side of the road and woodland to the rear.
14. The land at Coombe House is located between the existing garden of the property and that of the neighbouring property. The land is separated from the garden closer to the house by a fence and I understand was previously open with a set of stables discretely located in the corner closest to the dwelling and road. I understand that a horse may have previously been kept on the land. As such, the land would have had a rural appearance.
15. Changes to the land, including provision of hardstanding, gates, sleepers, vegetable beds, log store and glasshouse, result in a more domestic character and appearance to the land. The hardstanding, gates and sleepers at the access are particularly visible from the road and take a domestic form rather than the five bar gate that I understand was previously in this location. I accept that the other domestic paraphernalia is visible in only limited views given the topography and hedge on the boundary of the road, and much of the land has an informal appearance, more like a meadow. Nevertheless, the appearance contrasts with the more natural and rural landscape and scenic beauty of the surrounding SDNP. Given the neighbouring residential properties and other domestic style gates in the street scene, the changes in appearance are modest but, nevertheless, they do not conserve or enhance the landscape and scenic beauty of the area.
16. I understand that the gravel on the hardstanding replaces a previous hoggins surface. That was dark in colour and may have grassed over to some extent, such that it better reflected the surroundings than the replacement gravel.
17. The hardstanding is available for parking, and the gravel surface indicates a more intensive use of this area than the previous hoggins surface. Use as part of the garden to Coombe House extends that residential use, providing more space for residential activities. Whilst the effect of this additional activity on the relative tranquillity of the area is modest, it adds to the harm to the landscape and scenic beauty of the SDNP.
18. For these reasons, I conclude that the change of use of the land at Coombe House does not conserve or enhance the landscape and scenic beauty of the SDNP. As such, it conflicts with Policies SD1, SD4, SD6 and SD7 of the South Downs Local Plan and the Framework that seek to both conserve and enhance the natural beauty and landscape character of the area, including by preserving the relative tranquillity, visual integrity, identity and scenic quality of the SDNP.

Conclusion

19. For the reasons set out above, I conclude that on balance the development does not accord with the development plan. The appeal on ground (a) therefore fails.

Formal Decision

20. The appeal is 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