



Appeal Decisions

Site visit made on 24 August 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2020

Appeal Ref: APP/A1910/C/3226323

Land at Smallgrove Farm, Windmill Road, Pepperstock, Hertfordshire LU1 4LQ

- 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 Nathan Stewart on behalf of Smallgrove Farm Limited against an enforcement notice issued by Dacorum Borough Council.
- The enforcement notice was issued on 11 March 2019.
- The breach of planning control as alleged in the notice is engineering works on the Land to create bunding to the western boundary and raising of the height of the Land.
- The requirements of the notice are:
 1. Cease the importation and engineering of soils to create bunds and to raise the level of the Land on the Land outlined red on the attached plan.
 2. Remove from the Land edged red on the attached plan, all imported and engineered soils and restore the Land back to its original condition before the breach took place.
- The period for compliance with the requirements is:
 - Step 1 - 1 (one) day.
 - Step 2 - 12 (twelve) months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal Ref: APP/A1910/C/3226324

Land at Smallgrove Farm, Windmill Road, Pepperstock, Hertfordshire LU1 4LQ

- 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 Christopher Pugh against an enforcement notice issued by Dacorum Borough Council.
- The enforcement notice was issued on 11 March 2019.
- The breach of planning control as alleged in the notice is engineering works on the Land to create bunding to the western boundary and raising of the height of the Land.
- The requirements of the notice are:
 1. Cease the importation and engineering of soils to create bunds and to raise the level of the Land on the Land outlined red on the attached plan.
 2. Remove from the Land edged red on the attached plan, all imported and engineered soils and restore the Land back to its original condition before the breach took place.
- The period for compliance with the requirements is:
 - Step 1 - 1 (one) day.
 - Step 2 - 12 (twelve) months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal Ref: APP/A1910/C/322632

Land at Smallgrove Farm, Windmill Road, Pepperstock, Hertfordshire LU1 4LQ

- 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 Miss Sarah Pugh against an enforcement notice issued by Dacorum Borough Council.
- The enforcement notice was issued on 11 March 2019.
- The breach of planning control as alleged in the notice is engineering works on the Land to create bunding to the western boundary and raising of the height of the Land.
- The requirements of the notice are:
 1. Cease the importation and engineering of soils to create bunds and to raise the level of the Land on the Land outlined red on the attached plan.
 2. Remove from the Land edged red on the attached plan, all imported and engineered soils and restore the Land back to its original condition before the breach took place.
- The period for compliance with the requirements is:
 - Step 1 - 1 (one) day.
 - Step 2 - 12 (twelve) months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Background

1. Planning permission was granted for the reconstruction of the original farmhouse, courtyard, barns and outbuildings¹ on 29 November 2013. Attached to the permission were a number of conditions, amongst other things, relating to an approved scheme of remediation and an approved archaeology scheme.

The ground (c) appeals

2. The appeal on this ground is whether, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. The onus of proof is on the appellants.
3. The appeal site comprises the ongoing reconstruction of the farmhouse, courtyard, barns and outbuildings, which are set within extensive grounds. These grounds lie adjacent to a paddock with which there is currently no physically boundary separating it from the buildings and associated residential land.
4. The construction of the development has involved extensive ground works, the material from which has been stored on the site by way of levelling it across a large portion of the site. Soil has also been deposited on the western boundary of the site. The appellants argue that there has always been a steep bank on this boundary. The topographical survey submitted with the planning application for the adjacent property² indicates a steep incline between the level ground on which the buildings are situated and the boundary with the

¹ Council Ref: 4/00995/12/FUL

² Council Ref: 4/03171/18/FUL

- appeal site. However, it does not provide any evidence to indicate the land levels on the appeal side of the boundary fence.
5. The photographic evidence submitted by the appellants suggest that there was a significant increase in land levels between the western boundary fence and Smallgrove Farm. However, they do not indicate where or how the change in levels took place. The Ordnance Survey extract indicates a change in levels between 140m and 145m between Doone Brae Farm and the paddock area. However, the contour lines on the map indicate that this change in levels is across an area wider than what is present on site, with the 145m contour line cutting across the paddock area some distance further back from the boundary than the current bund is. This suggests that either the pre-existing bank was set further back from the boundary, or the gradient was not as steep, or a combination of both.
 6. The historical photographic evidence submitted by the Council taken from views looking east across Doone Brea Farm towards Smallgrove Farm are not particularly clear. However, in my mind, they are clear enough to suggest that the land levels immediately behind Doone Brae Farm were not as high as what is currently on site, suggesting that the slope was previously much gentler.
 7. In any event, the appellants admit that the bund on the western boundary has been “amplified” by 0.5m to 1.5m. Although there may well have always been a substantial step in the land levels on the western boundary, given the extent of the works undertaken, and even though it utilises material from within the site, I consider that it amounts to an engineering operation for which planning permission is required.
 8. The appellants contend that the works involving the movement of soil within the site fall within the remit of the approved scheme of remediation. However, there is no reference within the remediation strategy to the creation of a bund on the western boundary of the site or the raising of the height of the land. Whilst I acknowledge that DEFRA guidelines promote the storage and management of soil directly to its extraction point, this is separate legislation and does not negate the need for planning permission for the works that have taken place.
 9. I have had regard to the reference to the height of the proposed 2 storey dwellings that formed part of the planning application on the adjacent site³ in that they would not rise above the current bank and hedge line. However, there is no evidence before me, for example elevational drawings, to substantiate this claim.
 10. The appellants also suggest that the works to the bund are not a permanent change as works are ongoing and the boundary has already been reduced. However, it seems to me that, as the land has clearly been levelled and the bund almost uniformly angled, it is unlikely that any works to reduce them further are intended. In any event, this has had no bearing on my consideration of whether the alleged breach of planning control took place at the time the Notice was issued.
 11. I have had regard to the remediation works undertaken regarding the small amount of contaminated land found on the site. However, this has had little

³ Council Ref: 4/03171/18/FUL

bearing on my consideration as to whether the alleged breach of planning control referred to in the Notice has taken place.

12. I find therefore that, on the balance of probabilities, the scale of works undertaken in altering the bund on the western boundary and the raising of the land levels amounts to an engineering operation for the purposes of section 55 of the Town and Country Planning Act 1990. As such, planning permission would be required for these works. In the absence of any planning permission for such works, it is clear that a breach has occurred and the appeals on ground (c) fail.

Other Matters

13. The appellants indicate that they can resubmit revised landscaping design plans including details of the pre-existing bank. However, this has no bearing on my consideration of the ground (c) appeals.

Conclusion

14. For the reasons given above, and having regard to all the other matters raised, I conclude that the appeals should be dismissed.

Alexander Walker

INSPECTOR