
Appeal Decision

Site visit made on 24 November 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2020

Appeal Ref: APP/A4710/C/20/3256018

Land Off Branch Road and Stainland Road, Barkisland

- 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 Andrew Littlewood against an enforcement notice issued by Calderdale Metropolitan Borough Council.
- The enforcement notice was issued on 28 May 2020.
- The breach of planning control as alleged in the notice is:
The material change of use of the land from agricultural use to domestic garden (Breach 1);
Engineering operation re-contouring of the land (field) (Breach 2); and
The construction of two summer houses and associated decking areas on the land (Breach 3).
- The requirements of the notice are:
 - i. Permanently cease the use of the land as a domestic garden;
 - ii. Permanently remove from the land summer house buildings 1 and 2 together with associated decking areas, as shown on digital photographs on appendices 7 and 8;
 - iii. Permanently remove from the land all building materials rubble arising from compliance with the second requirement (ii) and restore the land to its condition before the breach took place;
 - iv. Infill the excavated area with non-waste material and re-grade the area such that the contours are the same as those before the breach took place and re-seed it with grass to integrate with the surrounding agricultural land.
- The periods for compliance with the requirements are:
 - i. For i to and iii of part 5 above: Three months.
 - ii. For iv of part 5 above: Six months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.

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

Procedural Matter

1. With respect to the appeal on ground (d) the appellant does not dispute that the material change of use of the land from agricultural use to domestic garden occurred within the last ten years. In addition, the appellant also acknowledges that part of Breach 3; namely the erection of the summer house 2 and associated decking area as shown on photographs 19.00353 in Appendix 7 of the Enforcement Notice took place within the last four years. Consequently, the appeal on ground (d) only relates to Breach 2 (namely engineering operation re-contouring of the land) and part of Breach 3 relating to the construction of summer house and associated decking area 1, situated immediately adjacent to the river. I will determine the appeal on that basis.

The appeal on ground (d)

2. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary to show that the engineering operation relating to re-contouring the field and the construction of summer house 1 and associated decking were substantially completed on the land four years before the notice was issued.

Breach 2 - Engineering operation re-contouring of the land (field)

3. The appellant states that the recontouring of the land took place after flooding occurred in December 2015 and the engineering work was completed on 19 April 2016. The relevant digital photograph to which the appellant refers shows that on that specific date some engineering operations had taken place to recontour the land adjacent to the river. However, the image shows only part of the land to which the alleged breach relates.
4. It appears to me that the image does not show parts of the site that have been re-engineered. Furthermore, the photograph is not clear enough to show that on that date the engineering works to recontour the land were complete. I have taken account of the other photographs and evidence submitted by the appellant but there is insufficient before me to demonstrate on the balance of probabilities that on the material date of 28 May 2016 the engineering operation re-contouring of the land (field) had been substantially completed.
5. Therefore, with respect to the engineering operations recontouring the land the appeal on ground (d) fails.

Breach 3 – Construction of the summer house and decking 1

6. In support of his case the appellant has submitted a series of dated digital photographs and receipts for materials used in the construction of the summerhouse and associated decking. The images show that on 18 May 2015 the construction of the decking had clearly commenced and on 18 October 2015 the decking was substantially completed along with the summerhouse.
7. Invoices for a range of building materials associated with the construction of the summer house and associated decking area have also been submitted. The dates of the invoices correspond with the contended building period. The range of materials identified in the invoices, including timber, fencing posts and screws correspond with those likely to have been used in the construction of the summer house and associated decking area.
8. Therefore, the evidence before me shows that on the balance of probabilities the summer house and associated decking area closest to the river and identified in the enforcement notice as summerhouse and decking 1, were substantially completed before the material date 28 May 2016. With respect to the construction of the summer house and associated decking 1 the appeal on ground (g) succeeds.

The appeal on ground (g)

9. The ground of appeal is that the time given to comply with the requirements is too short. The three months given is sufficient to permanently cease the use of the land as a domestic garden and there is insufficient evidence before me which justifies why this period should be extended.

10. Three months is also sufficient to remove summer house together with associated decking area 2 and permanently remove all building materials rubble arising from compliance. I also consider that the period of six months is sufficient to infill the excavated area with non-waste materials and regrade the land in accordance with the requirements of the notice. The 12 month compliance period suggested by the appellant would be excessive having regard to the on-going harm caused by the development.
11. However, I consider that the ongoing Covid-19 restrictions may delay the timescales associated with carrying out the necessary requirements. Therefore, I consider the periods should be increased to enable the appellant to undertake the necessary works. In this respect I consider that the period for permanently removing summer house building with associated decking area 2, permanently removing from the land all building materials rubble arising from compliance should be extended to six months. The period to infill the excavated area with non-waste materials and regrade the land should be extended to nine months. These would strike the appropriate balance and would not place a disproportionate burden on the appellant. To this limited extent the appeal on ground (g) succeeds.

Formal Decision

12. I direct that the enforcement notice shall be varied by:
- a) The deletion from paragraph 3 of the words "The construction of two summer houses and associated decking areas on the Land (Breach 3)." and the substitution therefor of the words "The construction of a summer house and associated decking area on the Land (Breach 3)";
 - b) The deletion from paragraph 5 (ii) of the words "buildings 1 and 2 together with associated decking areas" and the substitution therefor of the words "building 2 together with associated decking area";
 - c) The deletion of paragraph 6(i) of the words " to (iii)";
 - d) The deletion from paragraph 6(ii) of the words "For (iv) of part 5 above: Six months after the date of this Notice takes effect" and the substitution therefore of the words "For (ii) and (iii) of part 5 above: Six months after the date this Notice takes effect."; and
 - e) The addition of the following after paragraph 6(ii), " (iii) For (iv) of part 5 above: Nine months after the date this Notice takes effect.".
13. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR