



Appeal Decision

Site visit made on 12 November 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2021

Appeal Ref: APP/B1550/C/20/3255303

Land Adjacent 191 Rectory Avenue, Rochford, Essex

- 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 Graham Eiles against an enforcement notice issued by Rochford District Council.
- The enforcement notice was issued on 1 July 2020.
- The breach of planning control as alleged in the notice is Without planning permission, the carrying out of operational development involving the clearing of woodland and erecting a new building in the metropolitan green belt. (the building is in the approximate position shown hatched and labelled B on the attached plan).
- The requirements of the notice are 1. Cease all works on the construction of the new building labelled B on the attached plan; 2. Demolish the building constructed so far; 3. Remove from the land, the foundations laid in association with the new building; 4. Remove all resultant materials from the land; 5. Infill the foundation trenches and level the land returning it to its condition before the development occurred; 6. Within the next planting season (October to March) cultivate the land with a planting scheme (comprising a sufficient number and mix of native sapling trees to create a new wooded area over the extent of the site).
- The period for compliance with the requirements is Steps 1 to 5, within 8 weeks; Step 6, within the next available planting season (October to March), once compliance with steps 1 to 5 has been achieved.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

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

Application for costs

1. An application for costs was made by Rochford District Council against Mr Graham Eiles. This application is the subject of a separate Decision.

Preliminary Matters

2. The alleged breach of planning control includes the clearing of woodland, whilst one of the requirements of the notice is the provision of a replacement planting scheme. I understand from the Council's representations that the woodland is subject to a Tree Preservation Order (TPO). In such circumstances, tree removal matters would not be addressed within an enforcement notice served under s.172 of the Act. Rather the removal of TPO trees would be dealt with under a separate regime in the Act.

3. Accordingly it is necessary for me to correct the notice by deleting reference to woodland removal and replacement. I am satisfied that I am able to do this without causing injustice to either of the parties.
4. The appellant claims that the enforcement notice is invalid as the site has not been correctly identified. He says that the notice refers to land adjacent to 191 Rectory Avenue, where a dwelling is being constructed that has planning permission (18/00147/FUL)¹.
5. However the allegation sets out that the building of concern to the Council is that "in the approximate position shown hatched and labelled B" on the plan attached to the notice. This building has been clearly identified on the plan, and to my mind forms part of the wider site identified as adjacent to 191 Rectory Avenue.
6. Given the specific reference to the building "hatched and labelled B", I am in no doubt that the recipient of the notice would be able to tell that it is this building, rather than the house that is currently under construction, that is the intended target of the notice. Furthermore part of the appeal site, as defined by the red line, adjoins the side and rear boundaries of No 191 and as such I do not consider the use of the wording "Land adjacent 191..." to be incorrect. I am not therefore persuaded that the appellant would have been prejudiced by the description of the land as adjacent to 191 Rectory Avenue. The notice is not therefore invalid on this basis.
7. There is no appeal on ground (a), that is that planning permission should be granted. Accordingly the merits of the development are not before me for consideration in this case.

Background

8. The appeal site is irregularly shaped and encompasses an area situated between Nos 185 and 191 Rectory Avenue (which I shall call Area 1, simply for ease of reference), and a more extensive area directly behind Nos 191 – 201 Rectory Avenue (Area 2). These areas are not segregated from one another but form a continuous expanse of land.
9. In terms of history, planning permission was granted for a single detached residential dwelling on part of the site (within Area 1)². Planning permission was later refused on two occasions for the erection of a pair of semi-detached dwellings on the same part of the site, the latter of the two decisions being upheld on appeal³. It would appear from the appellant's final comments that a separate planning permission for a single detached dwelling has now been granted within Area 1⁴. The building the subject of the notice is situated in Area 2.

The appeal on ground (b)

10. The ground of appeal is that the breach of planning control alleged in the enforcement notice has not occurred. From my visit it was evident that a large timber outbuilding had been constructed in the approximate position shown hatched and labelled B on the notice plan (within Area 2).

¹ See Appeal Form – Grounds and Facts

² Ref 18/00147/FUL dated 30 May 2018

³ Refs 19/00769/FUL, 20/00009/FUL and APP/B1550/W/20/3249767

⁴ According to the appellant's final comments - Ref 20/00658/FUL, granted planning permission 2 December 2020.

11. The appellant states that he is constructing a single dwellinghouse which has planning permission. Whilst there is a dwelling under construction elsewhere on the site, I am not persuaded, on the balance of probability, that the location of the building that is the intended target of the notice, 'labelled B', could reasonably be confused with the location of the dwelling which is being constructed, and which is on a different part of the same site. The ground (b) appeal fails.

The appeal on ground (c)

12. The ground of appeal is that the matter alleged does not constitute a breach of planning control.
13. The appellant's original representations under ground (c) were extremely limited, such that it was simply said that a dwelling was being constructed that had the benefit of planning permission (18/00147/FUL). Latterly the appellant has confirmed that he is actually in the process of implementing planning permission 20/00658/FUL relating to a different dwelling. However as set out above the building that is the subject of the notice is located on a different part of the site to where a house is currently under construction. Consequently the appellant has not made any specific representations on the appeal form with regard to the building labelled B on the notice plan.
14. Notwithstanding this it is apparent from previous correspondence between the appellant and the Council, submitted with the Council's statement, that the building was intended for temporary use whilst building works progressed on the site. The appellant appears now to concede that the building in question is ultimately intended to be a stable block, for which he acknowledges planning permission should have been obtained, and for which a retrospective planning application is to be made. Nevertheless the appellant argues that the present temporary storage use of the building is permitted development associated with ongoing construction works on the site⁵.
15. Schedule 2 Part 4 Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) allows for the provision of buildings required temporarily in connection with and for the duration of operations being carried out on land. Paragraph A.1. of Class A contains the proviso that development is not permitted where planning permission is required for those operations but is not granted. The question is therefore whether, at the time the notice was issued, the timber outbuilding, which is the subject of the notice, was required to support permitted construction works on the site and whether it can reasonably be regarded as a temporary structure.
16. The appellant's original position was that he was constructing the dwelling, the subject of planning permission 18/00147/FUL. This was disputed by the Council, who said that the dwelling currently under construction does not have planning permission but is the subject of a retrospective planning application. It is significant that the appellant has since conceded that the dwelling under construction has only recently gained retrospective planning permission. This appears to support the Council's stance.
17. Consequently, even if the timber outbuilding could reasonably be regarded as a temporary structure, because the enforcement notice was issued against it

⁵ See appellant's email dated 26 June 2020

before the grant of planning permission for the dwelling currently under construction, the outbuilding would not be permitted development as it would be in conflict with paragraph A.1., as set out above.

18. In terms of whether the outbuilding is likely to be genuinely required temporarily or should be regarded as a permanent structure, I note from the Council's submissions that it appears to have been constructed on a concrete foundation. Moreover, in terms of detailed design, the building is partially open to the front, incorporating vertical railings and has also been sub-divided into a series of bays. There is also an integral canopy over the frontage. The building has the appearance of stables and, as set out above, the appellant has conceded that he has constructed a stable block which requires planning permission.
19. Therefore, whilst at the time of my visit some building related materials and equipment were being stored in the structure, in terms of its proposed eventual use, appearance and attachment to the ground the purpose of the structure should properly be regarded as the provision of permanent stables rather than a building required only temporarily for the duration of operations, even if this is argued to be a convenient intervening use. Having regard to its size, permanence and physical attachment, the building is not therefore a temporary structure and as such is also in conflict with Part 4 Class A of the GPDO for this reason.
20. The appellant has also suggested in correspondence with the Council that the structure would be permissible, under the GPDO, on grounds of being related to forestry. Whilst Schedule 2 Part 6 Class E of the GPDO states that the erection of a building reasonably necessary for forestry purposes would constitute permitted development, this would nevertheless still require the Council's determination as to whether prior approval was required for such development. There is no information before me to suggest that any such determination has been sought. Furthermore evidence would be required that the building would be reasonably necessary for forestry purposes. The appellant has stated in correspondence that the building is not being used at present for forestry. Nor is there any information before me to suggest that it would be so required in the future. The building is not therefore permitted by Part 6 Class E of the GPDO.
21. Drawing the above considerations together, the appeal on ground (c) therefore fails.

The appeal on ground (f)

22. The ground of appeal is that the steps required by the notice to be taken are excessive. The appellant's ground (f) case is that the notice should only apply to the land described therein. However I have already addressed this contention in the preliminary matters set out above.
23. Given that the purpose of the notice is to remedy the breach of planning control, this can only be achieved by the demolition of the building and returning the land to its condition before the development occurred. To require that does not, therefore, exceed what is necessary and the appeal on this ground must fail.

Other Matters

24. The appellant has referred to nearby residents purchasing protected woodland for use as extended garden areas. Irrespective of whether this is true, this is not a matter relevant to my consideration of this specific case.

Conclusion

25. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decision

26. It is directed that the enforcement notice be corrected by deleting the words "the clearing of woodland and" in Schedule 3; by deleting the wording in paragraph 6 of Schedule 5 in its entirety; and by deleting the second paragraph of Schedule 6 in its entirety, relating to the time for compliance with Step 6.
27. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR