



Appeal Decisions

Site visit made on 31 August 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2021

Appeal A: APP/Z3825/C/20/3263275

Appeal B: APP/Z3825/C/20/3263276

Land known as Plot 10, Land on the east side of Dukes Hill, Coolham Road, Thakeham, West Sussex RH20 2LT

- The appeals are 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 Colin Francis (Appeal A) and Miss Anja Koester (Appeal B) against an enforcement notice issued by Horsham District Council.
 - The enforcement notice was issued on 21 October 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the excavation of the Land and consolidation of imported material to form a hardstanding.
 - The requirements of the notice are: (i) Break up and remove from the land the material forming the hardstanding; (ii) Restore the land to its former condition by re-seeding it with grass and removing the resulting debris from the land.
 - The period for compliance with the requirements is three months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Summary of Decisions

1. The appeals are dismissed and the enforcement notice is upheld with a correction.

Preliminary Matters

2. The appellants say that the enforcement action is unreasonable and unsustainable and that the plot looks better. However, planning permission has already been refused to retain the hardstanding and no subsequent appeal or ground (a) appeal is before me to consider the planning merits to retain it.
3. The use of the word 'appear/s' is common to all enforcement notices as the notice issued by the Council is an allegation, until it takes effect.

The ground (c) appeal

4. For the appeal to succeed on ground (c) the onus is on the appellants to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.

5. The appellants suggest that the works pertaining to the clearance of the plot of land of brambles and foliage to provide an easily maintainable area does not constitute a breach of planning control. Whilst that might be the case, the enforcement notice concerns the excavation of the land and importation of material to form a hardstanding, as opposed merely the clearance of any vegetation. Indeed, a planning application¹ had previously been submitted to retain the hardstanding.
6. The appellants also assert that there can only be a breach of planning control relating to the hardstanding if there was an intent to further develop the area or if it had been used as a base for vehicles or development.
7. I am satisfied on the balance of probabilities from the photographic evidence before me and observations during my own site visit that the works that had been undertaken were of an extent that amounts to an operation normally undertaken by a person carrying on business as a builder. It therefore follows, irrespective of its compaction or density, that the works undertaken are development for the purposes of Section 55 of the Town and Country Planning Act 1990 and are therefore engineering operations liable to enforcement action.
8. That being the case, it is irrelevant as to whether there was or was not any intention for future development or use of the hardstanding for the purposes of a ground (c) appeal.
9. There is also very little evidence before me to demonstrate on the balance of probabilities that the hardstanding amounts to that of a repair and maintenance operation or that the hardstanding benefits from any form of permitted development rights.
10. The appellants have therefore not demonstrated on the balance of probabilities that there has not been a breach of planning control arising from the excavation of the land and importation of material to form a hardstanding.
11. The appeal on ground (c) accordingly fails.

The ground (f) appeal

12. The purpose of the enforcement notice is clearly to remedy the breach of planning control. For an appeal on ground (f) to succeed it would be necessary for the appellant 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 steps.
13. The appellants say that they have already laid topsoil over the hardstanding to reasonably diminish it. However even if that were the case, and I could see during my site visit that some form of stony soil/material had been introduced, it does not demonstrate on the balance of probabilities that the requirements of the notice are excessive. That approach also does not remedy the breach of planning control enforced against as it does not result in the removal from the land of the hardstanding material. There is also no ground (a) appeal before me to enable me to consider other measures to diminish the hardstanding.
14. The notice then requires the land to be restored to its former condition by re-seeding with grass and remove resulting debris, albeit it does not require the

¹ Council Ref DC/20/0543

appellants to reintroduce other types of vegetation. The appellants say this would enrich the Council beyond the original condition of the land. Indeed, the photographic evidence before me does not demonstrate on the balance of probabilities that the land was set to grass and I could see during my site visit that there was no other debris. The second requirement of the notice is therefore excessive in order to remedy the breach of planning control.

15. The appeal on ground (f) accordingly succeeds to this extent.

Overall Conclusion

16. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction.

Appeals A and B

17. It is directed that the enforcement notice be corrected by:

- deleting the words '*(ii) Following step (i) above, restore the land to its former condition by re-seeding it with grass and removing the resulting debris from the land.*'

18. Subject to this correction the appeals are dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR