

Appeal Decision

Site visit made on 4 August 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 14 September 2021

Appeal Ref: APP/Y3615/C/21/3274279

Land known as Lot A1, Westwood Lane, Wanborough, Guildford GU3 2JN registered at HM Land Registry under title number SY864326 and Land known as Land lying to the west of Westwood Lane, Wanborough, Guildford, Surrey and registered at HM Land Registry under title number SY86190, shown edged red on plan attached to the notice

- 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 Ben Davis (Cupids Green Ltd) against an enforcement notice issued by Guildford Borough Council.
- The enforcement notice, numbered EN/20/00121, was issued on 21 April 2021.
- The breach of planning control as alleged in the notice is without planning permission, engineering operations consisting of the creation of a track, shown in the approximate position marked with black hatching on the site plan attached to the notice, and the creation of bunds, shown in the approximate position marked A - B and C - D on the site plan attached to the notice.
- The requirements of the notice are to: i) Remove from the Land all material, including but not limited to hardcore and earth, used to create the bunds adjacent to the track in the approximate location marked A - B and C - D on the plan attached to the notice. ii) Remove from the Land all material, including but not limited to hardcore and earth, used to create the track on the Land, hatched in black on the plan attached to the notice. iii) Return the Land to its previous levels, so at any point it is level with the natural pre-existing land immediately adjacent to it.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) (c) (d) (e) and (f) of the Town and Country Planning Act 1990 as amended (the Act).

Decision

1. It is directed that the enforcement notice be corrected by replacing SY86190 with SY861901 in paragraph 2. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Procedural matters/the enforcement notice

2. It is clear from the Land Registry documentation provided by the Council (official copy of register of title) that the notice contains a typographical error, in that the last digit of the title number has been omitted in respect of SY861901. However, I am satisfied that the land subject to the notice has been clearly identified because the description of it in paragraph 2 draws reference to the plan attached to the notice where it is clearly marked. The appellant has not raised the incorrect title number as an issue and has made his appeal submissions on the basis that the land has been correctly identified. Therefore, I am correcting the notice to essentially add the omitted digit without any injustice caused to any party.

3. I have also dealt with another appeal (Ref: APP/Y3615/C/21/3276011) on this site and made against the same notice. That appeal is the subject of a separate decision.

Ground (e)

4. For an appeal to be successful under this ground, the appellant must satisfy me on the balance of probabilities that copies of the notice were not properly served as required by the Act. The appellant has commented that "there are 40 additional landowners who have not received the necessary documents" but has not provided further information or evidence about the additional landowners he states should have been served. The burden of proof is on the appellant to provide sufficient information to make his case under this ground, and he has not done so. Further, I have seen nothing in the evidence to lead me to find that the Council failed to properly serve copies of the notice as required by section 172(2) of the Act, including on the appellant who has exercised his right of appeal. It served copies of the notices, as was appropriate, in accordance with the results of Land Registry searches conducted and this was supplemented by copies of the notice posted at the site addressed to the "owner" and to the "occupier". Consequently, the ground (e) appeal does not succeed.

Grounds (b) and (d)

5. For success under ground (b) the appellant must satisfy me on the balance of probabilities that the matters stated in the notice have not in fact occurred and under ground (d) that, if they have, it was too late for the Council to take enforcement action in respect of them at the time the notice was issued.
6. The appellant does not make any case under these grounds in respect to the bunds. He refers to their existence and states that the notice could fairly require their removal. However, he says that the track has not in fact been created but is historic and has been in place for more than 10 years. He says that Google Earth Satellite Imagery and Ordnance Survey Data provide evidence of this, yet the only evidence the appellant appears to have submitted is an Ordnance Survey Map marked "Data last updated 10:00pm 23 APRIL, 2021". This shows a track but post-dates the issue of the notice by 2 days.
7. Conversely, the Council has submitted photographs provided to it by a complainant on 20 May 2020 which appear to show a grassed site without a track (or bunding) where I observed the development to have occurred on my site visit. It has also submitted a number of photographs taken since that date which show, over time, engineering operations resulting in the construction of a track and bunds. Further, the nature of those operations are supported by evidence in complaints from third parties. Google Earth Satellite Imagery also submitted by the Council support its case that this operational development has been substantially completed within the last 4 years which would make the enforcement action within time.
8. Consequently, the appeals under grounds (b) and (d) fail.

Ground (c)

9. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control. He seeks to do so in stating that a farm

track benefits from being treated as a permitted development right in accordance with Schedule 2, Part 6 of The Town and Country Planning (General Permitted Development) (England) Order (GDPO) 2015 which states that 'the formation or alteration of a private way' is permissible.

10. However, Part 6 permitted development is subject to limitations and conditions contained within the GDPO and the appellant has not made any substantive or evidenced case (the burden of proof being upon him) as to why he considers the development complies with those limitations and conditions. Further, the appellant has not satisfied me that the works were reasonably necessary for the purposes of agriculture within the unit (nor has any agricultural use been evidenced).

11. Therefore, the ground (c) appeal fails.

Ground (f)

12. For success under this ground, I must be satisfied that the requirements of the notice are excessive in achieving its purpose. It is clear to me that the purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach. The requirements require no more than this, and are accordingly not excessive. The appellant says that only recently deposited material should be scraped off the track, but that would not remedy the breach of planning control caused by the creation of the track which I have found to have occurred within 4 years of the issue of the notice.

13. Accordingly, the appeal under ground (f) fails.

Conclusion

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

Andrew Walker

INSPECTOR