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# Appeal Decision

Site Visit made on 1 September 2021

**by M Savage BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 September 2021**

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**Appeal Ref: APP/A1530/C/21/3275391**

**Priory House Priory Road, Chappel, Colchester, Essex CO6 2EL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jim Melia against an enforcement notice issued by Colchester Borough Council.
- The notice was issued on 22 April 2021.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the carrying out of engineering operations comprising excavation and the bunding of soil and the raising of land levels. ("the Activity").
- The requirements of the notice are to:
  - (i) Backfill the excavation using the original spoil that came from the excavation, ensuring the land is reinstated back to slightly above natural land level at a height sufficient to allow for settlement to the original level over time.
  - (ii) Ensure the surface 500mm of the reinstated land is adequately decompacted and a topsoiled surface cap to that reinstated land is created as part of the renovation works, and that this cap is at a minimum depth of 200mm, free of any contaminants, detritus and larger stones.
  - (iii) Reseed the topsoiled surface of the reinstated area with grass of a compatible mix to the location.
  - (vi) Reinstatement and re-sow any areas of failed grass seed during the next grass sowing season, i.e. September 2021.
  - (v) Leave the land in a clean and tidy condition.

Note: all landscape works will be carried out broadly in accordance with the relevant current British Standards'

The recipient of the notice should discuss any technical landscape points they are unsure of with their landscape consultant/contractor.

- The period for compliance with the requirements is: 3 calendar months from the date this notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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## Summary Decision

1. The appeal succeeds in part and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

## Preliminary Matters

2. Since the appeal was lodged, the Government published its revised National Planning Policy Framework (July 2021)('the Framework'). The parties have had the opportunity to comment on the implications of the changes during the appeal process.

## **Ground (a)**

### **Main Issue**

3. The main issue of the appeal is the effect of the scheme on the character and appearance of the area, including its effect on trees.

### **Reasons**

4. Priory House is a detached building located in generous grounds in a generally rural area, bound by woodland to the north. Public rights of way (PROW) run either side of the appeal site. Although the rear garden is bound by mature trees, a substantial gap in the vegetation allows open views into the site from the east. The engineering operations have been carried out to the rear of the dwelling and comprise a substantial excavated area, with sloped access and bunding.
5. Policy ENV1 of the Colchester Core Strategy (CCS)(2008) seeks to conserve the environmental assets and open character of the Borough and policy DP1 of the Colchester Development Policies (CDP)(2010) seeks to ensure that development respects or enhances the landscape, amongst other things. The Framework seeks to ensure that decisions contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, including trees and woodland.
6. The appellant suggests that the bunding and raising of ground levels has been carried out to reflect and respect the natural contours of the existing land, both within the appeal site and adjoining land. However, the topographical survey submitted points towards a difference in land levels of around 5m in parts of the site. While there would be natural variation in the levels within the site, such significant differences have been created by the excavation works and are not, in my view, reflective of the natural contours of the site.
7. Although the appeal site is not in a conservation area, AONB or national park and there are no buildings proposed, there are a number of trees within and adjacent to the appeal site which are likely to be affected by the appeal scheme due to their proximity to the works, including substantial oak trees. Whether or not trees have been removed, the works have the potential to adversely affect the health of the existing trees due to the effects of excavation and compaction on root systems.
8. The appellant states that the purpose of the ground works is to provide secure and 'hidden' parking for his motorhome. However, I see no reason why it is necessary to secure his motorhome in this way. I consider that there are other, less intrusive means of securing the appellant's motorhome, such as installing a security camera and keeping it parked within sight of the property. I therefore afford this matter very limited weight.
9. While some of the trees are located in the appellant's garden, the trees along the boundary of the site make a significant contribution to the character and appearance of the area. Their loss would be harmful to the character and appearance of the area. Furthermore, whilst there are limited views of the works from the public footpath along the western boundary, the works, in particular the bunding, can be seen from the public footpath along the eastern boundary. Although there is natural undulation in the area, the works which

have been carried out appear an alien feature which diminish the character and appearance of the area.

10. The appellant suggests the provision of bat boxes within the existing treed areas on site. However, while such provision would provide biodiversity enhancements, this would not outweigh the harm I have identified to the character and appearance of the area.
11. Whilst I note that a number of interested parties have expressed support for the scheme, I have found it harms the character and appearance of the area. Thus, the appeal scheme is contrary to policies ENV1 of the CCS and DP1 of the CDP, the requirements of which are set out above and the expectations of the Framework.

### **Other Matters**

12. Although the enforcement notice cites policy DP21 of the CDP in its reason for issuing the notice, from the wording of the notice, it seems that the Council's concerns relate to the effect of the degradation and mismanagement of the woodland on the landscape rather than the biodiversity interest of the site. Since policy DP21 of the CDP seeks to conserve or enhance biodiversity interests, amongst other things, it is not directly relevant to the appeal before me.
13. The appellant states that he has removed a derelict unsightly stable building as part of the works carried out. However, the demolition works do not appear to be dependant upon the works being enforced against and so do not weigh in support of the appeal scheme.

### **Ground (a) conclusion**

14. Thus, for the reasons given above, I conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

### **Ground (f)**

15. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control. The Council has confirmed that the purpose of the notice is to remedy the breach of planning control.
16. The appellant states that the nature of surrounding land is undulating so it will be impossible to establish what were the pre-existing ground levels and profile. Whilst it will be a matter of judgement as to former natural ground levels, the appellant is best placed to know what the land was like before the works commenced. The appellant knows what he has to do and so there is no lack of certainty in this regard.
17. Notwithstanding the above, I have a duty to get the notice in order. Requirements should not be based on potentially subjective judgements.
18. Requirement (i) requires the excavation to be backfilled using the original spoil that came from the excavation. The requirement to ensure that the land is reinstated back to slightly above natural land level at a height sufficient to

- allow for settlement to the original level over time is subjective and open to interpretation. Although some settlement is likely to occur following the works, I do not consider it would be so significant as to require the land is reinstated above natural land level. I shall delete this part of the requirement.
19. Requirement (ii) states 'ensure the surface 500mm of the reinstated land is adequately decompacted and a topsoiled surface cap to that reinstated land is created as part of the renovation works, and that this cap is at a minimum depth of 200mm, free of any contaminants, detritus and larger stones.' The requirement to 'ensure the surface 500mm of the reinstated land is adequately decompacted' is ambiguous and open to interpretation. Furthermore, it is not clear whether there was a minimum 200mm depth of topsoil present within the site prior to the works. It may not be possible to create a surface cap of topsoil, given the works that have been carried out in the site. Consequently, this requirement should be deleted.
  20. Given the above, it is also necessary to delete the word '*topsoiled*' from requirement (iii).
  21. Requirement (vi) [*sic*] to reinstate and re-sow any areas of failed grass seed during the next grass sowing season, i.e. September 2021 is onerous, goes beyond remedying the breach and so I shall delete it.
  22. Requirement (v) to leave the land in a clean and tidy condition, is open to interpretation and so I shall delete it.
  23. Within the requirements section, is a note which states 'all landscape works will be carried out broadly in accordance with the relevant current British Standards' The recipient of the notice should discuss any technical landscape points they are unsure of with their landscape consultant/contractor'. This is unclear and is therefore open to interpretation. Although it appears advisory, it is contained within the requirements section. Given the penalty for non-compliance with an enforcement notice it is vital that the requirements are sufficiently precise. For the avoidance of doubt, I shall delete this text from the enforcement notice.
  24. The requirements, as corrected, would ensure the land is reinstated. Since the purpose of the notice is to remedy the breach, I consider that the corrections above can be made without injustice to either party.

### **Ground (g)**

25. An appeal under ground (g) is made on the basis that the period specified in the notice falls short of what should reasonably be allowed. The appellant suggests a period of 6 months is required to specify, tender and execute the works. The Council states that it has no objection to extending the time limit for compliance to 6 months if deemed necessary.
26. Given the extent of the excavations, I agree it is likely that the appellant would need to secure the services of a contractor to carry out the works. I agree a period of 6 months is reasonable and proportionate, to give the appellant sufficient time to secure the services of a contractor and for the works to be carried out and completed.
27. I shall therefore vary the terms of the enforcement notice accordingly. In this respect, therefore, the appeal on ground (g) succeeds.

## Conclusion

28. For the reasons given above I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## Decision

29. It is directed that the enforcement notice is corrected by:

- In section 5 of the notice, the deletion of *'slightly above natural land level at a height sufficient to allow for settlement to the original level over time.'* from requirement (i) and the insertion of *'original land levels'* so that it reads *'Backfill the excavation using the original spoil that came from the excavation, ensuring the land is reinstated back to original land levels'*.
- The deletion of requirement (ii) from section 5.
- In section 5 of the notice, the deletion of *'topsoiled'* from requirement (iii).
- The deletion of requirement (vi) from section 5.
- The deletion of requirement (v) from section 5.
- The deletion of *'Note: all landscape works will be carried out broadly in accordance with the relevant British Standards'* from section 5.
- The deletion of *'The recipient of the notice should discuss any technical landscape points they are unsure of with their landscape consultant/contractor.'* from section 5.

30. It is directed that the enforcement notice is varied by:

- In section 6 of the notice, the deletion of '3' calendar months and the substitution of '6' calendar months as the period for compliance.

31. Subject to the corrections and variation above, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*M. Savage*

INSPECTOR