



Appeal Decisions

Site visit made on 28 September 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 11 October 2021

Appeal A Ref: APP/R0660/C/21/3272136

Appeal B Ref: APP/R0660/C/21/3272137

17 Fletsand Road, Wilmslow SK9 2AD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Sergio Romero against an enforcement notice issued by Cheshire East Council. Appeal B is made by Ms Eliana Guercio.
- The enforcement notice was issued on 1 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, the importation and deposit of material in order to raise the levels of the land within the rear garden.
- The requirements of the notice are:
 - a) Remove the stone wall shown edged in blue on the attached plan marked 'Plan B'.
 - b) Regrade the area of land shaded in green on the attached plan marked 'Plan B' by the removal of material to a level consistent with the level of the land located at the boundaries of the site that are shown edged in pink on the attached plan marked 'Plan B'.
 - c) Cover the land shaded in green on the attached plan marked 'Plan B' with 100mm of topsoil and seed with grass seed.
- The period for compliance with the requirements is 2 months.
- The appeals are proceeding on the grounds set out in section 174(2)(f) of the 1990 Act as amended.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

1. The appellants do not dispute that the matters alleged in the enforcement notice have occurred and that planning permission was required for the development. An application to regularise land levels, which had been raised during the construction of a replacement building on the land, was refused by the Council in September 2020 (ref 17/3087M). Subsequently an enforcement notice was issued, which is the subject of these appeals.
2. The appeals have been made on ground (f) and, therefore, I must consider the statutory purpose of the enforcement notice. The purposes are set out in Section 173(4) of the 1990 Act as (a) remedying the breach by making any development comply with the terms of any planning permission which has been granted, by discontinuing any use of the land or by restoring the land to its condition before the breach took place, or (b) remedying any injury to amenity which has been caused by the breach.

3. The steps seek the removal of the material that has resulted in raised levels and the restoration of the land to its previous condition. It is clear that the purpose of the enforcement notice is to remedy the breach of planning control. Consequently, on the ground (f) appeals, I must decide whether the steps required by the notice exceed what is necessary to remedy the breach identified.
4. There is no ground (a) appeal and associated deemed planning application. Hence, the planning merits of the unauthorised development are not before me. Matters such as whether the increase in levels to the rear of the appeal property has had a detrimental impact on adjoining properties, due to surface water runoff, are not relevant. Similarly, I cannot consider the fallback position suggested by the appellants, which concerns what may or may not be constructed as 'permitted development' under the Town and Country Planning (General Permitted Development) (England) Order 2015. I must focus on the requirements of the notice and whether they are excessive to achieve its statutory purpose, which is to remedy the breach of planning control.
5. I understand that separate litigation proceedings are ongoing. These matters do not affect my consideration of these appeals.
6. The appellants question the necessity for enforcement action, however, expediency is a matter for the Council. I appreciate that the application to regularise land levels took several years to determine and that the appellants are willing to work with the Council, despite not being responsible for the unauthorised works. These matters are between the Council and the appellants and do not concern these appeals.

Reasons

7. The appellants argue that there is no evidence that the requirements, if implemented, would have any effect on surface water pooling. However, this is not the correct test. The matters which I must consider are set out above.
8. The importation of materials and resulting raised levels in the areas indicated amount to development for which there is no planning permission. This constitutes a breach of planning control and that breach can only be remedied by the removal of the deposited material and by returning the land to the condition it was in before the breach took place. This is what the requirements seek and, as such, they are not excessive.
9. The appellants suggest that the removal of the stone wall, requirement (a), is not necessary. However, I saw that the wall is integral to the raised levels and its purpose is to retain the earth. Consequently, its removal is necessary to remedy the breach. In addition, if the wall were to be retained, it would serve no purpose as it would simply become a free standing structure within the re-graded garden area.
10. It is also argued that requirement (c), to cover with topsoil and seed with grass seed, is unreasonable as outbuildings and hard standings may be constructed without the need for planning permission. While this may be correct, I must return to the purpose of the notice which is to restore the land to its condition before the breach took place, that being rear garden, laid with grass¹, at a level consistent with levels along the site boundaries.

¹ 2010 Google Earth image.

11. The appellants make the case that 'lesser steps', devised to address the surface water pooling, would achieve the statutory purpose behind the notice with less trouble and expense. It may be that lesser steps comprising the construction of land drains and / or a pumping station would mitigate the effects of the unauthorised development, but this is by no means clear from the evidence before me. In any event, such works would not remedy the breach of planning control and, thus, would not achieve the statutory purpose behind the enforcement notice.

Conclusion

12. I conclude that the requirements of the enforcement notice are not excessive to remedy the breach of planning control. For the reasons given above, I consider that the appeals should not succeed.

Formal Decision

13. The appeals are dismissed and the enforcement notice is upheld.

Debbie Moore

Inspector