
Appeal Decision

Site visit made on 11 October 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2021

Appeal Ref: APP/B2355/C/21/3267164

Land to the rear of 401 Holcombe Road, Helmshore, Rossendale, Lancashire BB4 4NF

- 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 Sharjeel Nasim against an enforcement notice issued by Rossendale Borough Council.
 - The enforcement notice was issued on 20 January 2021.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, operational development comprising the excavation of an agricultural field to extend the residential curtilage of No.401 Holcombe Road, facilitating the material change of use of land from agricultural use to residential use.
 - The requirements of the notice are:
 - a. Cease the use of the Land as an extension of the residential planning unit of No.401 Holcombe Road;
 - b. Demolish the L-shaped stone and breezeblock retaining wall, as indicated in blue on the attached 'Retaining Wall Plan';
 - c. Remove all materials associated with b. from the Land;
 - d. Remove all materials and equipment associated with carrying out the operational development from the Land; and
 - e. Restore the Land to its former land level, condition and use as an agricultural field by soiling and seeding with grass.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (d) 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 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Appeal on ground (b)

2. The appeal is whether as a matter of fact when the notice was issued the Land was in use for residential purposes facilitated by the excavation of an agricultural field. The burden of proof falls on the appellant to make out his case.
3. The appellant's case is that the Land has been utilised by past and present occupiers of the residential property known as 401 Holcombe Road for over 20 years and a change of use has not therefore occurred. However, these arguments are more relevant to the appeals on grounds (c) and (d).

4. From the evidence before me, including photographs attached to the Council's Statement of Case¹ (SoC), some levelling works to the land and repairs to adjoining retaining walls has taken place. In addition, the appellant does not dispute that on occasion the Land has been used for residential purposes, for example, for sitting out.
5. Consequently, on the balance of probability, levelling works to the field did occur and the Land has been in residential use as a matter of fact. The appeal on ground (b) therefore fails.

Appeal on ground (c)

6. The issue is whether as a matter of fact and degree there was a material change in the use of the Land from a lawful agricultural use to a residential use facilitated by operational development comprising the excavation of the field. A main consideration is whether a significant difference in the character of the activities and use can be identified when compared to the lawful use.
7. A starting point is to identify the planning unit, which is the most appropriate physical area to assess the materiality of the change.
8. The Land identified by the enforcement notice is a small rectangular parcel of grassland which is situated to the rear of 401 Holcombe Road, a residential dwelling. The Land is at a much higher level than No 401 and its established rear garden. It is located above a high stone retaining wall and there is no permanent physical means of access to the Land from No 401. I conclude that the appropriate planning unit comprises the Land identified in the notice.
9. The landowner has advised that they purchased the Land as part of a wider area of agricultural pasture in 1994. Shortly after its purchase they erected stock proof fencing. The fencing was erected away from the edge of the retaining wall for safety reasons. Consequently, the Land between the fencing and the retaining wall was not able to be used for grazing. Since that date they have been happy for the inhabitants of No 401 to utilise this Land.
10. Considering third party evidence, including letters from neighbours and a statutory declaration from the Landowner, it is evident that for at least the last 20 years the Land has, on occasion, been utilised by the occupiers of No 401 for sitting out or recreational purposes. However, for a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.
11. The Land has a lawful agricultural use. Whilst I recognise that it has not been actively grazed for many years, from the evidence before me, including photographs within the Council's written SoC, dated April 2012, May 2017 and July 2020, and my own observations on my site visit, the Land retains the appearance of rough grassland.
12. The evidence before me in relation to the residential use of the Land relates solely to observations of its occasional use for sitting out, facilitated by fold-up chairs. Whilst, some clearance/excavation works have taken place to the Land, from my observations on my site visit, those works have not been substantive. Given their limited extent and depth they would not in my view constitute

¹ NAB.2. Site Visit Photographs 29 October 2020.

engineering operations. In addition, the walls identified in blue on the enforcement notice are less than a metre in height, and therefore development permitted by Class A, Part 2, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order, 2015.

13. Moreover, there has been no discernible change in the overall appearance and character of the use of the Land. It retains an appearance of rough grassland. There is no fixed outdoor seating area/laid patio, nor any evidence of domestic paraphernalia which might be associated with a residential use of the Land. Furthermore, the Land is not easily accessible for the occupiers of No. 401. Access is currently from a ladder propped against the three metre high garden wall. With no safety railing on top of the garden wall it is not surprising that the use of the Land for sitting out has only been on occasion.
14. From all the evidence before me, as a matter of fact and degree, there has been no material change in the use of the Land to residential use. A breach of planning control has not occurred and the appeal on ground (c) succeeds.

Conclusion

15. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeal on grounds (d) and (a), and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Elizabeth Pleasant

INSPECTOR