



Appeal Decisions

No Site Visit Required

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 12 November 2021

Appeal Ref: APP/V1505/C/19/3225477

Land at the Eastern End of Cornwall Road, Opposite Property known as Fairview, North Benfleet, Essex, SS13 2LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Essex County Council against an enforcement notice issued by Basildon Borough Council.
 - The notice, reference 17/00348/UCO, was issued on 21 February 2019.
 - The breach of planning control as alleged in the notice is MCU from woodland to residential garden amenity space.
 - The requirements of the notice are to: (i) cease using the land for residential garden purposes; (ii) remove the boundary fences shown in blue on the attached plan; (iii) remove all debris resulting from steps (i) and (ii) from the land; (iv) return the land to its former condition by levelling and allow the land to naturally afforest restoring it to its former condition
 - The periods for compliance with the requirements are: for (i) 1 month; (ii) and (iii) 2 months and (iv) 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) 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 have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The Council have issued a series of enforcement notices affecting various parcels of land all known by the above address. These parcels have over the years been occupied by various people. The notices address various alleged material changes of use made by various occupiers of the different parcels. A number of them have appealed, and an inquiry was held on 26 October for 2 days to consider the appeals by Mr Dean and his sons. A further appeal by the Bromleys was proceeding by way of written representations but that notice has now been withdrawn. A number of other occupiers of the parcels of land have reached a settlement with the Council and those notices and appeals have also been withdrawn.
3. Essex County Council are the landowners of all the parcels of land, although this is disputed by Mr Dean. Hence the notices were served on the County Council as well. Unfortunately, the enforcement notices were all given the same reference, so I cannot tell which ones this appeal by the County Council is directed against, I assume all the outstanding appeals. I have not repeated

all the possible iterations of the notice in the heading above for reasons that will become obvious below. I have chosen that one as typical of them all.

Reasons

4. The County Council have appealed on ground (b) only, that the matters alleged have not occurred. Unfortunately the County Council are labouring under a misapprehension that because they were not responsible for the matters alleged, that somehow means they haven't occurred. They have occurred as a matter of fact, and that is not disputed by any of the remaining appellants. Or if they do dispute that it is simply because they have confused the grounds and really meant they had been doing it for so long they were immune from enforcement. The appeal on ground (b) must therefore fail and would fail for any of the notices.
5. I have considered whether the County Council also mistook the grounds, but none of the other grounds are a suitable defence against the issue of the notices. The Council have offered no evidence other than that they didn't do it which is of course irrelevant. As landowners they are subject to the effects of the notice in the same way as any others with an interest in the land.

Conclusion

6. The appeal is dismissed.

Simon Hand

INSPECTOR