



Appeal Decision

Site visit made on 30 November 2021

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

an Inspector appointed by the Secretary of State

Decision date: 10th December 2021

Appeal Ref: APP/N1920/C/21/3272805

Land at 19 Chiltern Avenue, Bushey, Hertfordshire WD23 4PX

- 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 Mrs Sylvia Sherridan against an enforcement notice issued by Hertsmere Borough Council.
 - The enforcement notice, numbered 20/0065/UAW, was issued on 12 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the raising of rear garden ground levels by over one metre.
 - The requirements of the notice are to:
 - Reduce the present ground levels in the rear garden back to the pre-2020 levels with corresponding gradient as shown in the photograph attached to the notice received from the owners via email on 16/07/2020 and titled – ‘19 Chiltern Ave Patio Height and Rear Corner of 17A Chiltern Ave Level’ and on drawing number mma.27, existing rear elevation – attached to refused planning application reference TP/05/0269 for the previous dwellinghouse.
 - Remove all materials, debris, waste and equipment resulting from compliance with the requirements above completely from the land and its environs
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) (c) (e) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

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

The enforcement notice

2. The appellant says that the notice was unsigned. However, there is a signature on the copy she provided with her appeal documents.

Ground (e)

3. For an appeal to succeed on this ground, the appellant must demonstrate on the balance of probabilities that copies of the notice were not served in accordance with section 172 of the Act. I also have discretion under section 176(5) of the Act to disregard any such failure where it has not caused substantial prejudice.
4. The appellant says that she was not served with a copy of the notice at her home address or at her agent's address, both of which she had previously supplied to the Council for service purposes.
5. The notice indicates that copies were served on the appellant at the appeal site address (with the appellant confirming that a copy was placed in the site hoarding door). The Council says that this was in accordance with Land Registry records showing the appellant's address as the site address.

6. Notwithstanding the burden of proof being upon the appellant, she has not provided any substantive evidence to demonstrate that she provided the Council with alternative addresses for service (she refers to an application form for planning permission but has not provided a copy). The Council further says that it emailed a copy of the notice to the appellant and her son using an email address which had been accepted by the main parties as means of communication about the enforcement matter. As the appellant subsequently appealed against the notice, I do not consider that she has been caused any substantial prejudice even had the Council not complied with section 172 of the Act (which in any case she has failed to demonstrate).
7. Accordingly, the appeal under ground (e) does not succeed.

Ground (b)

8. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that the matter as stated in the notice has not occurred as a matter of fact.
9. The appellant says that she has topographical reports showing that the average increase in height of the rear garden was 0.5 metres higher than before the deposition of temporary "muck and debris" from works to build houses on the site under planning permission 17/0245/FUL¹. She further says that, as this "muck and debris" have been removed, the garden height is the same as before the works.
10. However, the burden of proof on this legal ground is on the appellant to show that the matter stated in the notice has not occurred. She has not provided any substantive evidence during the appeal to support her above statement, such as copies of the topographical reports to which she has referred.
11. Accordingly, the appeal under ground (b) does not succeed.

Ground (c)

12. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that the matter stated in the notice (if it occurred) is not a breach of planning control.
13. Section 55(1) of the Act provides that development includes the carrying out of building, engineering, mining or other operations in, on, over or under land. The allegation of raised ground levels by over one metre is a physical alteration of the land amounting to operational development requiring planning permission under section 57 of the Act. The Council says that express planning permission for the development has not been given, nor does it benefit from general planning permission under permitted development rights. The appellant, who bears the burden of proof, has suggested in her appeal comments² that the garden ground levels are as approved under planning permission 17/0245/FUL. However, she has not made her case by providing the relevant documents or drawings associated with that permission and has not satisfied me to the required standard that there is not a breach of planning control.

¹ Demolition of existing dwelling & erection of 2 No. detached 5 bed dwellings; Approved 27/03/2017

² "...as of a direct consequence of the planning permission granted under reference 17/0245/FUL the garden would no longer reflect the picture of 2020..."; "The submitted and approved plans show the garden level running directly from the rear of the building"

14. For these reasons, the appeal under ground (c) does not succeed.

Conclusion

15. For the reasons given above I consider that the appeal should not succeed.
The enforcement notice is upheld.

Andrew Walker

INSPECTOR