



Appeal Decision

Site visit made on 7 July 2022

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2022

Appeal Ref: APP/K1128/C/22/3294210

14 Abbot Road, Woodside, Ivybridge, Devon, PL21 9TF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Norman Sidney William Kirk against an enforcement notice issued by South Hams District Council.
 - The notice, numbered ENF/026159, was issued on 1 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from residential garden use to a mixed use, comprising residential use and the depositing and storage of building materials, rubble, soil and spoil.
 - The requirements of the notice are to:
 - 1 Cease the use of the land for the depositing and storage of building material, rubble, soil and spoil.
 - 2 Remove the building materials, rubble, soil and spoil from the land to a facility licensed pursuant to the Environmental Protection Act 1990 and any related legislation.
 - The period for compliance with the requirement is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by deleting the words 'to a facility licensed pursuant to the Environmental Protection Act 1990 and any related legislation' from requirement 2.
2. Subject to the correction, the appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

3. It is my duty to get the notice in order. The requirements introduce matters that are dependent on consents under other legislation and are unnecessary. I can correct the notice by deleting 'to a facility licensed pursuant to the Environmental Protection Act 1990 and any related legislation' from requirement 2 and I can do so without any injustice to the parties.
4. Letters of support for the work being undertaken by the appellant have been submitted but these are not relevant to an appeal on ground (c).

The site

5. The appeal site is the rear garden of a detached dwelling where the appellant is re-building a retaining wall between the garden and that of 11 Oaktree Close at the rear. There is a quantity of stone and other materials stored within the garden but the amount is significantly less than the quantities shown on the

submitted photographs. It appears that the bulk of the stone has now been used to support the boundary.

Reasons

6. An appeal on ground (c) is that there has been no breach of planning control. With appeals based on matters of law, the onus of proof rests with the appellant and the level of proof is on the balance of probability.
7. The appellant states that he is repairing a boundary, which was an original Devon hedge bank, after it collapsed following its weakening by the activities of developers and the effects of roots. He states that ground was excavated approximately 3m below his garden level and fixed posts with reinforced concrete structures. This led to a surplus of soil which was stored in the garden but has subsequently been removed. Whilst constructing the footings for the wall the garden shed was underpinned using hollow concrete blocks. The locally sourced stone is intended to repair the wall below and is not waste material.
8. The Council states that the works have been ongoing for a period of 5 years at the time of their enforcement investigations and have been the source of multiple complaints from neighbours. The Council considers that the amount of stored material is significantly more than would be required to carry out the engineering works involved in creating the soakaway and the retaining wall and would require planning permission.
9. Reference is made to the site being in a Critical Drainage Area and the need for the soakaways to be of sufficient size such that they would not lead to an increase in surface water run-off outside the site. Notwithstanding this, the allegation makes no reference to engineering works.
10. Concern centres on the amount of material on the site upon which the Council has drawn a conclusion that a substantial retaining wall is proposed and that the impact on the amenity of neighbours should be considered to ensure that the wall is not of a height or position that it would have a harmful impact on the outlook, light or general amenity of neighbours. However, this is speculation on the part of the Council and forms no part of the allegation.
11. The Council has failed to demonstrate that a mixed use has occurred as the evidence indicates that the site has been and remains in residential use, albeit that the appellant has taken an inordinate amount of time to repair the retaining wall and in the process he accumulated a large quantity of material for this purpose. There has been no change to the planning unit, there is no evidence that the material is on site for any purpose other than in connection with the residential use of the land, such as for the running of a business or for another reason, and the matters alleged is not development requiring express planning permission.

Conclusion

12. I conclude that on the balance of probabilities, the appeal on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.

P N Jarratt

INSPECTOR