



Appeal Decision

Site visit made on 24 October 2022

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 November 2022

Appeal Ref: APP/R3650/C/22/3290664

Legend Acres, River Lane, Farnham, Surrey GU9 8UD

- 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 Nigel Schultz against an enforcement notice issued by Waverley Borough Council.
 - The enforcement notice, numbered EN/2021/14, was issued on 25 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission the carrying out of an engineering operation to materially change the levels of the Land in the approximate area hatched on the attached plan.
 - The requirements of the notice are to:
 1. Restore the levels of the land in the cross hatched area of the attached plan to the levels of the land before the engineering operations took place.
 2. Permanently remove from the land all resultant materials in compliance with step (1) above.
 3. Reseed the Land hatched area with grass after step (1) and (2) has been carried out.
 4. If unexpected contamination is found on site at any time, the Local Planning Authority shall be immediately notified in writing and all works shall be halted on the site. The following shall be submitted and approved in writing by the Local Planning Authority prior to the recommencement of works.
 - a) An investigation and risk assessment,
 - b) Where required, a remediation scheme,
 - c) Following completion of approved remediation works, a verification report will be submitted to the Local Planning Authority for approval.
 - The period for compliance with the requirements is three (3) months after the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

Ground (c)

2. Ground (c) is that the matters set out in the notice do not constitute a breach of planning control.
3. The Land identified in the notice (0.36ha) is a rectangular shaped gypsy and traveller site immediately to the south of the A31, occupied currently by three residential mobile homes as well as various outbuildings. Access to the site

from River Lane is controlled by a wide electronically operated double close-boarded gate.

4. The land to the northeast of the appellant's mobile home, associated dog kennels and parking area rises up steeply to form a flat plateau, which is about 4m higher than the land on which the mobile homes are sited to the south-west and the agricultural field to the south, and is also about 1m higher than the main road, the A31 adjoining the site to the north. This plateau is shown on the 2015 LiDAR plan (Appendix 4 of the appellant's appeal statement).
5. However, the levels of the land in the last approximately 40m of the north-eastern part of the site up to the 2.4m high close-boarded fence which demarcates the boundary of Homeleigh, the nearest residential neighbour, is about 2m lower than this high plateau area. The plateau land slopes down steeply by about 2m at approximately 40m from Homeleigh's boundary fence. Part of this land is the hatched area on the notice's plan, which alleges the raising of the land levels in this area.
6. The appellant argues that moving soil around the site does not constitute development requiring planning permission. In addition to the LiDAR plan dated May 2015, he also supplies topographical survey plans dated October 2017 and November 2021. The 2021 plans appear to show the current levels. Indeed, they appear to confirm the photographs (taken on 10 June 2020) in Appendix 1 of the notice, the direction of view of which are indicated on the photo plan in Appendix 2.
7. Although the earth mounds shown in the photos are now covered in vegetation following two summers' growth, I was able to see during my site visit including looking from Homeleigh's rear garden, that the trunk of the semi-mature oak tree shown in Photo 2 was still partially covered in earth. These mounds of earth, as shown in the photos which I am satisfied demonstrate an accurate representation of the works, show substantial earth movement, as confirmed in the 2021 topographical surveys when compared to the 2017 surveys. Such earth movement is clearly not de minimis and undoubtedly comprises an engineering operation that constitutes a breach of planning control.
8. For these reasons the ground (c) appeal must fail.

Ground (a)

9. Ground (a) is that planning permission ought to be granted.
10. I was able to clearly see the front entrance and porch of Homeleigh as well as its rear and side garden from land within the hatched area delineated in the notice's plan. Consequently, I agree with the Council that the earth moving shown on the photos appended to the notice has resulted in the possibility of harmful overlooking of Homeleigh's residents.
11. Whilst I accept that this part of the site currently does not seem to be used for very much, this may not always be the case. The fact that the earth moving has increased the potential for overlooking of Homeleigh's front entrance and garden is itself unacceptable because it could occur, which would significantly harm Homeleigh's occupiers' living conditions. This harm could not be overcome by a fence higher than the current 2.4m high boundary fence because such a higher fence would itself be harmful since it would give Homeleigh's occupiers a feeling of being unduly hemmed in.

12. Whilst the piling of soil against, for instance, the semi-mature oak trees shown in Photo 2, does not appear to have caused them any significant noticeable harm to date, covering the main trunks of trees like this with material can be harmful to them in the long-term and is itself unsightly. Whilst these trees may not be protected by Tree Preservation Orders, it is normal to see trees in a countryside area such as this and earth movements that adversely affect their health should be discouraged. I also note that the site lies within an Area of Great Landscape Value. These trees are definitely not saplings and have not been saplings for many years; such semi-mature oak trees should be preserved and allowed to thrive without being partially covered by earth. These trees are very near the boundary and themselves provide adequate boundary screening of the site from Homeleigh to a large extent; there is no need for additional tree screening if these trees are in good health.
13. Policies TD1 and NE2 of the Waverley Borough Plan Part 1 (adopted in February 2018) respectively seek new development of a high-quality design that responds to the distinctive local character of the area and to maintain and enhance existing trees, woodland and hedgerows in the Borough. The earth movements tackled by the notice do not achieve this and such development is contrary to these policies. Policy D1 of the Waverley Borough Local Plan 2002 addresses similar issues and also militates against the loss of privacy enjoyed by neighbours. For the above reasons the development tackled by the notice again conflicts with this policy.
14. The earth mounds identified by the notice therefore cause or create the potential to cause harm to both the living conditions of the residential neighbours at Homeleigh and the verdant character of this part of the countryside, contrary to the development plan and related policy set out in the National Planning Policy Framework. For these reasons this development would be unacceptable and planning permission should not be granted.

Ground (f)

15. Ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control.
16. The appellant states that the material used in the engineering operation was already on the site and that the requirement to remove it from the Land is therefore excessive and goes beyond what the LPA can reasonably require.
17. However, no information is given by the appellant as to exactly where on the site the material came from, which is what I would have expected by way of explanation and justification. Looking at the photos attached to the notice and from my site visit at the nature of the soil on the part of the site within the hatched area on the notice's plan, it appears to be comprised not just of soil but also a variety of stones and broken pieces of rubble. Consequently, it seems more than likely that this material was brought onto the site from elsewhere. For this reason, the requirement in Step 2 of the notice to remove it from the site is not excessive or unreasonable.
18. The appellant argues that the requirement of Step 1 of the notice – to restore the levels of the land in the hatched area of the plan to the levels of the Land before the engineering operations took place – is imprecise and contradictory. I understand that this is because the boundary with the neighbour at Homeleigh,

as delineated by the 2.4m high close-boarded fence, has been moved into the site by 4m, and so he could not restore the levels of this part of the land to what they were in the 2017 topographical plan because part of the original site now lies on the neighbour's side of the fence.

19. Whilst I obviously accept that the appellant cannot carry out works on the neighbour's land, there is clearly no need to do so. All that is necessary is for him to restore the levels on his own land at this part of the site, as essentially illustrated by the red lines annotated to the notice's photos in Appendix 1, having first removed the imported material from the site. His 2017 topographical plan sets out the precise levels of how he should do this, albeit that the boundary has moved 4m into his site. Consequently, there is nothing remotely imprecise or ambiguous about the requirement of Step 1.
20. The appellant states that the plan attached to the notice is excessive in that it covers the whole of the gypsy and traveller site owned by the appellant. However, that is entirely understandable and not unreasonable because it is clear from the wording of the notice and its contents exactly what has to be done to remedy this unacceptable breach of planning control.

Conclusion

21. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Nick Fagan

INSPECTOR