



Appeal Decision

Site visit made on 7 March 2023

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State

Decision date: 21 March 2023

Appeal Ref: APP/M1710/C/21/3272527

Land Adjacent to Mountain Ash, 112 White Dirt Lane, Horndean, WATERLOOVILLE, PO8 0TW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Robert Saunders against an enforcement notice issued by East Hampshire District Council.
 - The notice was issued on 26 February 2021.
 - The breach of planning control as alleged in the notice is: without planning permission and within the last 10 years, material change of use of land to residential garden serving Mountain Ash, 112 White Dirt Lane, Horndean, WaterlooVille, PO8 0TW.
 - The requirements of the notice are to: 1. Cease the use of the land as an extended residential garden. 2. Permanently remove all residential paraphernalia from the land. 3. Restore the land to its previous condition before the planning breach set out in the enforcement notice took place.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f), (g) 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.
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Decision

1. It is directed that the enforcement notice is corrected by the deletion of the plan attached to the enforcement notice and the substitution of the plan attached as Annex A to this Decision. The revised site area is shown edged red and hatched black. Subject to this correction, the appeal is allowed and the enforcement notice is quashed.

Applications for costs

2. An application for costs has been made by Mr Robert Saunders against East Hampshire District Council. This is the subject of a separate Decision.

Site History

3. The appeal site lies adjacent to the property known as 'Mountain Ash', 112 White Dirt Lane. This property has been converted to a separate dwelling from a building originally within the grounds of 114 White Dirt Lane. The land that is now being used as garden by no.112 has been separated from that of no.114 by fencing on its western boundary and it has been engineered to reduce its levels. The appeal site, as delineated on the enforcement notice plan, lies to the north east and east of no.112 and is divided into 2 sections separated by a fence made of scaffold poles. At the time of the site inspection, there were building materials stored on the southern part of the appeal site and the north eastern part contains various domestic items such as children's play equipment, a trampoline, goal posts and a barbeque.

4. The property at 120 White Dirt Lane was in the ownership of the appellant's father, Mr Raymond Saunders, until he sold it in 2019. The original land holding included the site on which no.114 has since been built and on which, I understand, Mr Saunders Snr now lives. The appellant has submitted statutory declarations from witnesses, including the former owner of the land, former neighbours and Mr Saunders Snr, that attest to the fact that, since 2006, the north eastern area of the appeal site has been used by the Saunders family as garden land, with the permission of the landowner, until it was eventually purchased in 2017. This area of land is now part of garden used by the appellant and his family who now live in no.112.

Preliminary Matter

5. The plan attached to the enforcement notice includes land purchased by the appellant from Hampshire County Council in February 2019 (annotated as HCC land on various plans submitted by the appellant, such as those attached to the statutory declarations). This land lies to the south of the area the Council included in a previous enforcement notice, quashed at appeal in November 2020. In a letter dated 12 November 2019, the Council's Planning Enforcement Manager confirmed that, at that date, it was not being used as garden land.
6. Whilst the former HCC land has now been cleared, this land is separated from the north eastern section shown on the current enforcement notice plan by the scaffold fence noted above and the appellant claims that it has never been used as garden to 112 White Dirt Lane. He submits that any authorised change of use of this area would make him liable to pay a financial sum (overage) to the vendors and he would therefore be financially disadvantaged if this land was found to be in a residential use. The appellant has appealed under ground (c) in relation to this change and asks that the enforcement notice plan be altered to omit this area.
7. The Council has subsequently agreed that I can make this correction without injustice should I consider that necessary. Such a claim would normally fall under an appeal under ground (b), that the alleged breach of planning control has not occurred as a matter of fact, and I will therefore consider it as such.
8. As noted above, the area of land concerned abuts the area originally enforced against. When the inclusion of the additional area was queried by the appellant, he was told the land was included as *'it appears the entire land is now levelled and opened up to the dwelling at 112. It forms one area and should the inspector be mindful of removing this from the notice, then it would cause no injustice'*. The Council has not put forward any other evidence to substantiate the claim it that is being used as a garden and I saw no sign that the land was being, or had been used, in that way.
9. The appellant has explained why he would be financially disadvantaged if the land was found to be in a garden use and this supports his claim that he would not use it as such. I am satisfied that I can correct the plan attached to the enforcement notice to relate to the north eastern section only. The appeal on ground (b) succeeds to this extent.
10. As I have been provided with a number of site plans that show different boundaries for the 2 areas in question, I have used the 2 Land Registry plans delineating the land bought by Mr Raymond Saunders in 2017 and that bought by the appellant in 2019 to determine the revised area that will now be included on the plan attached to the enforcement notice.

Main Issues

11. I consider the main issues in this case to be:

on Ground (d): whether the current use of the appeal site is immune from enforcement action through the passage of time and, if not;

on Ground (c): whether the alleged change of use is a breach of planning control that requires a grant of planning permission to authorise it and, if it is;

on ground (a): the effect of the development on the character and appearance of the surrounding rural area.

If these grounds fail then:

on ground (f): whether the requirements of the notice exceed what is necessary to remedy the breach of planning control and,

on ground (g): whether the time for compliance is reasonable.

Reasons

Grounds (d) and (c)

12. The Council considers that, as the land subject to the corrected enforcement notice has now been included in the planning unit that has been created by the occupation of Mountain Ash as a separate dwelling and is in use as a garden to that property, this constitutes a material change in its use. It also submits that the land has not been used as garden land for this property, or any other, for more than 10 years prior to the issue of the enforcement notice and evidence shows that it was previously vacant and in a different ownership.
13. However, the appellant has produced evidence that confirms to my satisfaction that, on the balance of probabilities, the land in question has been used as a garden, either to no. 112, no. 114 or no. 120 White Dirt Lane since at least 2006. The sworn statements from independent witnesses describe how the land was used by the Saunders family and nothing the Council has produced as evidence to causes me to believe that these claims are less than likely.
14. The evidence of the previous owner of the land confirms that he sold the field adjacent to the appeal site to the appellant's father Mr Raymond Saunders in 2006. He states that the appeal site was fenced off from the field purchased by Mr Saunders Snr and he therefore allowed it to be used as a garden by the Saunders family, as it would also give access to the other land. He states that he was aware that the land had previously been used as garden to another property known as Mountain Ash, which has since been demolished. For that reason, he did not consider there would be any objection to the garden land use.
15. From this date, he and the other the witnesses for the appellant confirm that the appeal site was used as garden to no.120, when this property was owned by the Saunders family and this use continued when they sold that property and moved into no.114. Eventually the appeal site was sold to Mr Saunders Snr in 2017. Although the land was not fully cleared of trees and turfed until 2012, this does not mean that it was not used as claimed and described in detail, as an informal area of garden land. It was being put to an active, albeit low key, use by the appellant's family and was not, in my view, vacant.

16. Nevertheless, for an appeal on ground (d) to succeed in relation to this appeal, it must be shown that the land has been used in association with no.112 for a period of 10 years prior to the issue of the notice. This cannot be demonstrated as it has not been claimed that no. 112 has been a separate dwelling for the requisite time. The appeal on ground (d) consequently fails.
17. Therefore, the matter now to be considered under ground (c) is whether the current use of the garden by the occupants of Mountain Ash (no. 112) is a material change to the situation that existed prior to its incorporation into the boundaries of this property.
18. As noted above, I have already concluded that the land in question was already a garden in residential use for over 10 years prior to the issue of the enforcement notice and, in order to determine whether a material change of use that would require a grant of planning permission to authorise it has taken place, a comparison must be made between the current situation and the use as it existed prior to the change described above.
19. Although a new planning unit has been created, through the separation of no. 112 from no. 114, this is not the breach as alleged in the enforcement notice. The notice cites a '*material change of use of land to residential garden serving Mountain Ash*' and it seems to me that, although the land is now in use by no.112 rather than no.114 or no.120, this makes little difference in planning terms. The extent of the land in use as a residential garden for over 10 years has not increased, as the notice will be corrected to exclude the former Hampshire County Council land. The type of activities taking place on it are normal for a family dwelling and do not appear materially different from what would have been occurring when the land was associated with no. 114 or no. 120.
20. Although it is the case that there have been significant changes in the topography of the land, it is not clear exactly when these took place and whether it was before or after the land was taken into the boundaries of no.112.
21. In any event, the Council has not enforced against any operational development or engineering works that have been carried out, but has only claimed that a material change of use has occurred. That use is only defined as a garden use in connection with no.112 and from the evidence submitted, there appears to be no reason why the topographical changes to the land were necessary in order for this change to take place.
22. Consequently, I conclude that the change in the use enforced against which is, in effect, a change from use as garden land in association with 114 White Dirt Lane to garden land in association with no. 112, is not material and is not, therefore, a breach of planning control.

Conclusion

23. From the evidence before me, I conclude that the southern area of land formerly owned by Hampshire County Council was not in a residential use at the time the enforcement notice was issued and the appeal on ground (b) succeeds to this extent. I will correct the plan attached to the enforcement notice to reflect this.

24. In respect of the land now enforced against after the correction described above, I conclude, on the balance of probabilities, that the alleged change of use is not material and therefore does not represent a breach of planning control. The appeal on ground (c) succeeds in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.
25. The enforcement notice will be corrected and quashed. In these circumstances, the appeals on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Katie Peerless

INSPECTOR

Annexe A

This is the plan to be inserted following the deletion of the plan attached to the enforcement notice. The site subject to the enforcement notice is edged red and hatched black.

