



Appeal Decision

Site visit made on 18 October 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 29 March 2023

Appeal A Ref: APP/T0355/C/21/3286353

Land adjacent to Briar House, Ascot Road, Holyport, Maidenhead SL6 3LA

- 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 Jerry Donovan against an enforcement notice issued by Council of the Royal Borough of Windsor and Maidenhead ('Notice 1').
 - The enforcement notice, numbered 21/50247/ENF, was issued on 6 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the carrying out of engineering operations comprising the excavation of holes in connection with the installation of concrete block pad foundations to facilitate retaining walls; and the importation of materials to raise land levels.
 - The requirements of the notice are: a) Dig up and remove from the land all imported materials; b) Dismantle the concrete panels used to form the retaining walls and remove them from the land; c) Dig up and remove from the land the concrete block pad foundations; and d) Following compliance with steps (a-c), restore the land to its former state, by reinstating the previous land level and seeding with grass seed, to match the remaining section of the paddock as shown in its former size in the appended plan marked AJH1 and image marked AJH2.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/T0355/C/21/3286354

Land adjacent to Briar House, Ascot Road, Holyport, Maidenhead SL6 3LA

- 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 Jerry Donovan against an enforcement notice issued by Council of the Royal Borough of Windsor and Maidenhead ('Notice 2').
 - The enforcement notice, numbered 21/50247/ENF, was issued on 6 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to the storage of a metal container, building materials and plant and machinery in connection with development of the land; with facilitating works comprising the erection of gates.
 - The requirements of the notice are: a) Cease the use of the land to store a metal container, building materials and plant and machinery used in connection with operational development set out in Enforcement Notice 1; b) Remove the gates and piers identified in the appended image marked AJH1.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. In respect of Appeal A:

It is directed that the enforcement notice is corrected and varied by:

Deleting the plan attached to the Notice and replacing it with the plan attached to this decision;

Inserting the words "and deposition" between the words "and the importation" and the words "of materials to raise land levels" in section 1 of the Notice 'The Land to which this notice relates;

In section 2 of the Notice 'The matters which appear to constitute the breach of planning control', inserting the words "in the approximate location marked with crosses on the plan attached to this Notice" between the words "facilitate retaining walls" and "; and the importation", and inserting the words "in the approximate location marked with circles on the plan attached to this Notice" between the words "to raise land levels" and the "."; and omitting the words ", to match the remaining section of the paddock as shown in its former size in the appended plan marked AJH1 and image marked AJH2" from requirement d) in section 4 of the Notice, 'What you are required to do'.

Subject to the corrections and variation, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the carrying out of engineering operations comprising the excavation of holes in connection with the installation of concrete block pad foundations to facilitate retaining walls; and the importation of materials to raise land levels at land adjacent to Briar House, Ascot Road, Holyport, Maidenhead SL6 3LA as shown on the plan attached to this decision.

2. In respect of Appeal B:

It is directed that the enforcement notice is corrected by: the deletion of the words "in connection with development of the land" in Section 2 of the Notice, 'The Matters which appear to constitute the breach of planning control'; the variation of requirement a) of Section 4 of the Notice, 'What you are required to do', by the deletion of the words "used in connection with operational development set out in Enforcement Notice 1"; and the variation of requirement b) in Section 4 of the Notice by the deletion of the words "image" and the substitution of the word "images".

Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. Whilst the two Notices relate to different developments, the land to which they relate is the same. As such, it is appropriate to deal with the appeals in the same decision letter, though the reasoning for each decision is given separately.

Reasons

Appeal A – The Notice

4. The Notice, as corrected, relates to land that lies to the northwest of the A330, Ascot Road, to the southwest of the large town of Maidenhead. It consists of a paddock that the Council estimates has an area of 2259 sqm. The evidence shows that it has been separated off from a larger paddock by the erection of a timber fence. The land was part of an area of land that was given planning permission for use as a equestrian facility.
5. Prior to the Notice being issued, the Council issued a Planning Contravention Notice and a Temporary Stop Notice. It tells me that criminal proceedings had commenced regarding the non-return of the former and non-compliance with the latter. Whilst this is noted, those proceedings have no bearing on my decision.
6. The land identified in 'the Plan' that was attached to the Notice takes up the greater part of a paddock that lies on the north side of the A330, between it and a detached property, Seymour House. A narrow portion of the paddock adjacent to the boundary with Seymour House was not included within the red line on the Plan. The paddock is separated from similar land to the northeast by a timber fence and one of the walls referred to in the Notice.
7. Requirement d) of the Notice requires, amongst other things, the reinstatement of land levels across the paddock that is enforced against, and its planting with grass to match the adjacent paddock, as shown in the plan marked AJH1 and an aerial image marked as AJH2. That plan and image show a larger area of land than that identified in the Plan, though they, too, do not include the strip of land adjacent to Seymour House.
8. The Appellant claims that this requires him to reinstate an area of land that is larger than that referred to in the Notice. In any event, he says, in the absence of details of levels, he has not been told sufficiently clearly what is expected of him.
9. He also states that the wording of the Notice in respect of the walls is ambiguous, as some of the walls that have been erected are not retaining walls, though all are required to be removed.
10. The Appellant has set out further concerns regarding the alleged breach of planning control and the consequential requirements of the Notice. He says that the Matters which appear to be the breach of planning control makes no reference to the erection of walls on the land, it only mentions the engineering operations that facilitated their erection. Notwithstanding this, the Council requires them to be dismantled and removed from the land.
11. He acknowledges that some of the walls that have been erected are retaining walls, but states that the majority of them are not. As a result, he says that the Notice has "a certain ambiguity"
12. The Council's response on matters related to the validity of the Notice, in its Statement of Case, is that it requested a Hearing "where it would welcome a discussion about the validity of the enforcement notice". It says that the Notice clearly tells the Appellant what he should do. It goes on to say that, given the Appellant's comments in respect of the strip of land, I have powers under s176(1) of the Act to amend the Plan to include this land. It followed

this up, by letter dated 13 June 2022 that was emailed to the Planning Inspectorate, by submitting a plan showing the additional land. Its line being that, as the Appellant raised the matter of this area of land he could not be prejudiced by its inclusion.

13. I find, given the comments made in his submissions, that the Appellant would not be prejudiced if the terms of the Notice were to include the strip of land adjacent to Seymour House. Thus, I could substitute a new Plan to show this.
14. Similarly, the Council state that my powers allow me to delete reference to attachments AJH1 and AJH2. These, it says, were attached to aid the Appellant and the requirements of the Notice did not apply to the paddock to the northeast of the land. I agree that this could be done without prejudice. However, without these the latter part of requirement d) becomes unclear and I shall also remove this after the requirement to seed the land with grass seed.
15. Although the Notice might have been worded more clearly, I find that, taken in the round, the alleged engineering operations cover the erection of any retaining walls on the land. In this regard, as the Appellant has addressed the erection of retaining walls in his submissions, he would not be prejudiced by my taking this position. If it is held that there had been changes to levels and the Notice were to be upheld, the Appellant would be best placed to know what these original levels were. Therefore, I need not make any changes in this respect.
16. There is a difference between the importation of materials to raise land and their deposition to raise the level of the land. It is clear that the latter is alleged, and that the Appellant addresses the matter in this way. I shall correct the allegation using my powers to reflect that the allegation also refers to deposition.
17. Overall, the Notice is not so hopelessly ambiguous or uncertain to render it a nullity. There are flaws, as I have set out, but these can be addressed without injustice to either party.

Ground (c)

18. An appeal made under Ground (c) is that the breach of planning control alleged in the Notice does not constitute a breach of planning control. It is for the Appellant to make his case on the balance of probability.
19. The Council's case is that all the walls on the land are retaining walls. This is disputed by the Appellant. He acknowledges that levels were changed in an area of land that is shown hatched in blue on the Council's amended Plan and was retained by new walls. This land runs from a point roughly commensurate with the front of Seymour House towards the northeast corner of the paddock. These are within the land that was hatched in blue on the Council's revised plan, which I have determined can be accepted.
20. When I visited the site, I could not be sure whether the engineering works there had created a single retaining wall or whether two had been created with a short break between. Nothing turns on this, however. I saw that a length of retaining wall in this area, which the Appellant acknowledged had been erected, had been removed above ground level. Therefore, this area no longer had any visible retaining structure.

21. A short length of wall remains at the north corner of the paddock. This is, as identified by the Appellant, a retaining wall. The land on one side was considerably higher than land on the other; the wall clearly retained raised land behind and had been designed to do so. The evidence shows that a wall or two walls were on the land at the time the Notice was.
22. It was apparent to me that the wall that had been erected between the paddock that is the subject of the Notice and the paddock beyond, is not a retaining wall. The levels of both areas of land appeared to be very much the same. The levels of the land at the bottom of a fence that had clearly been in place for a longer period, immediately behind the new concrete wall, reinforced this finding. I find that this wall was not erected to retain land and did not do so in any meaningful way. That I could not see the bottom of the panels' internal faces does not to my mind equate with performing a retaining function. The amount of soil against this face was negligible. I saw that the land had fairly recently been planted with evergreen trees and the disturbance of the land could easily account for the small amount of soil against this face of the wall.
23. I find similarly in respect of the wall that has been constructed close to the boundary with the A330. I could see the lower edge of the earlier wooden fence, between the wall and the road, which gave a good idea of original land levels prior to the construction of the wall. The levels on either side of the wall are roughly commensurate with one another, and with those around the fence. This indicates that what has been erected is not a retaining wall.
24. I assessed the wall running from the gates that give to the land along the boundary with Seymour House, in part with the use of a ladder. From measurements that were taken, and visually, I was able to see the land levels either side of the wall. These lead me to believe that this wall did not retain land.
25. Whilst their lower parts, and, of course, the footings of those walls that I do not consider to be retaining walls might go down a short distance below ground level, this does not mean that they are retaining land.
26. In respect of the raising of land levels, from the relative heights of land that I saw, and from my assessment whether walls retained land, I do not find that the land across the whole of the paddock has been raised. I can see from the photographs that have been provided that the whole of the land was significantly churned up by the plant that was brought in to undertake the erection of the walls. However, I cannot conclude from these and my site visit that the land has been raised other than in the areas acknowledged by the Appellant. On the balance of probability, the evidence as a whole shows that this only occurred along the land close to the gates to the site and near Seymour House.
27. For the above reasons, the Appellant has made his case to a limited extent. Therefore, the Ground (c) appeal succeeds in part. I have marked the approximate area where raising has occurred on the revised plan that I attach to this decision.

Ground (a)

Main Issues

28. An appeal under this ground is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the Notice, planning permission ought to be granted.
29. As the paddock lies within the Green Belt ('GB'), the Main Issues in the appeal are:
 1. Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 2. The effect of the proposal on the openness of the Green Belt;
 3. The effect of the proposal on the character and appearance of the area; and
 4. Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Whether inappropriate development and effect on openness

30. Paragraph 147 of the National Planning Policy Framework ('the Framework') states that 'Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances'.
31. Paragraphs 149 and 150 of the Framework set out those circumstances where developments will not be inappropriate. Amongst these, Paragraph 150 b) lists 'engineering operations'. This is subject to the proviso that they preserve openness. The terms of the Framework are mirrored in Policies GB1 and GB2 of the Royal Borough of Windsor and Maidenhead Local Plan (Incorporating Alterations Adopted in June 2003) ('LP') and Policy QP5 of the Borough Local Plan 2013 - 2033 Submission Version, Incorporating proposed changes, October 2019 ('BLP'). As the latter document is 'emerging', I can only give it limited weight.
32. Amongst its terms, section 55 of the Act defines development as meaning 'the carrying out of building, engineering, mining or other operations in, on, over or under land'. Engineering works generally involve some element of pre-planning and might be supervised by an engineer. The works do not have to be carried out by an engineer, however.
33. Here, the evidence clearly shows that the erection of retaining walls and the deposition of soil behind them were pre-planned, this included the preparation of a Structural Design Report¹. The works were carried out as a single operation, and I have no doubt that this was an engineering operation, as defined in section 55.
34. Assessed in both a spatial and visual manner, I find that these works do affect the openness of the GB, albeit to a limited degree.
35. The deposition of imported materials in the area close to the gates at the entrance to the site was a very limited engineering operation. Using the same assessment as above, I find that this work does not affect the openness of the GB. It is not, therefore, inappropriate development.
36. As the operational development in respect of the retaining walls has an effect on the openness of the GB, albeit that this is very minor, it represents

¹ Pasquala Vacirca Consulting, dated 18 October 2021

inappropriate development in the GB. This is a matter to which the Framework requires me to attach substantial weight.

Character and Appearance

37. Thus, I move onto the effect that the operations have on the character and appearance of the area. The Appellant's position is that there is no material harm. The walls, he says, are not high and are entirely concealed from public view by trees along the A330. He says, quite rightly, that the foundations, referred to in the Notice, being below ground have no effect on the character and appearance of the area.
38. All the walls erected on the land have an industrial appearance that is at odds with the character and appearance of the area. However, the Notice only attacks retaining walls on the land and those that are not retaining walls, irrespective of their height, are not affected by the Notice.
39. Although the engineering operations to erect the identified retaining structures and create the raised land behind are not great they do cause some limited harm to the character and appearance of the area. That they are not clearly seen from outside the site is, in part due to planting and the wooden fence along the boundary with the A330. However, these might not be retained and, were they to be removed, the retaining walls might be more clearly seen. Taking matters in the round, I find that the minor harm is contrary to the aims of LP Policy DG1 and BLP Policy QP3.
40. It appears that the land levels in the area around the entrance to the site have been raised. This was in connection with the creation of an access for construction vehicles to reach Seymour House, where building work was being undertaken. This very limited work does not cause harm to the character and appearance of the area and accords with those policies.

Whether other considerations clearly outweigh the identified harm

41. Given that I have found harm to the GB, albeit that this is limited, I have to assess whether this would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.
42. In respect of the retaining walls, evidence has been provided of the need for the land adjacent to Seymour House to be retained. It was slipping and this was leading to damage to land and structures at Seymour House. I give this significant weight and consider this to amount to very special circumstances which justify the development. Therefore, in terms of the effects on the GB, I find that the development accords with the terms of the Framework and Policies GB1, and GB2 of the LP and Policy QP5 of the BLP.
43. I find likewise in terms of their limited harm to the character and appearance of the area. The need for the retaining structures outweighs the limited harm and, therefore, the conflict with LP Policy DG1 and BLP Policy QP3.

Other Matters

44. The Council has informed me that a planning application was received, on 9 December 2022 for a 'Detached new dwelling with PV panels, access gates, associated parking and landscaping'. This is a matter that would have to be

assessed on its own merits, in the normal manner, and it has no bearing on my decision.

Conditions

45. The Council did not suggest any conditions to be attached, should planning permission be granted for the development. The Appellant suggested attaching a condition requiring the grassing of the land, as shown in Appendix A to his statement would be acceptable. However, I do not find it to be necessary to require the grassing of either the small area of land that has been retained or that which has been raised. Were they to be planted in some other way, or even left as bare soil, it would not cause harm to the character and appearance of the area.

Conclusion on Appeal A

46. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected.
47. Therefore, the appeal on ground (g) does not fall to be considered.

Appeal B

The Notice

48. Requirement a) of the Notice refers to 'Enforcement Notice 1' and the Appellant argues that this is not sufficiently clear and unambiguous. He acknowledges that he was served with two Notices on the same day and was clearly aware of the terms of each. Notwithstanding this, in the circumstances I agree with the point that he makes. However, Section 176(1)(a) of the Act gives the Secretary of State powers to correct any defect, error or misdescription in an enforcement notice. The proviso being that he is satisfied that the correction or variation will not cause injustice. Here, I am satisfied that correcting the requirement through the omission of "used in connection with operational development set out in Enforcement Notice 1" would not cause injustice to either party.
49. The Appellant also makes the point, in respect of his arguments about the validity of the Notice, that its requirement b) refers to image 'AJH1'. He states that there is more than one image attached to the Notice and none is given that title.
50. He is right that there is more than one image. There are three, but all of them are appended to the Notice as 'AJH1'. This, again, is easily addressed using the powers in s176(1)(a) by simply varying requirement b) to replace "image" with "images". This would not cause injustice to either party.

Ground (b)

51. An appeal under this ground is made on the basis that those matters alleged in the Notice have not occurred.
52. The Appellant's case is not that the use of the land for the storage of a metal container, building materials and plant and machinery has not occurred. He agrees that it has. This, he says, was not "in connection with development of the land", as set out in the alleged breach of planning control, but was in

association with an extension to the adjacent Seymour House. He also claims that the reference to 'Enforcement Notice 1' in the first of the Notice's requirements lacks precision.

53. On the balance of probability, I find that the Notice's reference to the development being associated with the development of the land to be wrong. However, as acknowledged by the Appellant, the use that is alleged has occurred, albeit not in association with the development of land at Seymour House.
54. Notwithstanding this, the Notice is not so defective as to be a nullity. I can correct the allegation using the powers in s176 of the Act by omitting the words "in connection with development of the land" from the alleged breach of planning control. Although the Appellant was aware of Enforcement Notice 1, as he was served with a copy of it at the same time as he was the Notice that is the subject of this appeal, I agree it lacks precision and appears ambiguous. Given that the Appellant agrees that the development alleged in the Notice did occur, albeit in association with development at Seymour House, I can also vary the terms of requirement a) by omitting reference to Enforcement Notice 1. The correction and variation can be made without causing injustice to either party.
55. The Appellant goes on to say that the items referred to in the Notice will be removed when the development at Seymour House is complete. I am unsure how that work is progressing, but, although the storage had ceased, when I visited the site the gates were still in-situ.
56. I find that the alleged use of the land, as corrected, has occurred and, therefore, the Ground (b) case fails.

Conclusion on Appeal B

57. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction and variation.

Roy Curnow

Inspector



Plan

This is the plan referred to in my decision dated: 29 March 2023

by Roy Curnow MA BSc(Hons) CMS MRTPI

Land at: Adjacent to Briar House, Ascot Road, Holyport, Maidenhead SL6 3LA

Reference: APP/T0355/C/21/3286353

Scale: Not to scale

