



Appeal Decisions

Site visit made on 20 September 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28TH SEPTEMBER 2023

Appeal A Ref: APP/U1430/C/22/3296273

Appeal B Ref: APP/U1430/C/22/3296274

Land at Moorings, Forewood Lane, Crowhurst, Battle TN33 9AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeals are made by Mr Stephen Knight (Appeal A) and Ms Caroline Knight (Appeal B) against an enforcement notice issued by Rother District Council.
- The notice was issued on 4 April 2022.
- The breach of planning control as alleged in the notice is without planning permission, operational development, comprising erection of large platform / scaffold at the rear of site as shown hatched blue on the plan.
- The requirements of the notice are: (i) Remove the structure in its entirety from the land. (ii) Remove any associated materials and debris from the land.
- The period for compliance with the requirements is: Four months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f), and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld.

Procedural Matters

1. Appeals have been lodged under grounds (b), (f), and (g). It is evident that the appellants' case in support of their ground (b) appeal would be more relevant to an appeal under ground (c). I shall therefore consider the appellants' case under ground (c) in addition to the other grounds mentioned above. The Council and interested parties have already commented on the appellant's submissions, relevant to an appeal under ground (c). I have not therefore invited any further comments in this regard, and no injustice would be caused to any parties by me proceeding to consider an appeal under ground (c).
2. At the site visit Mr Knight claimed that the enforcement notice had been complied with. I make no assessment as to whether that is correct, but it was evident that much, if not all, of the 'platform / scaffold' which was in place at the time the enforcement notice was served has since been removed, with some scaffolding poles remaining on the land or replacing those which previously existed. I have considered the appeals based on the information provided, alongside what I saw during my site visit, in relation to what was in place when the enforcement notice was issued.

Ground (b)

3. To succeed under this ground of appeal the appellants would need to demonstrate that the breach of planning control alleged in the enforcement notice had not occurred when the notice was issued.

4. The evidence shows that scaffolding had been erected at the rear of the appeal site. That created a platform level with the rear garden of the appeal site, above a significant slope. The breach of planning control alleged in the notice had therefore occurred when the notice was issued.
5. The appeal under ground (b) must therefore fail.

Ground (c)

6. To succeed under this ground of appeal the appellants would need to demonstrate that the breach of planning control alleged in the enforcement notice does not constitute a breach of planning control.
7. It is claimed that scaffolding does not require planning permission, and that its purpose in this case was to provide safe access to maintain and repair the land.
8. Section 57 of the Act explains that planning permission is required for the carrying out of any development of land. Section 55 of the Act states that 'development' includes the carrying out of building, engineering, or other operations in, on, or over land. This is often referred to as 'operational development', as opposed to a material change in the use of any buildings or other land, which also constitutes development.
9. The scaffolding and platform comprised series of poles apparently driven into the ground and fixed together with bolted brackets, topped with timber planks. They created a single structure which was substantial in size. Although it could be disassembled and the poles, brackets and timber planks could be re-used to erect scaffolding elsewhere, the structure which existed had a significant degree of permanence and was anchored in position. I am therefore satisfied that the scaffolding comprised operational development requiring planning permission.
10. The erection of scaffolding incorporating a platform often does not require express planning permission from the local planning authority, on account of the provisions of Article 3(1) and Class A, Part 4 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). This grants planning permission for the provision on land of buildings, moveable structures, or works required temporarily in connection with operations being or to be carried out on, in, under or over that land or on land adjoining that land, subject to limitations and conditions. The second limitation of Class A is that such development is not permitted if planning permission is required for those operations but is not granted or deemed to be granted.
11. The appellants have explained that it was their intention to carry out stabilising works to the slope at the rear of the appeal site, which may include retaining walls. It has not been claimed that any such works would not require planning permission. On the submissions made and what I saw during my site visit, it appears likely that such works would comprise engineering or other operations requiring planning permission. I have not been referred to any planning permission which may exist for such works. The scaffolding and platform in this case did not therefore accord with the limitations of Class A and did not benefit from any planning permission granted by the GPDO.

12. The scaffolding and platform comprised development which required planning permission. As no planning permission existed, the scaffolding and platform were in breach of planning control.

13. The appeal under ground (c) must therefore fail.

Ground (f)

14. To succeed under this ground of appeal the appellants would need to demonstrate that the steps required by the enforcement notice to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused.

15. The notice requires the unauthorised development and any associated materials and debris to be removed from the land. The purpose of the notice is therefore to remedy the breach of planning control. This could not be achieved by any lesser steps.

16. The appeal under ground (f) must therefore fail.

Ground (g)

17. To succeed under this ground of appeal the appellants would need to demonstrate that the period specified in the enforcement notice for its steps to be complied with falls short of what should reasonably be allowed.

18. The notice allows 4 months for its requirements to be complied with. The appellant requested that this be varied to allow 24 months to allow sufficient time to complete retaining wall works. I do not know the full extent of such intended works, which may have already been completed. As much, if not all, of the development the subject of the notice appears to have already been dismantled, I see no reason for the period specified in the notice to be varied.

19. The appeal under ground (g) therefore fails.

Conclusion

20. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Formal Decision

21. The appeals are dismissed and the enforcement notice is upheld.

L Douglas

INSPECTOR