
Appeal Decision

Site visit made on 11 September 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 05 October 2023

Appeal Ref: APP/B2355/C/23/3315044

Land to the South of Victoria Street, Cloughfold, Rossendale, Lancashire BB4 7PT

- 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 David Rothwell against an enforcement notice issued by Rossendale Borough Council.
- The enforcement notice was issued on 19 December 2022.
- The breach of planning control as alleged in the notice is the carrying out of earthworks, the installation of retaining structures resulting in the reprofiling of the Land and the creation of hard surfaced areas.
- The requirements of the notice are:
 - Remove all retaining structures, reprofile the Land and restore the Land to its former condition and levels, in a manner that will not cause land instability.
 - Remove all hard surfacing.
 - Remove all other walls which have been constructed.
 - Re-seed the Land with grass.
 - Remove all waste materials, construction materials, plant and containers from the Land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld subject to a variation.

Background

1. The appeal site is situated to the south of Victoria Street, at the end of a row of terraced houses which are along the western side of the street with commercial buildings along the eastern side. To the south the land opens up to countryside which is characterised by a sloping hillside and undulating land beyond. It is my understanding that in 2021 outline planning permission was granted under reference 2020/0339 for the erection of four dwellings. A subsequent application for reserved matters (Reference 2022/0029) was withdrawn in April 2022.
2. Following concerns with respect to the amount of earthworks that had taken place on the site it was agreed that a temporary retaining structure would secure the land from potential slippage. However, the concrete retaining structure and other works the subject of the current appeal were implemented which the Council does not accept.
3. The appellant contends that a previous permission for commercial development on the site and more recent residential approvals demonstrate that the Council

accepts that the land is suitable for development. It is also argued that given the rising land which formed the southern part of the site has been excavated, the retaining wall was necessary to provide a long term solution to concerns regarding the stability of the site and land to the south west.

The appeal on ground (a)

4. The ground of appeal is that planning permission should be granted. The main issues are the effect on the character and appearance of the area and whether the development contributes to creating an unacceptable risk of land instability.

Character and appearance

5. The site is situated in a mixed residential and commercial area and is adjacent to rising open countryside. It is clearly visible from a number of local vantage points and, in particular, from the approach along Victoria Street and from Hope Street. There is a wide variety of designs and scale of development in the vicinity including stone faced terraced houses with slate roofs and larger commercial buildings built of brick, cladding and corrugated sheet roofs.
6. The retaining structure has been built of pale concrete and is highly visually prominent as a consequence of its materials and overall scale. It contrasts greatly with its mixed surroundings and is at odds with other buildings and the adjacent countryside. It is a dominant structure which, when combined with the other earthworks and the reprofiled land erodes the character of the area.
7. Therefore, on this issue I conclude that the development is harmful to the character and appearance of the area and conflicts with Policies SD1, ENV1 and ENV3 of the Rossendale Local Plan 2019-2036 Adopted 15 December 2021 (the LP) and the Framework. Among other objectives these seek to achieve sustainable forms of development, all developments should take account of the character and appearance of the local area and conserve and enhance the natural and built environment. However, I find that there is no conflict with Policies SS, SD2 and ENV4 of the LP which relate to the Spatial Strategy for Rossendale, the urban boundary and Green Belt and biodiversity, geodiversity and ecological networks.

Land Instability

8. The appellant has confirmed that the retaining wall is a permanent solution to ensure the stability of the sloping land to the south west of the appeal site. Evidence from a structural and civil design engineer states that the retaining walls are an essential component for the safe usage of the developed site and without them the stability of the slope above it could not be guaranteed. Without the permanently installed retaining wall, the embankment above the site would need to have been battered at a slope that would be unacceptable in the permanent condition.
9. The evidence also shows that in the short term, to allow for the wall to be constructed, the slope was partially excavated to the steeper slope, but this was backfilled at the earliest convenience for stability. I have no reason to dispute the expert evidence and conclude that the development does not contribute to creating an unacceptable risk of land instability. As such I find no conflict with Policies ENV6 and ENV9 of the LP which relate to environmental protection and surface water run-off, flood risk, sustainable drainage and water quality.

10. However, to stabilise the site, the retaining structures have an unacceptable and harmful effect on the character and appearance of the area. That is the overriding consideration in this case. Therefore, although does not itself contribute to creating an unacceptable risk of land instability, it conflicts with the development plan as a whole. The appeal on ground (a) does not succeed and permission is refused on the application deemed to have been made.

The appeal on ground (f)

11. The ground of appeal is that the steps required by the notice to be carried out exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires removal of all retaining structures, reprofile the Land and restore the Land to its former condition and levels, removal of all hard surfacing and all other walls which have been constructed, re-seed the Land with grass and removal of all waste materials, construction materials, plant and containers from the Land, the purpose is clearly to remedy the breach. Leaving any part of the development in place would not achieve that purpose. In this respect the appeal on ground (f) fails.
12. The appellant has stated that the removal of the retaining wall may lead to slippage, resulting in the loss of potential to develop the site and will lead to there being a potentially dangerous site. Therefore, it is contended that the requirements exceed what is required to provide the long-term stability of the site and land to the south-west. I am also aware of comments from the owners of nearby farmland supporting the retention of the retaining wall. However, the objective of this enforcement action is not to secure the future development potential of the site or secure its long-term stability, but to return it to its condition before the unauthorised development took place. Therefore, any lesser steps suggested would not achieve the overall objective under s173(4)(a) of the Act and the appeal on ground (f) cannot succeed.

The appeal on ground (g)

13. The ground of appeal is that the time given to comply with the requirements is too short. The three calendar months would be barely sufficient to carry out all the requirements. In addition, I can appreciate that time will be required to ensure the works are carried out in a safe manner to ensure the stability of the land in question during and after the completion of work. In this respect I consider six months as suggested by the appellant as a compliance period is reasonable. Therefore, the appeal on ground (g) succeeds.

Formal Decision

14. The enforcement notice is varied by the deletion from paragraph of the words "3 months" and the substitution therefor of the words "6 months" as the time for compliance with the requirements. Subject to this variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

A A Phillips

INSPECTOR