



Appeal Decision

Site visit made on 25 September 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

Appeal Ref: APP/B3600/C/22/3302912

Land lying to the west and south of The Paddocks, Rose Lane, Ripley, Surrey GU23 6NE

- 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 Mrs Sheila Jane Stevens against an enforcement notice issued by Surrey County Council ('the Notice').
 - The enforcement notice, numbered TIP/GU/63, was issued on 15 June 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the land from agricultural to a mixed use comprising agricultural and a sui generis comprising the importation, disposal and burning of combustible waste, the unauthorised importation, storage and sorting of scrap metal and the importation and disposal of mixed soils and hardcore leading to the raising of land levels on the area shown cross hatched on plan EN/TP/001 dated 22 March 2022.
 - The requirements of the notice are: 1/ Stop all unauthorised importation, deposit, storage and disposal of waste by spreading to raise the level of the land with mixed soils and hardcore shown edged red on plan EN/TP/001 dated March 2022; 2/ Stop all importation, deposit, storage and disposal by burning of combustible waste on the Land shown edged red on plan EN/TP/001 dated March 2022; 3/ Stop all importation, storage and sorting of scrap metal on the Land shown edged red on plan EN/TP/001 dated March 2022; 4/ Remove all imported combustible waste from the area of land shown cross-hatched on plan EN/TP/001 dated March 2022; 5/ Remove all imported mixed soils from the land shown cross hatched on plan EN/TP/001 dated March 2022 in order that the round levels are reinstated and are level with the adjoining land; 6/ Reinstatement of the area of land shown cross hatched on plan EN/TP/001 dated March 2022 to a condition suitable for agriculture by regrading it to achieve even falls that facilitate surface water drainage away from the residential area to the east; and 7/ Reinstatement of the area of land shown cross hatched on plan EN/TP/001 dated March 2022 to a condition suitable for agriculture by ploughing, picking, harrowing and seeding with a suitable grass mix.
 - The periods for compliance with the requirements are: 1/ and 2/ - 1 day; 3/ - 2 days; 4/ - 3 weeks; 5/ - 5 weeks; 6/ - 8 weeks; and 7/ - 12 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) (d) and (g) of the Town and Country Planning Act 1990 as amended ('the Act').
-

Decision

1. It is directed that the enforcement notice is varied by: the deletion of paragraph 7 of section 5 'What you are required to do'. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. Initially, the Appellant made a case under Ground (c). In her final comments, she set out that as she was satisfied with the Council's response to her Ground (c) case she relinquished that challenge to the Notice.

Reasons

3. The appeal site lies between the village of Ripley and the A3, a busy arterial road running from London to Guildford and the south coast. The land is gently undulating and is mainly grassed. The appeal site comprises an area of land adjacent to a small caravan site, from which it is separated by a timber fence. It is separated from adjoining land, which has much the same character and appearance, by fences and hedges. The requirements of the Notice relate to a portion of the land adjoining the western end of the caravan site, which is shown hatched on the plan attached to the Notice.

Ground (b)

4. An appeal made on Ground (b) is that the alleged breach of planning control has not occurred. This is a legal ground of appeal where the onus lies with the Appellant to make her case on the balance of probability. The Appellant addresses these matters in the order of the Notice's requirements. For the purposes of clarity, I shall do the same.
5. She claims that there has been no importation, deposit or storage or disposal of waste by spreading to raise the level of land with mixed soils and hardcore, save for that authorised by planning permission 20/P/00232.
6. The Council has provided a copy of the planning permission decision notice for 20/P/00232, though I do not have any of the relevant drawings. This was a retrospective permission for the use of land for a gypsy and traveller caravan site, limited to 8 caravans, associated buildings and hardstanding. The Council tells me that the red line indicating the land to which the permission related was drawn tightly around the development and that the land to which the Notice relates is outside of that area. This has not been countered by the Appellant, so I take it to be the case.
7. The evidence, in particular photographs submitted by the Council in support of its case and what I saw at my site visit, demonstrate that the importation, deposit or storage or disposal of waste has occurred on the balance of probability.
8. In terms of whether the land has been raised as a result of those activities, the Appellant states that the land is lower than adjoining land and submitted a photograph showing a drop in land levels. I saw this straight feature at my site visit and it is apparent that some very limited excavation has taken place on the land. However, I have no details as to when this occurred or why.
9. The hatched area of land is to the north of this feature. When I visited, the larger part of this hatched land had been enclosed by timber fencing and was being used for the keeping of horses and ponies. I did not enter this area, but the parties agreed that I was able to see it adequately by standing on a metal pole on land adjacent to the horse enclosure and from its gateway.

10. From what I saw on site, and from the photographs submitted by the Council, I could see that the land had been raised. This was especially evident when I looked at the relationship between the land in the hatched area and the land to the north. There is a hedgerow here formed primarily of low hawthorn bushes and I was able to see how the land has been raised with soil within which there were stone and pieces of bricks and tiles. It was clear that this material had been spread relatively recently and was not part of the deposition of material arising from the construction of the A3 Ripley by-pass in the 1970s.
11. The Appellant's phrase "there is a reduction in land height between ours and the neighbouring land" is not explained. Notwithstanding this, it is clear that the hatched area of land has been raised. It has not been raised greatly, but appreciably so and perhaps by as much as the 1m upper end of the Council's estimate.
12. The Appellant claims that there have been a couple of bonfires of domestic waste and on Bonfire Night. The site of these is shown in her photograph SJS2D; she says SJS2C in her statement, but the only blackened area she refers to is in SJS2D.
13. Photographs 5, 6 and 7 of the Council's Appendix 8 show the remains of a large bonfire within the hatched area. The Council describes this as 'Burnt waste'. There is no specific rebuttal of this by the Appellant, and it does appear to be domestic waste. Furthermore, as the photograph is dated 26 August 2021 it is certainly not related to Bonfire Night.
14. Photographs in Appendix 8 show that combustible material on the land. On the basis of the evidence before me, I find that the Appellant has failed to demonstrate that land has not been used for the disposal of this combustible waste through burning.
15. The Appellant's claim that no soil has been brought to the land is clearly wrong. Evidence of this is shown in photographs 6, 9 and 19 of the Council's Appendix 7. The latter two show piles of soil on the land and the former is described as showing soil graded out over mixed waste hardcore. None of these are specifically countered by the Appellant.
16. In these Ground (b) submissions, the Appellant refers to the land's lack of suitability for agriculture. I shall address this as a 'hidden' Ground (f) case in respect of the requirements of the Notice.
17. The Council's photographic evidence show that scrap metal has clearly been brought to the site. From Appendix 7, photographs 1, 3 and 4 show, amongst other things: what appear to be metal water tanks, white goods and 4 vehicles in what could only be described as scrap condition; metal baths and white goods; and 2 different scrap vehicles, respectively. From Appendix 8, photographs 4, 5 and 6 show, amongst other metal items: electrical cable and drain covers; what appears to be a large metal drum, radiators, gates and a vehicle wheel, respectively.
18. The Appellant agrees that this has taken place as she says that metal has occasionally been brought to the land and is there for "no more than a week or so". This was because the tip was shut or it was brought to the site before being sold on. This shows that this part of the alleged breach has occurred. The state of the vehicles on the land do not support her contention that this was car

repairs being carried out by her son. That activity might have been carried out on the land but, to my mind, the cars shown in the photographs were beyond repair.

19. I note that the Appellant has a waste exemption registration, which allows for the burning of waste. However, registering an exemption does not remove the need to apply for other permits or permissions, such as planning permission, where required.
20. From the evidence before me, including what I saw at my site visit, I find that the Appellant has failed to demonstrate, on the balance of probability, that the uses alleged in the Notice have not occurred. Therefore, the Ground (b) appeal fails.

Ground (d)

21. An appeal made under this Ground is that at the date the Notice was issued, no enforcement action could be taken in respect of the breach of planning control it alleges. This, too, is a legal ground of appeal where the requirements in Grounds (b) and (c) apply to the Appellant.
22. Time limits for enforcement action, after which development becomes immune from such action, are set out in section 171B of the Act. S171B(3) sets out that the period for changes of use, as alleged in the Notice, is 10 years. Therefore, given that the Notice was issued on 15 June 2022, it is necessary to show that the development was commenced prior to 15 June 2012.
23. The Appellant's case again relates to the importation and disposal of mixed soils and hardcore to raise the levels of the land. She states that this was done long before she bought the land, when the A3 was constructed and extended.
24. The levels of the land covered by the Notice might have been modified as a result of the A3 works. However, evidence of this is scant. Notwithstanding this, from the evidence that I refer to under Ground (b), importing and disposing of soil and hardcore to raise the land levels was clearly going on in 2020. Thus, the importation and disposal of mixed soils and hardcore to raise the levels of the land has occurred in the last 10 years and it was not too late to take enforcement action.
25. For the above reasons, the Ground (d) fails.

'Hidden' Ground (f)

26. A Ground (f) appeal is that 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 which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
27. Item 7 of the Appellant's Grounds of Appeal relate to the unsuitability of the land for agriculture and that the requirement 7 would result in "an enormous amount of work given the amount of rough stones in the area and the amount of ragwort in the area". This, as I have said, is a matter better dealt with as a hidden Ground (f) case.

28. I walked around most of the land within the red line and saw that the soil there was not of good quality and that this seemed to be the case on adjoining land. It appeared to me that the imported material has been deposited on the land, rather than having been dug into the land that is underneath. Thus, simply removing that material to uncover the land below would remedy the breach.
29. The purpose of the Notice is to cease the breach of planning control. I am of the view that that requirement 7 exceeds what is necessary to achieve this. This would be achieved by the remaining requirements.
30. I shall vary the Notice to reflect this, and to this extent the hidden Ground (f) succeeds.

Ground (g)

31. An appeal made under this Ground is that the time given to comply with the requirements falls short of what should reasonably be allowed. The Appellant's case initially related to requirements 5, 6 and 7 of the Notice. However, she accepted in her Final Comments that the time given in requirement 5 was sufficient. As I have removed requirement 7, only number 6 remains to be considered.
32. In her initial case, she says that the period given for this is too short, given that they include substantial works and earth moving for which she would have to hire earth working machines and shore up the land. No details of what machinery would be required, nor why and to what extent the land would need to be shored up have been given. Furthermore, no alternative period was proposed.
33. In her Final Comments, she says that 6 weeks is needed for compliance with requirement 6. This is less than the period given in the Notice. Notwithstanding this apparent change of mind, I will not reduce the period for compliance with requirement 6. This has been found to be a reasonable period by the Council and, were I to change it, it would leave the Appellant worse off. Therefore, it would not be appropriate to vary the period for compliance downwards.
34. The periods for compliance in the Notice are reasonable and I shall not vary them in the manner suggested. Therefore, the Ground (g) case fails.

Conclusion

35. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

Roy Curnow

Inspector