
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: 9th November 2023

Appeal Ref: APP/Y3615/C/22/3307875

Land known as Valentines Farm, Rose Lane, Ripley, Woking 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 Mr Alexander Stewart Clark of Lasch Ltd against an enforcement notice issued by Guildford Borough Council ('the Notice').
 - The enforcement notice, numbered EN/19/00016, was issued on 24 August 2022.
 - The breach of planning control as alleged in the notice is (i) Without planning permission, an engineering operation consisting of the construction of a bund/raised earth platform in the approximate position outlined in blue on the attached plan; (ii) Without planning permission, an engineering operation comprising changes to the levels of the ground, construction of a wall and fence and the laying of materials to create a hard surfaced raised area, in the approximate location outlined in green on the attached plan; (iii) Without planning permission, operational development consisting of the installation of two structures, in the approximate location outlined in black on the attached plan and also shown in the two photographs attached to this Notice; (iv) Without planning permission, an engineering operation consisting of the construction of the construction of a track shown in the approximate location hatched black on the attached plan.
 - The requirements of the notice are i) Remove from the Land the unauthorised bund/raised earth platform in the approximate location outlined in blue on the attached plan. All material and soil from the bund should be removed from the Land in its entirety; ii) Level the land outlined blue on the attached plan so that it is the same height as adjacent land and seed with grass seed; iii) Remove from the Land the wall and fencing and all materials introduced to create the raised area of land to the south-west of the barn and outlined in green on the attached plan; iv) Level the land outlined in green on the attached plans so that it is at the same height as adjacent land and seed with grass seed; v) Remove from the Land all material used to construct the track shown in the approximate position location cross hatched in black on the attached plan; vi) Level the Land cross hatched in black on the attached plan so that it is at the same height as adjacent land and seed with grass seed; vii) Remove from the Land the two structures in the approximate location outlined in black on the attached plan and also shown in the two photographs attached to this notice; and viii) Permanently remove from the Land all materials, rubble, rubbish and debris arising from steps (i) to (vii).
 - The period for compliance with requirements i) to vii) is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(b), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Appeal Site

2. Valentines Farm lies in the open countryside between the village of Ripley and the A3, a very busy trunk road running from London to Guildford and on to the south coast.
3. There is a large building, formerly a barn, and associated hard surfaced areas at the north-eastern end of the land. The building is used for commercial purposes and the hard surfaced areas appeared to be in use for the parking and/or storage of vehicles and equipment at the time of my visit. The plan attached to the Notice shows the structures referred to in alleged breach (iii) were sited on the hard surfaced area to the southeast of the building.
4. Close to the commercial building, on its southwest side, there is a large wall with a fence on top. The lower portion of the wall retains land behind; its upper portion and the fence on top partially enclose the raised land for safety purposes. The higher land, outlined in green on the plan attached to the Notice, is hard surfaced, with a ramp dropping to a surfaced track that runs from the commercial building to the entrance to the land. The land outlined in green, including the wall and fence, is the subject of alleged breach of planning control (ii). The track running to the entrance is not the subject of the Notice and it, too, appeared to be in use for parking and/or storage purposes.
5. The remainder of the land is gently sloping and is grassed. The track that forms the basis of alleged breach (iv) in the Notice runs along the southwestern boundary of the land. It runs to the south-eastern corner of the site where there is a very large pile of soil. This is the subject of alleged breach (i).
6. In terms of nearby development, there are allotments to the north, a bowls club to the northeast and, a short way to the northwest a small caravan development. The land is part of a wide swathe of open land within the Green Belt ('GB') that is mainly pastoral, and, notwithstanding, the road and developments I refer to, it has a rural character and appearance.

Ground (b)

7. An appeal made under ground (b) is that the breach of planning control alleged in the Notice has not occurred. The Appellant's case relates to the two structures referred to in alleged breach (iii). Both had been removed prior to my site visit. In its response, the Council was of the opinion that the Appellant's arguments amount to a Ground (c) case, which is to say that the alleged development (if it occurred) does not constitute a breach of planning control. The Appellant's case is made on the basis that the structures did not constitute operational development and, therefore, the alleged breach is incorrect and had not occurred. He refutes the Council's suggestion that this should be addressed under Ground (c), and I deal with this as a Ground (b) case. This is a legal argument where the onus lies with the Appellant to make his case on the balance of probability.
8. The Appellant's case refers to established case law in *Skerritts of Nottingham Ltd v SSETR* (No.2) [2000] 2 PLR 102. This identifies three tests to be applied in the assessment of the structures - size, permanence and degree of attachment.

9. No argument was put forward relating to their size. From photographs of the structures, one of which was being used as a toilet facility serving the adjacent commercial building, I can see that their size was not insignificant.
10. Although they have been moved, this cannot automatically be taken as meaning they did not have the required degree of permanence. I have been given no details of how the structures were moved and, from their size, to my mind this would have required the use of a crane and a lorry. The evidence suggests they were used for purposes to serve the commercial building and had been connected to services. Furthermore, I see from photographs in the Council's enforcement report that a hard surface and paving slabs had been laid to the northernmost of the two structures. This evidence suggests to me that there had been an intention to retain them. Permanence should not be read as meaning that the state of affairs is to continue forever or indefinitely, it is more nuanced than that. From the evidence I find that the structures were permanent.
11. Scant evidence of how they were attached to the ground has been provided by the Appellant. The Council's submissions relating to service provision suggest some degree of attachment.
12. Weighing the three factors, on the basis of the evidence put forward, I find that what are described as structures in the Notice were buildings and, therefore, amounted to operational development. As such, the Ground (b) case fails.

Ground (d)

13. 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. This, too, is a legal ground of appeal in which the onus lies with the Appellant to make his case on the balance of probability.
14. The Appellant's case here relates to the changes to the levels of the ground, construction of a wall and fence and the laying of materials to create a hard surfaced raised area, in the approximate location outlined in green on the plan attached to the Notice, (alleged breach (ii)).
15. The time limits within which enforcement action can be taken are set out in s171B of the Act. The Notice is directed against operational development and, therefore, the time limit set out in s171B(1) is 4 years from the point when the development was substantially complete. The assessment is, therefore, whether the development had reached this stage by 24 August 2018, 4 years before the issuing of the Notice.
16. The Appellant argues that he formalised the area through the erection of a retaining wall, flattening the area behind and, later, the erection of a wall with a fence on top.
17. Fundamental to the assessment of this ground of appeal is to determine whether, this was a single operation or, as claimed by the Appellant, there were separate operations.

18. Photographic evidence¹ shows that there has long been a difference in ground levels between that of the commercial buildings and the land to the southwest, in essence that identified by the green line on the plan attached to the Notice. However, the levels of the land there are now markedly different from when those photographs were taken in 2008. What was undulating then is now uniform.
19. An appeal² was made against an enforcement notice issued by the Council in 2017. A plan taken from that Notice shows that much of the area which is outlined in green on the plan attached to the Notice before me to have been used for the parking or storage of HGVs, trailers, machinery and cars. The Appellant states that it must have been flat and accessible at that time to allow for this use. He says that photographs, submitted as Figures 5, 6 and 7 of the Grounds, show this.
20. The first of these photographs shows the ramp and a small part of the raised hard-surfaced area. As such, it does not show that the works across the area outlined in green on the plan were complete. Figure 6 appears to show vegetation at the top of the retaining wall, which was clearly built at that time. That vegetation is on the part of the raised area that is not shown in Figure 5. Figure 7, as with Figure 6, was taken at the lower level by the commercial building. From these three images, there is no way in telling whether the raised area was substantially complete at the time they were taken.
21. An aerial Google Earth image that I am told dates from September 2018 shows the land. However, this appears to show that the area was covered in grass, rather than being hard surfaced as it is today. An architect's drawing entitled 'Valentine's Farm Landscape Plan- existing' and dated 27 April 2018 shows the ramp in-situ; it is shown in a brown stipple that is different from the green of the area it leads to. The same green is used on land to the southwest of the raised area and would seem to indicate that both were grassed or vegetated, but not surfaced in the same manner as the ramp. This would accord with the Google Earth image. Google Earth images from 2020 and 2021 submitted by the Council show that the nature of the surface has changed markedly, as the hard surface is in place.
22. Case law has established that the question at what point operational development is substantially complete is a matter of fact and degree and is based on the individual circumstances of the case. In this, one has to look at the development holistically. The Appellant's position is that the first of the two operations he claims has occurred comprised the "changes to the levels of the ground, construction of a (retaining) wall and the laying out of materials to create a hard surfaced raised area were all completed over 4 years ago". To gain immunity, this would have had to have been by 22 August 2018 ('the relevant date'). However, I find that the evidence I refer to that has been put forward to support this contention does not do so. I agree that the hard surface is a part of the overall development, and this has not been shown to be in place on the relevant date.
23. Furthermore, as the Appellant concedes, without the wall and fence there would be a drop of over 2m to the concrete apron around the commercial

¹ Figures 2 and 3 – Appellant's Grounds of Appeal

² APP/Y3615/C/17/3176590

building. This is described as a safety hazard, where there is potential for people, goods and vehicles to fall off. As such, I find the wall and fence to be integral to a single operation. It is not claimed that the wall and fence are immune from enforcement action through the passage of 4 years. Taken holistically, I find that alleged unauthorised development (i) was not substantially complete on the relevant date.

24. That the Council enforced against the use of this part of the land in 2017 is not inconsistent with its position that the operational development was incomplete at that time. The land did not have to be hard surfaced for the parking/storage use to occur, and the Appellant acknowledges that the hard surfacing was part and parcel of the operational development.
25. The Appellant has not demonstrated on the balance of probability that the development in alleged breach of planning control (ii) was substantially complete by the relevant date. For the above reasons, I find that the Ground (d) case fails.

Ground (a)

26. An appeal under ground (a) is that planning permission ought to be granted in respect of the breach of planning control alleged in the Notice. The appeal is made in respect of two of the alleged breaches, numbers (ii) and (iv).
27. In respect of breach (ii), the case has been made in respect of the fence and wall that have been erected on top of the wall retaining the raised land. The basis for this case is the assumption that the Ground (d) case for the raised land and retaining wall would succeed. In the light of my decision on that matter, it would be nonsensical to restrict my assessment here to what would be an unsupported wall and fence. Therefore, I am assessing the Ground (a) against the whole of the development in breach (ii).
28. The main issues for alleged breaches (ii) and (iv) are:
- i) Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - ii) The effect of the proposal on the openness of the Green Belt;
 - iii) The effect of the proposal on the character and appearance of the area; and
 - iv) 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'.

Alleged Breach (ii) - Raised Area etc

Whether inappropriate development

29. Chapter 13 of the Government's National Planning Policy Framework 2021 (the 'Framework') sets out the Government's policy aims for GB land. It attaches great importance to it and its fundamental aim is to prevent urban sprawl by keeping land permanently open.

30. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the GB and should not be approved except in very special circumstances. Paragraph 148 states that when considering any planning application, decision-makers should ensure that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
31. Paragraphs 149 and 150 set out forms of development that can be considered as not inappropriate in the GB. Amongst these are various building operations, as well as engineering operations; the latter so long as they preserve openness and do not conflict with the purpose for including land in the GB.
32. The retaining wall, creation of the raised, hard-surfaced area of land behind it and the wall and fence are a single engineering operation. The caveat to engineering operations being not inappropriate development is that they preserve openness of the GB and do not conflict with the purposes of including land within it.
33. The development has had a fundamental effect on the GB, significantly reducing its openness both spatially and visually. It conflicts with the purposes of including land within it. It is inappropriate development, and this carries substantial weight in my assessment.

Character and Appearance

34. The A3 abuts the land and has a significant effect on its character and appearance, as well as that of the wider area. The commercial building abuts the development to the northeast and, again, impacts on the rural character and appearance of the area.
35. I saw a large number of vehicles parked or stored at Valentines Farm and a variety of commercial uses being undertaken from the land and buildings there. I am aware that the Council is looking at the uses, but I am not aware of what has planning permission or is lawful, save for the commercial use of the large building.
36. Notwithstanding these and the other developments that I refer to earlier, the overall character and appearance of the area is that of largely undeveloped countryside. The raised land, retaining wall and wall and fence above, taken as a whole, have markedly changed the topography of the land at Valentines Farm. Although it forms an obtrusive feature in the local landscape, the harm to character and appearance is only moderate when the effects of the other developments in the area are taken into account.

Other considerations weighing in favour of the development

37. Given the Appellant's presumption that his Ground (d) case would prove successful, his reasoning here is limited to the erection of the wall and fence atop the retaining wall. These were included as a safety feature to stop people, vehicles and goods falling from the raised land to the hardstanding around the commercial building below.
38. Safety is an important issue but, given that I know very little of the lawful use of the land, I attach limited weight to this argument.

Do very special circumstances exist to clearly outweigh harm to the GB?

39. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion on Ground (a) - Alleged Breach (ii)

40. For the above reasons, the changes to the levels of the ground, construction of a wall and fence and the laying of materials to create a hard surfaced raised area is inappropriate development that causes harm to the GB, contrary to the terms of chapter 13 of the Framework and Policy P2 of the Guildford Borough Local Plan: Strategy and Sites 2015-2034, adopted 25 April 2019 ('GBLP') that reflect these. It is also harmful to the character and appearance of the rural area, contrary to Policy D1 of the GBLP that requires, amongst other things, developments to reflect an area's distinctive local character, 'saved' Policy G1(12) of the Guildford Borough Local Plan 2003 that requires the safeguarding of an area's characteristic landscape, and the terms of the 'Guildford Landscape Character Assessment & Guidance' supplementary planning document 2007 ('SPD').

Alleged Breach (iv) - Track

41. My comments, above, in respect of Chapter 13 and paragraphs 147-150 of the Framework, are relevant here but do not need to be repeated.

Whether inappropriate development

42. The track is formed from a cellular grid system that is laid into the ground, the 'cells' are filled with soil in which vegetation is allowed to grow. The Council estimates its length as 125m and its width as 5-6m. It describes this as an engineering operation, and I, too, find this to be the case.
43. This engineering operation does have an effect on openness. Notwithstanding this is minimal, the fundamental aim of GB policy is to keep land permanently open, and this has primacy in my assessment.
44. I find that the track is inappropriate development in the GB.

Other effects – character and appearance

45. The Council acknowledges that the track is not widely seen in the landscape, but also describes it as being "clearly seen". Despite its length and width, as it is set into the ground with no appreciable protrusion from it, it is only seen from very close-by. It has no adverse effect on the rural character and appearance of the area.
46. The Council refers to the use that it alleges it has been used for and the harm that arises from it, and the Appellant replies to this. However, as this is a Notice directed at operational development and the Council continues to investigate the use of the land, this is not a matter that I take further.

Do very special circumstances exist to clearly outweigh harm to the GB?

47. I have not been made aware of considerations that would clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion on Alleged Breach (iv)

48. The track is an engineering operation that affects the openness of the GB. It is inappropriate development. Therefore, it is at odds with the terms of the Framework and GBLP Policy P2. It does not cause harm to the character and appearance of the area and thus accords with the terms of GBLP Policy D1, saved Policy G1(12) of the LP and the SPD.

Ground (g)

49. An appeal made under Ground (g) is that the period given for compliance with the requirements of a Notice fall short of what should reasonably be allowed.
50. The Appellant's case, here, relates solely to the bund, which is a feature of considerable size. It is based on the harm that he says will arise from its removal in the manner required by the Council.
51. He says that the bund is unacceptable as a matter of principle, rather than through the limited harm it causes visually or spatially to the GB. He estimates that it would take in the order of 1200 lorries to remove the bund and that, over 6 months this would be 200 per month, or 10 per day; though less lorries could run in the winter when days are shorter. This would cause inconvenience and harm to the occupants of dwellings along the lorries' routes. Furthermore, it would cause safety and logistical problems. For these reasons, he states that the period should be extended to 30 months.
52. The Council finds this an excessive period. It does not agree with the Appellant's definition of the harm that the bund causes. It points to a lack of evidence to show that it the requirement to remove the bund could not be achieved in 6 months, and states that more than one lorry could be loaded at anytime and that a banksman could be employed as a safety measure. It says a traffic plan could be agreed to ensure that traffic either did not travel through the village or did not do so at busy times. It does not provide counter-evidence in respect of the number of lorry movements.
53. I give little weight to the Appellant's arguments in respect of the harm that arises from the bund. The reasons for issuing the Notice refer both to a spatial effect on the GB and harm to landscape character and appearance. In the absence of a Ground (a) appeal, those reasons are to be taken as read.
54. Section 171(b) sets out that a local planning authority may issue a Notice when it is expedient to do so, having regard to the provisions of the development plan and to any other material considerations. It is axiomatic that such a test would also apply to the form in which the Notice was issued. Acting in the public interest, the Council would have looked at the effects of the requirements on those living in the area. A further opportunity was afforded to it when looking at this ground of appeal. The Council provided a well-argued case and I did not find its arguments to belie a clouded judgement bent on winning the appeal at all costs. Those made in respect of multiple lorries, a banksman and the like point to a way to meet the requirements of the Notice within the 6-month deadline.
55. Although the Council did not find that the Notice required a traffic plan to protect residents' living conditions, their protection is clearly in the mind of the Appellant. He could ensure that traffic works to such a plan.

56. For the above reasons, I find that the period for compliance set out in the Notice is reasonable, and thus the Ground (g) fails. In reaching this point, I am mindful of the provisions of section 173A of the Act, which give a local planning authority the power to amend the requirements of a Notice.

Overall Conclusion

57. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

Inspector