



Appeal Decision

Site visit made on 8 November 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 08 December 2023

Appeal Ref: APP/T0355/C/22/3313415

**Land Associated with 7 Halfway Houses, Maidenhead Road, Maidenhead
SL6 6PP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Paul Summers against an enforcement notice issued by Royal Borough of Windsor and Maidenhead.
 - The notice was issued on 15 November 2022.
 - The breach of planning control as alleged in the notice is the carrying out of engineering operations including the formation of a means of access comprising the regrading of the bank, new hard surface area, associated retaining wall, steps and access, without planning permission.
 - The requirements of the notice are
 1. Remove the hardstanding and associated retaining wall, steps and access in its entirety.
 2. Following compliance with step 1, remove all associated materials from the land to an authorised place of disposal.
 3. Following compliance with steps 1 and 2 regrade the bank and reinstate the grass verge to its condition prior to the engineering operation.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act has lapsed
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Decision

1. It is directed that the enforcement notice is corrected and varied by
 - i) Deleting the words 'Breach of Condition Notice' and the substitution of the words 'Enforcement Notice' in the title page and heading of the notice.
 - ii) Deleting the words 'to an authorised place of disposal' from the second requirement of the notice.
 - iii) Deleting the words 'engineering operation' from the third requirement of the notice and replacing them with 'development taking place.'
2. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary and Background Matters

3. The Council refused to grant retrospective planning permission for the development on the 11 of January 2022 and the 5 August 2022¹. Although the

¹ 21/03184/FULL and 22/00855/FULL

appellant lodged an appeal against the second refusal that appeal was turned away as it was submitted outside the relevant time limits. In the absence of the payment of the required fee, the ground (a) for this appeal has lapsed.

4. As there is no ground (a) appeal which would have included an application for planning permission for the development, the planning merits of the development are not matters before me for consideration. There is no dispute that the appeal site is located in the Green Belt. However, in the absence of a ground (a) appeal, this is not a matter that I need to address further when the appeal is proceeding under the limited grounds of (c) and (f).

The Notice

5. The Inspector has a duty to put the notice in order. The Council has in error referred to a breach of condition notice rather than an enforcement notice in the title page and the headings of the notice. The appellant has nevertheless understood the notice and lodged grounds of appeal. I will correct the notice by deleting the wording 'breach of condition notice' and replacing it with 'enforcement notice.'
6. The requirements include removing materials to an unauthorised place of disposal which is unnecessary when removing materials from the land addresses the breach in the event of the notice being upheld. The third requirement refers to reinstating the land to its condition 'prior to the engineering operation.' Replacing those words with 'prior to the development taking place' provides more clarity. I will amend the notice accordingly.
7. Whilst no plan appears to have been served with the notice, there is no specific reference to a plan or 'the Land' in the allegation or the requirements and the appellant has understood the notice from the wording provided.

The appeal under ground (c)

8. This ground of appeal is that what is alleged does not amount to a breach of planning control. The burden of proof is on the appellant and the relevant test is the balance of probabilities. The allegation includes the formation of a means of access comprising the regrading of the bank, new hard surface area, associated retaining wall, steps and access, without planning permission.
9. The development provides vehicular access directly from the road to a hard surfaced parking area with a retaining wall with steps to the rear. The steps provide access to the parking area for the occupiers as the parking area is located on a higher level than the appeal property. All of the elements form a single structure and the appellant is not alleging that the development was not constructed as a single operation carried out contemporaneously
10. The appellant has questioned whether the retaining wall and steps can be described as an engineering operation and states that the construction of the wall did not require engineering services. Section 55 of the Act defines development as including the carrying out of building, engineering or other operations in, on over or under land. Section 336 of the Act sets out the definition of "engineering operations" as 'the formation or laying out of means of access to highways'.
11. The absence of the skills of an engineer to construct the retaining wall and steps does not mean that the development as a whole does not fall within

Section 55 of the Act. The case law² quoted by both parties considered whether the removal of top soil was an engineering operation and defined engineering operations as 'operations of the kind *usually* (my emphasis) undertaken by engineers.' Whilst the construction of the retaining wall did not require engineering services, the development consists of the regrading of a bank, the creation of a new access with hardstanding, a retaining wall and steps. The extent and nature of the works which includes the addition of physical permanent features clearly falls within the definition of development set out in Section 55 of the Act which includes both engineering and building operations.

12. The appellant has adopted the same approach in seeking to rely upon three different classes of the Town and Country Planning (General Permitted Development Order 2015 (the GPDO) for different parts but not all of the development. The appellant seeks to rely upon Class A for the retaining wall, Class B for the formation of an access and Class F for the hard surface. Limited information is provided to show how the different classes apply to the development. Class B relies upon Maidenhead Road not being a classified road when the Council states that it is. It also relies upon access being required in connection with development provided by any Class other than Class A. For Class F, the appellant has not provided any detailed information to show why the area where the development is located falls within the curtilage of the property.
13. Nevertheless, I have no evidence before me which indicates that it would be correct or justifiable to split the whole development and then consider each element in terms of the permitted development rights set out in the GPDO. Even if I was to adopt the appellant's approach, he is not seeking to rely upon permitted development rights for all of the development as the steps are excluded from the exercise. As one operation, falling within the meaning of development for Section 55 of the Act either the whole of the development benefits from planning permission or the whole has no planning permission³.
14. On the evidence before me, the appellant has not shown on the balance of probabilities that the development as a whole benefits from permitted development rights and there is no express planning permission in force. The breach of planning control has therefore occurred. The appeal under ground (c) therefore fails.

The appeal under ground (f)

15. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, 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
16. It is therefore necessary in a ground (f) appeal to establish whether the purpose of the notice is to remedy the breach or the injury to amenity. As the requirements of the notice include the removal of the development, the purpose of the notice is to remedy the breach. To succeed under this ground, the appellant would need to show that the requirements are excessive to remedy the breach.

² Fayrewood Fish Farms Ltd vs SOSE (1984)

³ Garland v City of Westminster (1968) 20 P & CR 93

17. Under this ground, the appellant is seeking to retain the wall and steps which he states are not harmful to highway safety which is the reason for issuing the notice. However, in the absence of a ground (a) appeal, it is not possible to seek to retain part of the development under ground (f) as it involves an assessment of whether or not planning permission should be granted having regard to the reasons for issue. Requiring the development to be removed is not excessive having regard to the purpose of the notice which is to remedy the breach. The appeal under ground (f) therefore fails.

Other matters

18. The appellant has referred to the Council having powers to address unauthorised access under the Highway Act. Whilst it is unlikely that those powers could have address the breach of planning control, it is for the Council to decide whether or not it is expedient to issue an enforcement notice.

Conclusion

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

E Griffin

INSPECTOR