



Appeal Decision

Site visit made on 14 August 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Appeal Ref: APP/K1128/C/24/3339217

Land at SX787405 Ford, adjacent to Peach Cottage, Ford, Kingsbridge, Devon TQ7 2LN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Darren Bowley against an enforcement notice issued by South Hams District Council.
 - The notice was issued on 22 January 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, operational development namely engineering operations to create a vehicular access and the construction of a hardstanding including the creation of timber retaining walls, shown in the approximate position hatched red on the attached plan.
 - The requirements of the notice are to:
 - (i) Dismantle permanently the retaining walls and remove all resultant materials from the Land; and
 - (ii) Remove permanently the hardstanding from the Land together with all resultant materials; and
 - (iii) Restore the Land to its former condition as an agricultural field; and
 - (iv) Stop up the vehicular access to the Land, and reinstate the pedestrian access to the land, with an entrance of no more than 1.2m wide; and
 - (v) Reinstate the section of Devon hedge that was removed to facilitate the formation of the vehicular access, by way of the planting of native species.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) of the Town and Country Planning Act 1990 (as amended).
-

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appeal is proceeding on the above grounds. The appellant requested an appeal on ground (a) after having completed the appeal form without that box ticked. Although a fee was eventually paid, it was not paid in time for that ground to be accepted however. I cannot therefore consider the planning merits of the alleged development.
3. The Council also submitted their appeal statement after the appropriate deadline and it was returned to them. I have not taken that into account.
4. Some of what the appellant has said in their submissions relates to procedural issues and also to the merits of the case which are not material to the grounds of appeal that I am considering. As such the suggested benefits of what has occurred are not relevant to take into account.

The Appeal on ground (c)

5. The appeal against the notice on ground (c) is that what is alleged does not constitute a breach of planning control. The onus is upon the appellant to prove their case on the balance of probabilities.
6. The Council's Officer report prepared prior to the notice being issued, included a photograph of the site viewed from the road taken from an on-line mapping system and is dated 2009. This shows a wooden picket style gate which appears to be wide enough for a pedestrian and not a vehicle to access the site. On both sides of that gate, the photograph shows a robust hedge which includes dense vegetation which continues along this narrow lane.
7. Another photograph provided in the Council's report is taken from a similar view-point after the alleged development had taken place. The new gate is a vehicular width metal gate with 2 sturdy timber posts on either side. The land slopes-up beneath the gate from where it joins the road, up into the site and this has grey stone-chippings on the surface. This photograph also reveals where the hedge has been cut back on the road-frontage, there is a substantial earth bank within which the vegetation in the hedge alongside the road is growing and which has been cut into to enable the widening of the entrance. Running perpendicularly back from the road, alongside the large gate-posts, there are substantial timbers which retain earth banks on either side of the entrance. The access is substantially wider than the previous pedestrian gate. This has required the grubbing out of a significant section of the hedge including the bank and then the installation of the gate-posts and the gate itself. These would have required a degree of pre-planning and effort with tools and were, as a matter of fact and degree, engineering operations. Therefore, these constitute development within the meaning of s55 of the Act.
8. What has happened within the site back from the highway edge is a little less clear because the photographic evidence has not included views within the site from before the works took place. However, the Council's officer report does provide a photograph showing the situation within the site once the works had been undertaken. I could also see through the widened entrance when I carried out my site visit. The large timbers that can be seen from the road extend back on either side and provide retaining structures holding back soil. The grey chippings have been used to cover a central section of the site which appears to have been graded up from the entrance to allow a convenient slope for the use of vehicles. The timbers are sturdy as they will need to be to retain the soil. There has been a lot of earth movements whether to take it off-site or to rearrange it behind the retaining timbers. Whether looked at alone or as part of one operation along with the changes to the entrance into the site, these works have also involved, as a matter of fact and degree, engineering operations.
9. The appellant considers that the land may be lawful to use residentially. The enforcement notice is targeting the operational development rather than any material change in use of the land. It is not within the scope of this appeal for me to have to make any ruling on what would be the lawful use of the site. The colours on the Land Registry plan are also no indication of the lawful use of the land. However, even if the land has some lawful domestic use, it does not form part of a curtilage of a dwellinghouse which would have some permitted development rights by reason of the Town and Country Planning (General

Permitted Development) (England) Order 2015 (as amended)(the GPDO). Furthermore, even if it were within the curtilage of a dwellinghouse, any engineering operations such as some of the work that has taken place, could not fall within any of the permitted development classes of Part 1 of schedule 2 of the GPDO. No other classes of permitted development have been brought to my attention that would authorise these operations.

10. Planning permission was required for the development as alleged. Without planning permission, the matters as alleged constitute a breach of planning control. As such, the appeal on ground (c) therefore fails.

The Appeal on ground (f)

11. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The purposes for enforcement notices are set out in s173(4)(a) and (b) of the Act. The notice seeks the undoing of the works that have been undertaken without planning permission. This therefore relates to s173(4)(a) to remedy the breach by restoring the land to its condition before the breach took place.
12. The suggestion by the appellant that the gravel surface can be re-seeded and climbing plants could be grown around the wooden sleepers, would not remedy the breach. I cannot consider the planning merits of those alternative steps. There are no lesser steps that have been identified that would achieve the purpose of the notice.
13. I am satisfied that the notice goes no further than it has to, to remedy the breach of planning control. The appeal on ground (f) therefore fails.

Conclusion

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

Andy Harwood

INSPECTOR