



Appeal Decision

Site visit made on 20 August 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2024

Appeal Ref: APP/H0928/C/23/3332570

Land at Bongate Hall West, Appleby CA16 6HW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mrs Maureen Kirwan against an enforcement notice issued by Eden District Council.
- The notice was issued on 13 October 2023.
- The breach of planning control as alleged in the notice is Without planning permission the construction and laying of a concrete pad and partial erection of a timber frame for a proposed outbuilding on/near the western boundary of the land (shown in photographs in Annex 3).
- The requirements of the notice are to:
 1. Dismantle and remove the concrete base and timber framework, avoiding any unnecessary harm to the lime trees and roots.
 2. Remove permanently from the site the resulting materials.
- The period for compliance with the requirement is:
 - 3 Calendar months.
- The appeal is proceeding on the grounds set out in sections 174(2)(f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Decision

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

Preliminary Matters

2. Planning permission¹ was sought retrospectively for the erection of an outbuilding at the appeal property in 2023. The application was refused and the subsequent appeal² was dismissed.
3. At the time of the site visit in connection with the previous appeal, the Inspector noted the presence of a timber frame that had been erected on a concrete base. A timber frame and concrete base were also present at the time of my visit to the site, as also reflected in the wording of the alleged breach set out within the notice.
4. There is no appeal under ground (a). Thus, the planning merits of the alternative courses of action as set out within the appellant's appeal

¹ LPA Ref No: 23/0070

² APP/K0940/D/23/3321818

submission – the retention of the concrete base as a patio or the regrading of the land – which would otherwise have been considered under ground (a), are not for consideration under the grounds of this appeal. Nor, whilst noted, are the conclusions of the appellant's '*Pre-development Arboricultural Report*'³ (Arb Report) of direct relevance to the appeal on grounds (f) and (g) for these same reasons.

5. Thus, whilst section 176(1)(b) of the Town and Country Planning Act 1990 (as amended) (the Act) allows for variation of the terms of a notice, the authority provided by *Wyatt*⁴ is that s176(1)(b) cannot be used to attack the substance of a notice. Thus, a notice requiring the land be returned to its condition prior to the breach cannot be turned into a notice requiring something less, for example the retention of the concrete base as a patio or retained but covered by soil, by reliance on this section through an appeal on ground (f). Rather, the correct approach would have been to also pursue an appeal under ground (a).

The appeal on ground (f)

6. An appeal under ground (f) is made on the basis 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.
7. In this instance, the notice requires the dismantling and removal of the timber framework and the concrete base, and the subsequent removal from site of the resulting materials. The notice also states that any unnecessary harm to the adjacent lime trees and their roots should be avoided. These measures are consistent with seeking to remedy the breach of planning control that the notice identifies, rather than remedying injury to amenity.
8. There is, as set out above, no ground (a) appeal. The alternative course of action set out by the appellant, the retention of the concrete base as a patio, would not remedy the breach of planning control. Nor would the re-grading of the land as this would not remove the concrete pad and instead merely re-grade the land above it through the importation of top-soil. Thus neither alternative would fully remedy the alleged breach of planning control.
9. The appellant's alternatives are therefore consistent with seeking to remedy injury to amenity, specifically visual amenity, rather than remedying the breach of planning control itself. As the purpose of the notice is to remedy the breach of planning control this could only be resolved by the steps specified in the notice. Thus, these alternatives would not achieve the purpose of the notice, whilst the planning merits set out by the appellant, including those within the Arb Report, are not matters to which I can attach weight in an appeal on ground (f).
10. The removal of the materials from the site, once dismantled or, in the case of the concrete base, broken up and removed, is not unreasonable in the context of remedying the breach of planning control and to ensure that traces of the

³ Treescapes Consultancy Ltd (Reference No: AH/AIA/070324 On: 11 March 2024)

⁴ Wyatt Bros (Oxford) Ltd v Secretary of State for the Environment, Transport and the Regions [2001] PLCR 161

breach of planning control are not evident. Whether, and to what extent, the appellant seeks to repurpose materials in the form of any further future proposals for an outbuilding or garden shed, for which I have no details before me, are matters for discussion with the Council. I am not persuaded therefore that the notice's requirements exceed what is necessary to remedy the breach of planning control set out, and I am satisfied that they are proportionate thereto.

11. The notice's requirement in the body of the text at section 5 requires the restoration of the land to its former state. It does not require the replication of the use to which it was previously put, which, in any event predates the Council's involvement with, and knowledge of, the land. It is accepted within enforcement proceedings that an appellant is best placed to understand any requirement that land is returned to its previous state. How the appellant chooses to use the land in question in this instance, once it has been restored to its previous state in the manner suggested by the Council, is a matter for the appellant. For these reasons, the appeal on ground (f) must therefore fail.

The appeal on ground (g)

12. The dismantling of the timber frame would not be a substantial task and I have no doubt that it could be carried out reasonably quickly. The breaking up of the concrete base, however, perhaps less so. Nevertheless, it is not a large area of concrete. Whilst I accept that the breaking up and removal of this area of concrete may require the use of tools that may not be amongst those most commonly found in a domestic garden setting, I am not persuaded that a longer period of up to 12 months as sought would be reasonable or proportionate to the notice's requirements.
13. Nor am I persuaded that the notice's compliance period should be extended as a counterbalance to the length of time the appellant states that the Council took to deal with the matter. The works required are not extensive and nor is the area to which they apply, and it has not been demonstrated that the notice's period of 3 months is insufficient to provide adequate time, opportunity and the sourcing of equipment and labour to undertake the required work. Although no doubt a source of frustration to the appellant, the period of time taken by the Council to progress matters does not persuade me as to agree to the 12-month period sought by the appellant. In the absence of an appeal on ground (a) it must be assumed that the harm identified in the notice remains. I am satisfied that the period specified in the notice is appropriate, reasonable and proportionate and that, for the reasons set out, the appeal on ground (g) therefore fails.

Conclusion

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

G Robbie

INSPECTOR