



Appeal Decision

Site visit made on 8 October 2024

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2024

Appeal Ref: APP/P2114/C/23/3324862

8 Newport Road, Ventnor, Isle of Wight PO38 1AE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Ricky Goode against an enforcement notice (the notice) issued by Isle of Wight Council.
 - The notice was issued on 18 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission and within the last 4 years the carrying out of an engineering operation by the importation of aggregate/gravel and the levelling and raising of land levels.
 - The requirements of the notice are to remove all imported aggregate/gravel from the approximate location highlighted green on the attached Plan B and to restore the Land to its condition prior to the breach.
 - The period for compliance with the requirement is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), & (f) of the Town and Country Planning Act 1990 (the Act, as amended).
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Decision

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

Reasons

Ground (b)

2. Ground (b) is that the matters alleged have not occurred – as a matter of fact. The appellant argues that a small quantity of material was moved about the site with only a minimal quantity imported onto it.
3. It is clear from the Council's photographic evidence (in Appendices F and E/J of its appeal Statement of Case) that a considerable amount of aggregate and gravel (and probably builder's rubble) has been moved onto the land owned by the appellant and attacked by the notice and onto the abutting land to the west, which I understand he rents directly from the Council itself.
4. This is clearly demonstrated from the comparison in Appendix F between photographs of the land in 2019 and in 2021. It appears from those 2021 photos, and from the photos taken on 17 August 2020 – shortly after the enforcement complaint – that the area infilled with rubble, aggregate and gravel is the land to the west of the access in the front part of the site adjacent to the footway, running as far west as the rear boundary of 54 Ocean View Road's back garden. This definitely includes the northwest part of No 8's plot, the appellant's land, as well as encompassing the adjacent land rented from the Council. It may include other parts of No 8 as well.
5. Whether or not the pile of rubble on what was the slope of this lower area shown in the 2019 photo was originally situated on the site, I have no doubt

that the hardcore and gravel shown on the August 2020 photos was imported onto the land. Given the depth of the lower area below the carriageway of the road shown on the 2019 photo, it would appear that a substantial quantity of such material must have been imported. Consequently, the matters alleged in the notice have occurred as a matter of fact and the appeal on ground (b) must fail.

Ground (c)

6. Ground (c) is that those matters do not constitute a breach of planning control. The appellant argues that a small quantity of material was moved about the site with only a minimal quantity imported onto it, and that this is consistent with typical landscaping activity, which does not require planning permission.
7. As set out above, a large quantity of material has been moved onto the site. This amounts to an engineering operation, for which planning permission is required. No such permission has been granted. Permission P/00622/17 was granted on 1 December 2017 for the retention and continued use of the appellant's mobile home on the site. Condition 4 of that permission required the submission of a landscaping scheme within 3 months. Although a scheme was submitted (as shown on drawing 560 01 Revision C), this scheme shows no alteration in site levels and was confined to No 8. In any case, the Council has no record that this plan was agreed and Condition 4 discharged.
8. A subsequent application (20/0134/HOU) was submitted for the retention of engineering/landscaping works on 21 August 2020, with a block plan indicating the inclusion of the Council land to the west together with a 1:50 cross-section indicating the raising of the land here by between 300-900mm to a level equal to that of the concrete pavement/footway adjacent to it. However, this application was never validated because of the appellant's failure to provide a ground stability report in compliance with policy requirements, which consequently led to its effective withdrawal on 5 February 2021.
9. It is clear, nonetheless, that the engineering operation as set out above was actually completed on both the No 8 plot and on the adjoining Council land. By the appellant's own admission in submitting the application, this is development requiring planning permission. For these reasons the appeal on ground (c) must fail.

Ground (d)

10. Ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters; in this case because the appellant argued that the material imported onto the land occurred more than 4 years before the notice was served.
11. The material would therefore have had to be deposited on the land prior to 18 May 2019. However, the appellant does not say exactly when it was deposited and has produced no documentary or photographic evidence showing this. The onus is on him to do so. Furthermore, the Council's evidence above confirms that the engineering operation took place after June 2019. The

notice was served in May 2023, less than 4 years later. Consequently, the appeal on ground (d) must be dismissed.

Ground (e)

12. Ground (e) is that copies of the notice were not served as required by s172 of the Act. In particular, the appellant argues that the Council itself owns some of the land where the material has been deposited.
13. The notice was correctly served on the appellant, the owner of the land at No 8. The fact that he also deposited material on the adjacent land he rents from the Council does not invalidate the service of the notice on him, because material has also been deposited on his land, which the notice attacks. Anyway, the Council could hardly have been expected to have served a notice on itself as landowner of the adjoining land.
14. The appeal on ground (e) therefore fails.

Ground (f)

15. Ground (f) is 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.
16. The requirement is simply to remove the aggregate/gravel deposited on the land. As such it is necessary to remedy the breach of planning control. No doubt the Council will pursue the appellant to also remove the material from its land, which he is renting, if it considers that to be necessary. The appeal on ground (f) therefore fails.

Other Matters

17. Mr Goode has not appealed on ground (a) – that planning permission ought to be granted – and so matters of planning policy in the Island Plan are not strictly relevant. But it is clear from what he has said on the appeal form that he does not understand the Council’s concerns about his deposition of the aggregate/gravel on No 8 and the adjoining land, and indeed (in his Final Comments) considers that the deposition of the material provides physical support for the adjacent footpath and carriageway of the road. I will therefore briefly explain.
18. The reason the Council did not validate the 2020 application for the retention of the engineering works was because Mr Goode failed to include a ground stability report with the documentation. The reason that is required is because Ventnor and the Undercliff are located in Policy Development Zone (PDC) 4¹. This document explains the long-term issues of land stability/slippage in this area and the need to manage the existing coastal defences (seawalls and revetments etc) and to avoid new development in areas of known ground movement or geomorphological vulnerability.
19. That is especially so in this location. The appeal site and the Council land rented by Mr Goode adjacent to it is located in one of the most vulnerable areas for potential future landslips: the Red Zone on Planning Guidance Sheet 1. These maps were commissioned by the Council in the early 1990s to help

¹ As described in Isle of Wight Shoreline Management Plan 2: Main Report – Chapter 4 (Appendix H to Council’s appeal Statement)

address the threat to the town from the well documented land stability problems in this area. The Red Zone, which comprises a relatively small part of Ventnor and the Undercliff, comprises '*Areas most unsuitable for built development. Local Plan development proposals subject to major constraints. It is likely that many planning applications in these areas may have to be refused on the basis of ground instability. Should development be considered it will need to be preceded by a detailed ground investigation, geotechnical appraisal and/or monitoring prior to any planning applications.*' Although the deposition of the material is not built development as such, it does place additional loading onto land within the Red Zone, which could well be problematic. Without a ground stability report from a suitably qualified professional there is no way of knowing whether or not it will add to ground instability in this area.

20. Various policies in the Island Plan deal with this issue. Policy SP5 states that development proposals will be expected to take account of an area's environmental capacity, which includes land stability issues. Policy DM2 requires such proposals to provide a safe environment. Policy DM15 sets out the Council's approach to managing development in areas affected by coastal change, including approaches for built-up areas like Ventnor. Paragraph 7.257 of the Plan makes clear that coastal change includes coastal landslip.
21. Additionally, paragraph 180 e) of the National Planning Policy Framework is relevant here as national policy. It states that planning decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability (my underlining of the relevant parts).
22. I hope the above explains to the appellant why, and despite his failure to appeal the notice on ground (a), the Council could not validly register his 2020 planning application and why it has served the notice. It may be that a ground stability report is able to assure the Council that the deposition of the above material does not contribute to the local area's land instability. But without such a report from a qualified professional it is impossible to say that is the case. Indeed, it could be that such a report would merely confirm that such deposition increases the likelihood of local land slippage.

Conclusion

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

Nick Fagan

INSPECTOR