



Appeal Decision

No site visit made

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2025

Appeal Ref: APP/C3810/C/24/3348230

Land adjoining Sunnyside (now Pine Close), Westergate Street, Westergate PO20 3QR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
 - The appeal is made by Mr Adrian Dunn of Hampshire Developments Limited against an enforcement notice ("EN") issued by Arun District Council.
 - The EN was issued on 18 June 2024.
 - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref AL/114/12 granted on 11 April 2013.
 - The development to which the permission relates is: Erection of 4 No four bedroom detached dwellings with associated car ports and extension of existing access road to serve site.
 - The condition in question is no 16 which states that: No development shall commence until details of the design of the proposed access road, to incorporate a geo-cellular confinement system, have been submitted to and approved in writing by the Local Planning Authority. The access road shall be constructed in accordance with the agreed details and retained as such thereafter.
 - The notice alleges that the condition has not been complied with in that: Failure to comply with Condition 16 of planning permission AL/114/12 of 11 April 2013 and AL/46/15/DOC of 15 July 2015 insofar that the access road has not been constructed and retained in accordance with the agreed details of those permissions due to incorrect kerb and / or road surface levels compared to those shown on the approved details:
 - A) Opus Drawing no FA E-F1631.00/300 (attached).
 - B) West Sussex County Council S278/38/02A, 11A, 18A, and 21A (attached).
 - The requirements of the notice are to: Construct and retain the access road in accordance with the details approved by the Council reference AL/46/15/DOC of 15 July 2015 including:
 - A) Opus Drawing no. FA E-F1631.00/300.
 - B) West Sussex County Council S278/38/02A, 11A, 18A, and 21A.
 - The period for compliance with the requirement is: Six (6) months from the date on which this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(e) and (g) of the 1990 Act.
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Decision

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

Preliminary Matters

2. The appeal is made under grounds (e) and (g) and therefore, the planning merits of the development are not relevant to this appeal. My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. As such, a site visit was not necessary as it would not help me reach a decision. I advised the main parties of my intention to determine the appeal without a site visit, and I have not received any comments disagreeing with this approach.
3. I acknowledge the comments of third parties and have taken them into consideration only insofar as the chronology of events surrounding the breach. The

appellant has not appealed the EN under ground (a) and therefore, I cannot consider the planning merits of the development.

Background

4. Planning permission was granted for the construction of 4 dwellings under planning permission AL/114/12 subject to conditions. Condition 16 required the design of the access road to be submitted to and approved by the Council. A discharge of condition application¹ ("DOC") was subsequently submitted that included various drawings to discharge Condition 16, which were approved by the Council. The information before me suggests that work was undertaken to surface the access road, but the works did not comply with the approved details.

Matters Concerning the Notice

5. Regulation 4(b) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 states that an EN shall specify all policies and proposals in the development plan which are relevant to the decision to issue an EN. The EN does not include any development plan policies. However, I am satisfied that the appellant could fully understand the reason for the EN and had sufficient information to be able to appeal it. Therefore, no injustice has been caused from an absence of development plan policies.
6. The matters that constitute the breach of planning control within the EN are inconsistent with the development expressed within the reason for issuing the decision. However, the inconsistency is not so severe as to make the EN defective on its face or to invalidate it.
7. The EN references several attached drawings in the breach of planning control. The EN submitted with the appeal did not include these enclosures. The Council confirmed the drawings were attached to the EN when it was served and directed me to a covering letter. However, the covering letter states that only two of the five drawings were attached to the EN.
8. Notwithstanding this, the two drawings that were attached to the EN were the most relevant to the breach (i.e. the kerb and surfacing levels), and the EN clearly identifies the planning application reference number and the drawing numbers. Therefore, sufficient information was provided to understand the reason for the EN, and no injustice has been caused.

Appeal on Ground (e)

9. An appeal under ground (e) is made on the basis that copies of the EN were not served as required. S172(2) of the 1990 Act requires a copy of an EN to be served (a) on the owner and occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
10. The appellant asserts that the Council failed to serve the EN on all the owners/occupiers of the land edged red on the plan attached to the EN. This is factually correct, as dwellings have subsequently been built on part of the land and sold to new owners. The Council has provided a revised plan with their statement that relates solely to the access road and has asked me to substitute it for the plan

¹ Planning Ref AL/46/15/DOC

attached to the EN. The appellant was contacted regarding the revised plan, who considered it constituted a further reason why the EN had not been served correctly under ground (e).

11. S176(5) of the 1990 Act provides that where a person required to be served with a copy of the notice was not served, I may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve them. The alleged breach relates only to the access road and not the wider site. Land Registry information has been provided by the Council to confirm the appellant is the owner of the access. The EN was served on the owner of the land to which the breach relates. Consequently, I am satisfied that those owner occupiers not served have not been substantially prejudiced by the failure to serve. For this reason, there is no need for the plan attached to the notice to be substituted.
12. As such, it follows that the appeal on ground (e) should fail.

Appeal on Ground (g)

13. An appeal under ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed.
14. A hybrid planning application² for a housing development on land adjacent to the appeal site has been submitted for consideration that includes full planning permission for the reconstruction and resurfacing of Pine Close (the access the subject of the EN). The appellant considers the EN's compliance period should be 12 months as this would allow time for the hybrid planning application to be determined and the road to be constructed as part of that application.
15. The Council consider the compliance period of 6 months to be a substantial amount of time for arrangements to be made to complete works to a road that is under 400 square metres in area.
16. The time for compliance refers to the time required to undertake the works needed to remedy the breach. I have no substantive evidence before me to suggest that the works involve any complex building operations, nor would it involve a large area. I acknowledge the planning application for the adjacent land. However, this does not persuade me that the time given to comply with the requirements of the EN are too short. Furthermore, there is no guarantee that planning permission will be approved and/or the access works completed within 12 months.
17. Should planning permission be granted for the adjacent residential development within the 6-month compliance period, the Council is able under s173A(1) and (2) to withdraw an EN issued by them or extend any compliance period specified, even if the EN has taken effect. Therefore, the period of compliance could be extended if the Council considered it appropriate to do so.
18. Given the uncertainty of if or when planning permission may be granted for the adjacent residential development, I find that the six-month compliance period afforded by the EN does not fall short of what is reasonable. Therefore, the appeal on ground (g) should fail.

² Planning Ref AL/11/24/OUT

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN.

A Berry

INSPECTOR