



Appeal Decisions

Site visit made on 24 March 2026

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2026

Appeal A Ref: APP/C1435/C/23/3327860

Appeal B Ref: APP/C1435/C/23/3327861

The Dinglewood, Brittenden Lane, Waldron, Heathfield TN21 0RN

- The appeal are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- Appeal A is made by Mr Junior Sobowale and Appeal B is made by Mrs Irene Sobowale both against an enforcement notice issued by Wealden District Council.
- The notice was issued on 14 July 2023.
- The breach of planning control as alleged in the notice is *without planning permission, the carrying out of works for the formation of a tennis court and the excavation of a swimming pool ("the works") in the approximate positions shown on the attached plan ("the land")*.
- The requirements of the notice are:
 - (i) *Break up and remove all hard standing, subbase, foundations, any drainage systems and all kerbing comprising the tennis court development.*
 - (ii) *Backfill the area where the swimming pool has been excavated with suitable inert materials and topsoil, using materials removed during the original excavation works or suitable alternatives.*
 - (iii) *Grade the areas from where the swimming pool has been refilled and the tennis court has been removed, to marry in with the contours of the adjacent undisturbed ground.*
 - (iv) *Cover the areas from where the swimming pool and tennis court have been removed with topsoil, and plant a mixture of Oak, Hornbeam, Birch, Willow, Wild Service, Holly and Hazel at a density of 1100 stems per hectare, which equates to roughly 3 x 3m spacing. Maintain stocking density by way of adequate protection from browsing animals and replacement of failed trees for a period of 5 yrs.*
 - (v) *Remove all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements.*
- The period for compliance with the requirements is: *12 months after this notice takes effect.*
- The appeals are proceeding on the grounds set out in section 174(2)(b) and (d) of the 1990 Act (as amended).

Formal Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by:
 - The addition of the word "*new*" in the allegation at Section 3 of the notice, so that it reads:

"without planning permission, the carrying out of works for the formation of a tennis court and the excavation of a new swimming pool ("the works") in the approximate positions shown on the attached plan ("the land")."
2. Subject to the correction, the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appellants have indicated that they do not contest the enforcement notice insofar as it relates to the formation of the tennis court. Therefore, I will limit my considerations of these appeals to the formation of a new swimming pool only.
4. The appellants exercised their right of appeal under ground (d). However, from the appellants' representations they highlight that a swimming pool has been in situ for some time and therefore what is alleged in the notice (in regard to the swimming pool only) has not occurred as a matter of fact. This issue should be addressed under a ground (b) appeal, and I have referred to both parties of my intention to consider these appeals under this ground as well as ground (d). Consequently, neither party has been prejudiced by this approach.

Appeal A and B under ground (b)

5. An appeal on this ground is that the matters alleged in the enforcement notice, have not occurred. In order to succeed on this ground, the appellants must demonstrate that, on the balance of probability¹, the matters stated in the notice have not occurred as a matter of fact.
6. Both parties acknowledge that a swimming pool has been located in the approximate position shown on the plan attached to the enforcement notice for some time. The Council state that a swimming pool and pool house existed in 1999, albeit without the benefit of any express planning permission or Lawful Development Certificate (LDC). The Council have also supplied dated aerial photographs taken from Wealden District Council photographic files and Google Earth Pro that confirms the presence of a swimming pool in this location.
7. The appellants have submitted a Statutory Declaration in which they confirm that a swimming pool has been present at the site since they acquired the property in October 2005. They have also supplied letters from neighbours (John Ditchbum) and a project manager (Yemi Sabowale), albeit these letters have not been made under the provisions of the Statutory Declarations Act 1835, nor witnessed by or signed in the presence of a solicitor, commissioner for oaths or notary public. Nevertheless, these letters allege the existence of a swimming pool in the approximate position in 1998 and 2007 respectively.
8. From the details before me, originally the pool consisted of a narrow brick built channel with concrete paving slabs around the outside for ingress and egress from the pool. There also appeared to be a small brick built pool house and bricked bench seat located close by. The appellants have stated² that the pool liner was unfit for purpose and was removed from the site, with the intention to replace it with a pool the same size and depth of the original pool.
9. I have not been supplied with a schedule of works undertaken at the site, however from the information before me and as observed during my site visit, significant works have been undertaken at the site resulting in the complete removal of the pool and pool liner. The excavation of the pool has created a larger void in the ground to what previously existed at the appeal site. The concrete paving slabs around the outside of the pool have also been removed, although the brick pool house and bench remain in situ. There were also works involving regrading the

¹ *Thrasyvoulou v SSE & Hackney LBC (No 1)* [1984] JPL 732

² Statutory Declaration of Mr Junior Sobowale dated 14 November 2023

land around the site of the pool and associated works for the formation of a tennis court. These works would be considered development under the definition of development at section 55 of the 1990 Act (as amended), given the engineering works to demolish and remove the original pool and associated landscaping and the re-profiling of the land.

10. Subsection (1a) of section 55 provides a non-exhaustive list of what 'building operations' include. These are: (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder. In this context, section 336 of the Act explains that 'building' includes any structure or erection and any part of a building. The pool would be considered a building under the meaning of the 1990 Act (as amended), thus as its demolition/removal and rebuilding would be undertaken by a builder it is a building operation for which planning permission is required.
11. Furthermore, section 55(2) further provides that the following operations or uses of land shall not be taken for the purposes of the Act to involve development of the land; (a) the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building. Given the complete removal of the swimming pool, it is unlikely that a reasonable onlooker would consider these works of maintenance. Even if, I was to consider these works of repair, the area of the pool is significantly larger than the previous one and as such the external appearance has been compromised.
12. I would acknowledge from the photographic evidence submitted, that a swimming pool was in situ at the appeal site since at least 1999. Be that as it may, I have not been presented with an LDC or similar that clarifies its lawful position. Even if I was to accept the previous pool was lawful, neither party disputes that the pool liner has now been removed. Given its removal it can no longer function as a swimming pool and would have to be replaced by new development.
13. The only lawful position for a pool to be constructed, would be in accordance with an extant permission or if it was deemed 'permitted development' under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). I have been presented with no planning permission for a swimming pool, and from the details before me the current property is subject to a restrictive condition that has removed Schedule 2, Part 1, Class E of the GPDO as part of a previous approval³.
14. Therefore, as a matter of fact the pool and pool liner have been excavated and removed from the site, representing development for which planning permission is required. The original swimming pool has therefore been removed and whilst the appellants intention was to replace the development like for like, the current development is materially different, thus represents a new planning chapter at the appeal site.
15. Consequently, the appeals under ground (b) fail.

³ Wealden District Council Ref: WD/2019/0226/FR

Appeal A and B under ground (d)

16. An appeal on ground (d) is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. As with ground (b) above, the test of the evidence is the balance of probability, and the onus of proof is on the appellants. If the Council has no evidence to contradict or otherwise make the appellant's version of events less than probable, an appeal on ground (d) can succeed, provided that the appellant's evidence alone is sufficiently precise and unambiguous.
17. The enforcement notice was issued on 14 July 2023 and related to the excavation of a new swimming pool. As established above, the excavation of a new swimming pool are operational works for which planning permission is required. Subsequently it is for the appellant to show on the balance of probabilities that the new swimming pool was 'substantially complete' four years before the enforcement notice was issued, therefore the relevant date is 14 July 2019.
18. Whether operational development is substantially complete and how that is to be assessed was considered by the *Sage*⁴ judgement. In *Sage*, the House of Lords held when an application is made for planning permission for a single operation, it was made in respect of the whole of the operation. If a building operation is not carried out, both internally and externally, fully in accordance with the planning permission, the whole operation is unlawful. Whilst planning permission has not been granted here, the principle of a single operation of development remains key.
19. The appeal site draws parallels with the *Sage* judgement, in that permission has not been obtained. The House of Lords indicated that *"...regard should be had to the totality of the operations which the person originally contemplated and intended to carry out. That will be an easy task if the developer has applied for and obtained planning permission. It will be less easy where, as here, planning permission was not applied for at all. In such a case evidence as to what was intended may have to be gathered from various sources, having regard especially to the building's physical features and its design."*
20. Based on the evidence before me, and following my site investigation, the physical features and design at the appeal site no longer resembles, nor functions as a swimming pool, moreover it could best be described as a pool under construction. Consequently, it has not been demonstrated with sufficient precision and unambiguity that the swimming pool was substantially complete prior to 14 July 2019. This approach is consistent with the *Sage* judgement on this matter.
21. Enforcement action could therefore be taken against the matters constituted by the breach of planning control, and the appeals on ground (d) therefore fail.

The Enforcement Notice

22. The enforcement notice alleges the breach of planning control relates to the excavation of a swimming pool. I have found that a swimming pool had previously existed at the site. The removal of this pool and pool liner involved significant works, which would have included excavation works as a requirement to create a

⁴ *Sage v SSETR & Maidstone BC* [2003] UKHL 22

new swimming pool or indeed repair the existing swimming pool as claimed by the appellants.

23. In the interests of clarity and to avoid any misinterpretation I have corrected the notice as stated above. No injustice would arise to the Local Planning Authority, since their evidence is clear that the works to form a swimming pool have occurred without planning permission. Likewise, no injustice would arise to the appellants, as their case has been made on the basis the notice is targeted at the operational development involving the swimming pool only, which they allege is immune from enforcement action.

Overall Conclusion

24. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with the correction.

Robert Naylor

INSPECTOR