



Appeal Decisions

Site visit made on 9 December 2025

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th May 2026

Appeal A Ref: APP/Y9507/D/24/3355303

Land at Mulberry Cottage, 3 Combe Hill Close, Rogate, West Sussex, GU31 5DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Tony Scopes-Upton against the decision of South Downs National Park Authority.
 - The application Ref is SDNP/22/00008/HOUS.
 - The development proposed is: Part retrospective permission for retention and alterations to structural retaining wall and pool house.
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Appeal B Ref: APP/Y9507/C/24/3357044

Appeal C Ref: APP/Y9507/C/24/3357045

3 Combe Hill Close, Rogate, GU31 5DS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal B is made by Mr Tony Scopes-Upton and Appeal C by Mrs Kerry Scopes-Upton against an enforcement notice issued by South Downs National Park Authority.
 - The notice was issued on 15 November 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of an outbuilding and retaining wall.
 - The requirements of the notice are to: (i) Demolish the said outbuilding and retaining wall and remove the resultant debris from the Land. (ii) Following compliance with step (i) above, re-seed the land with grass.
 - The period for compliance with the requirements is: 3 months from the date the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(c), (d) & (f) of the Town and Country Planning Act 1990 (as amended).
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Decision in Respect of Appeal A

1. The appeal is allowed and planning permission is granted for the construction of a detached outbuilding to provide a gym, changing facilities, plant room and pool room, formation of a swimming pool/ decking and replacement retaining wall at 3 Combe Hill Close, Rogate, GU31 5DS in accordance with the terms of the application, Ref SDNP/22/00008/HOUS, and the plans submitted with it, subject to the conditions in the attached schedule.

Decisions in Respect of Appeals B & C

2. The appeals are dismissed and the enforcement notice is upheld.

Applications for costs

3. An application for an award of costs in respect of Appeal A has been made by Mr Tony Scopes-Upton against the South Downs National Park Authority. That application is the subject of a separate decision.

Preliminary Matters

4. Three appeals are before me, as described in the banner heading above. Appeal A is made against the Council's decision to refuse to grant permission for a development described on the application form as: "Part retrospective permission for retention and alterations to structural retaining wall and pool house".
5. The Council subsequently altered that description within its decision notice to: "Part retrospective permission for the construction of a detached outbuilding to provide a gym, changing facilities, plant room and pool room, formation of a swimming pool/ decking and replacement retaining wall".
6. I can find no record on the appeal file that the appellant agreed to that amended description which included the formation of the swimming pool and associated decking, in addition to the retaining structure and outbuilding/ "pool room". However, within his initial statement of appeal, the appellant sets out a timeline of events which indicates that permission was sought for the swimming pool, on the advice of Council officers. The Planning Statement also refers to the pool and it is reasonable to assume that it formed part of the application, as submitted and considered by the Council. Consequently, I shall deal with the appeal on the basis of the amended description used in the decision notice, as opposed to the description given on the application form.
7. Whilst that may have been the basis upon which the application was considered at the time, the Council has subsequently formed a view that the swimming pool and decking amounts to permitted development¹. On that basis, the enforcement notice served in respect of Appeals B & C does not seek its removal. I have no reason to take a different view on that agreed position.
8. That will clearly have a bearing on consideration of Appeal A, particularly in respect of water neutrality, because the pool would remain in situ regardless of the enforcement action taken in respect of Appeals B & C. Nonetheless, the acknowledgement by the Council that it amounts to permitted development does not alter the fact that the swimming pool formed part of the planning application and I shall consider the appeal on the basis that permission is being sought for that element.
9. In respect of the enforcement notice, two appellants were named on the appeal form. In such circumstances, two appeals are technically made and a reference number is given to each. However, the grounds of appeal are identical and I shall address both appeals together within my decision.

APPEAL A:

Main Issues

10. The main issues in respect of the appeal are:

¹ Having regard to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

- i) The effect of the development on the character and appearance of the area which sits within the South Downs National Park; and
- ii) The effect of the development on groundwater extraction and water neutrality and any subsequent effect upon the Arun Valley SSSI, SAC, SPA and Ramsar sites.

Character and Appearance of the Area

- 11. The appeal site relates to a detached dwelling, set in a substantial garden on the southern fringes of Hill Brow, a predominantly linear settlement comprising dwellings running along London Road, with roads branching off including Rogate Road, from which the property is accessed. Shortly to the north of the site access Harting Combe Road, referred to as “Rake Hill” by the appellant, falls sharply downhill as it passes the land associated with the appeal property.
- 12. The result is a significant fall in level between the development in question and the highway below. The contours of the land and mature woodland lining the slopes provide an enclosed feel as one passes up and down Rake Hill, even in winter at the time of my visit when trees were not in leaf. Hill Brow is not a designated settlement in planning terms but the prevailing character of the immediate surroundings is of residential properties on the fringe of the cluster of housing, set within a wooded and significantly undulating landscape.
- 13. The site is within landscape character area 'O1: Blackdown to Petworth Greensand Hills' as defined in the South Downs National Park Landscape Character Assessment. The topography, extent of woodland cover and the adjacent sunken lane are typical features of that area which is typified by a sense of enclosure and remoteness provided by the high proportion of tree cover.
- 14. The Council and an interested party have referred to the historical removal of trees from within the garden, dating back to 2007 in the Council's case. However, there is no suggestion that any of those trees were protected or that the work was unauthorised in any way. It is quite common for people to manage planting within their own domestic setting. Consequently, it is not clear why the Council seeks to use historical data in that way as a benchmark for the assessment.
- 15. Similarly, the delegated officer report refers to cladding materials on the dwelling itself and a roadside fence which has historically been erected. Neither form part of the enforcement notice and the fence in particular would appear to have been in situ for a good number of years. There is no suggestion that any enforcement action is being considered against any of the matters referred to.
- 16. Consequently, whilst the Council may not find previous works at the property to its taste, the starting point when assessing the visual impact of the proposal was the property as it stood before the development took place. That was a residential property with a substantial garden which is largely concealed from view at the rear. Moreover, historical removal of trees from within the garden has had little impact upon external views. The slopes to the rear and side of the garden remain heavily wooded, in line with the prevailing character of the surrounding area.
- 17. Neither the outbuilding nor the retaining wall are particularly prominent when viewed from outside the confines of the site. Work has presently stopped on site pending the outcome of the appeal such that the outer face is currently breeze

block. Clearly, that presents an engineered and unsympathetic edge which contrasts sharply with the verdant setting of adjacent woodland. However, even in mid-winter and in its present state the development could not be said to be prominent or unduly noticeable.

18. Primary views come from Rake Hill. I walked and drove along the route at the time of my visit. There is no segregated pavement and care is needed in respect of oncoming traffic, accounting for speed and relatively poor forward visibility. The same would be said for anyone cycling or horse riding. It is not a location where one feels safe to stand and take in the view for any length of time. When driving, one passes the site quickly and the main impression is of the heavily wooded banks between the carriageway and the appeal site.
19. Whilst the retaining wall and outbuilding were visible, I was deliberately making the effort to stop and look for the development. For most people moving along the carriageway views would be fleeting at best, particularly when trees and undergrowth are in full leaf. Nonetheless, where those views are gained, the impression is harmful to the prevailing character on account of the unsympathetic materials.
20. The proposal before me is to clad the outbuilding and then create a “living wall” over it and the retaining structure. The combination of suitable timber and the greenery of the screen planting would soften the structure and allow it to assimilate into its surroundings, in combination with additional proposed planting in the woodland area adjacent. As shown on the submitted plans, the air conditioning units would be moved from the rear to the side where they would not be visible from the road below. That would remove a modern incursion and enable the green wall to cover the entirety of the structure.
21. Subject to those measures, which could be secured by condition, the development would largely blend into the wooded landscape to a point where it would have almost no discernible visual impact in my view. Given the topography and nature of the road at Rake Hill most people would pass by without noticing the structure.
22. Even if they did notice the outline at the top of the bank it would be set against the backdrop of the dwelling at the appeal site and other properties at Brow Hill. It is not unusual or incongruous in that context. Nor is it disproportionately large given the scale of the dwelling and size of the plot, containing a modest gym, poolside room, changing facilities and plant room. The Council’s assertion that the development has led to a “sprawling built mass” to the site is, frankly, over-egged.
23. Given that the site is already within a semi-built up area and that the building is set back some distance from the road the development will not have any adverse impact upon the tranquillity of the National Park, taking note of the assessment of noise arising from plant associated with the plant and equipment. Beyond that, the use would remain as a domestic garden so there is no reason to suppose noise levels would increase over and above the current situation.
24. There would be no roof lights in the building and the windows would be internal facing, generally set under the extended canopy of the structure. Consequently, I am satisfied that the building would not have an adverse impact upon dark skies, in the context of its setting on the edge of a cluster of residential properties. Any external lighting scheme could be conditioned to be approved by the Council to avoid undue impacts on dark skies.

25. For those reasons I am satisfied that the development will conserve the landscape and natural beauty of the National Park, in accordance with the aims of Policy SD1 of the South Downs Local Plan (2019) (the Local Plan). It will also safeguard the landscape character of the area, in line with the aims of Policy SD4; preserve tranquillity in accordance with Policy SD7; conserve dark skies in accordance with Policy SD8; and maintain and enhance the adjacent woodland, in line with Policy SD11 of the Local Plan.
26. The building represents high quality contemporary design which takes account of its setting, in accordance with the aims of Policy BE1 of the Rogate & Rake Neighbourhood Development Plan (2021) (the RRNDP). It would have no adverse impact upon the environment, landscape setting or key views identified in Policy NE1 of the RRNDP.
27. With regard to Policy SD31 of the Local Plan, there is no question that the outbuilding is required for a purpose incidental to the enjoyment of the dwelling, in compliance with paragraph 3 of that policy. The parties dispute the extent to which the proposal would increase the floorspace of the existing dwelling, in respect of paragraph 1. However, whatever the precise calculation, the over-riding purpose of that policy is to avoid the over-extension of dwellings and the adverse effect that has on the character and appearance of the area.
28. Given that I have found no harm to the character and appearance of the area and am satisfied that the proposal is not disproportionate to the dwelling or its plot there is no over-riding conflict with the aims of that policy, even if the extent of floorspace is above 30%. As with all policies some degree of interpretation is necessary and context is important. An increase in floorspace of 25% may cause harm in a tight urban context but a larger outbuilding in a more spacious setting may cause no harm at all. For the same reason, the building is appropriate to the size of the plot such that it accords with the aims of Policy H4 of the the RRNDP.
29. Overall, I am satisfied that the design has been carefully thought through in order to respect the character and appearance of the surroundings, including the South Downs National Park. The prevailing character of wooded slopes and the enclosed nature of Rake Hill would be maintained, subject to necessary conditions.

Water Neutrality

30. The potential effect of water extraction on protected natural assets formed the second reason for refusal. The appellant disputes the Council's position on the basis of the Water Neutrality Statement he had commissioned. However, the Council is now satisfied that the pool amounted to 'permitted development' and it does not form part of the development against which an enforcement notice has been served and is the subject of appeals B & C.
31. Therefore, the pool and decking already benefits from planning permission granted through Article 3(1) of the GPDO. In that respect, I am faced with the unusual position of being asked to grant planning permission for development that already has the benefit of such permission. Consequently, it seems to me that the baseline position at the time of my decision is that a pool has been constructed and filled with water and that the pool would remain and would no doubt continue to be used, regardless of my decision in respect of Appeal A.

32. The question of whether the water extraction relating to the pool would have an adverse effect on the integrity of the internationally designated Arun Valley nature conservation sites is somewhat academic because the same level of water extraction is likely to be required whether or not I was to grant planning permission for the development. Consequently, it seems to me that if I were to grant planning permission for the development before me, it would not be likely to lead to an adverse impact over and above the existing situation, in terms of water extraction, either alone or in combination with other planned development.
33. Accordingly, it is not necessary for me to carry out an appropriate assessment, in accordance with the Conservation of Habitats and Species Regulations 2017 prior to granting permission for the development before me. Even if I were wrong in that regard, the fall-back position of a pool of exactly the same dimensions, requiring exactly the same water supply would be a strong material consideration in favour of granting planning permission.
34. Put simply, either way, my decision will have no impact upon the protected sites referred to by the Council. It is not a matter raised by the Council in the associated enforcement notice in respect of Appeals B & C. Therefore, a decision to grant planning permission would have no adverse effect on matters of nature conservation over and above the already permitted development and would thereby accord with policies SD1, SD9 & SD17 of the Local Plan.

Conditions

35. The Council did not put forward any conditions other than standard conditions relating to the need to ensure that the development is carried out in accordance with the submitted plans in the interests of clarity and the character and appearance of the area.
36. However, as set out, also in the interests of the character and appearance of the area, conditions are necessary to ensure a landscaping scheme is completed, including additional planting and the creation of a living wall to the rear of the structure, together with the cladding of the building. For the same reason, a condition to ensure the air conditioning units are moved to the side of the building is needed, as is a condition to ensure that no external lighting is installed other than in accordance with details that shall first have been submitted to and agreed with the Council.
37. Given that the development is partly retrospective, with the retaining wall and outer shell of the building largely complete, the remedial works and planting scheme are required to make the development acceptable in planning terms. Accordingly, the respective condition needs to be worded to ensure that the works are carried out in a specified timescale, along with a clear sanction for non-compliance which is that the planning permission will fall away if the work is not carried out in accordance with the details and timetable required.

Conclusion on Appeal A

38. For the reasons given I am satisfied that the development will not have an adverse effect on the character and appearance of the area, including the National Park, subject to the imposition of necessary conditions. Nor would it lead to any adverse impacts in terms of water extraction, over and above the already permitted

development. The development accords with the relevant policies of the Development Plan, taken as a whole.

39. No material considerations have been presented to indicate a decision should be taken other than in accordance with the Development Plan and it follows that I shall allow the appeal and grant planning permission, subject to the conditions described above.

APPEALS B & C

The Appeals on Ground (c)

40. An appeal on ground (c) is made on the basis that the matters alleged in the enforcement notice do not constitute a breach of planning control. The onus rests with an appellant to make their case on this ground, on the balance of probability.
41. The appeals on this ground relate only to the retaining wall which the appellants believe amounted to 'permitted development' having regard to Class A, Part 2 of Schedule 2 of the GPDO. More specifically, in respect of paragraph A.1(c) of that Class it is argued that the retaining wall amounted to the maintenance of a previously existing retaining structure which did not exceed the former height.
42. A substantial amount of information and correspondence has been submitted in relation to the appeal. Based upon that and judging from what I could see on my site visit it is clear that a retaining structure of some form existed prior to the rebuilding which followed structural failure. One can clearly see sections of remaining wall that are older than the newer sections, particularly in the north-eastern corner. Overhead photographs, dating from 2017, when the appellants purchased the property clearly show a retaining structure in situ.
43. However, it is not possible to discern the precise height of the structure from those photographs. A letter from the appellants' structural engineer who inspected the failing wall in 2020 refers to it as being "approximately" 3m high but it is not clear from that letter what the height was across the full length of the structure. Similarly, whilst the photograph provided showing the re-built wall, as of 07 November 2020, clearly shows a new section joining onto an older section, it does not demonstrate the full extent or height of the previously existing structure.
44. Moreover, that photograph only shows a small section of the newly built wall. Photographs taken by Council officers in March 2022, and those subsequently submitted by the appellants dating from 2021, show the wall progressively stepping up in level to reach the higher ground adjacent to the newly constructed outbuilding. None of those photographs clearly show that the previous wall matched that profile or height across its length. The only section where a clear 'join' is shown is in the bottom corner.
45. Consequently, whilst it is clear that a retaining wall was previously in existence, as far back as 2017, I am not satisfied that the current wall amounted purely to the maintenance, improvement or alteration of the previous wall to a height no greater than that previous structure. As such, on the balance of probability, I cannot conclude that the current structure benefitted from permitted development rights when it was constructed.
46. For that reason, I am not satisfied that the wall benefits from planning permission granted through the GPDO and the appeals on ground (c) must fail.

The Appeals on Ground (d)

47. As with the appeals on ground (c), the appeals on ground (d) relate to the retaining structure only. In order to succeed on this ground it must be demonstrated, on the balance of probability, that the retaining structure was substantially complete more than four years prior to the service of the enforcement notice on 15th November 2024.
48. The appellant relies partly on photographs, taken on 07 November 2020. However, whilst much of the wall is visible on those images its full extent is not shown, making it difficult to reach a conclusion that it was substantially complete as of that date. In particular, the outbuilding was not in situ as of that date. One can depict a double skin of exposed concrete blockwork in the upper section of the wall with land backfilled behind it. Work is clearly continuing on site given the materials and equipment on display.
49. Similarly, photographs provided by the appellants at the final comments stage show the raft foundation for the outbuilding being set out, presumably in . The upper section of the retaining wall remains as exposed blockwork at that stage.
50. If one fasts forward to the site visit photographs taken by Council officers in March 2022 it is clear that further works had been undertaken to the upper section of the retaining wall directly to the rear of the outbuilding, the outer shell of which had been constructed at that point. Instead of the untreated and exposed concrete block, the top section of the wall has been altered. The cavities in the blockwork have been filled in with some kind of cement mix and the top section and inner facing section of the wall have been lined, again with some cement based finish. The outer face of the wall was not lined and nor were other sections away from the outbuilding. That gives the impression that the work to the inner and upper section of the wall was necessitated on account of the construction of the outbuilding.
51. I note the arguments presented as to whether the retaining wall and outbuilding should be considered as a single building operation. It does seem as though a small gap is maintained between the raft foundation and the wall. Nonetheless, it is clear that further work has been carried out to the upper section of the wall, linked to the construction of the building. Regardless as to whether the foundation of the building is taken off the wall it seems to me that work was continuing on both elements together. The facing and filling in of the cavities clearly have some function linked to the building and I am not satisfied that the wall was substantially complete prior to those works being carried out.
52. There was clearly a correlation between the design of the outbuilding and that of the wall and its foundations. I find the Council has reasonably looked at the two elements together. The raft foundation appears to have been constructed in December 2020 according to the building control record, less than four years prior to the service of the enforcement notice and works were continuing at that time and into 2021. Accordingly, on the balance of probability, the wall was not substantially complete prior to 15th November 2020 and the appeals on ground (d) must fail.

The Appeals on Grounds (f)

53. An appeal on ground (f) is made on the basis that lesser steps than those required by the notice would remedy the breach of planning control or any injury to amenity,

as the case may be. In this case, the Council is seeking to remedy the breach of planning control in its entirety.

54. However, in effect, the appeals on ground (f) are largely redundant because of my decision to grant planning permission in respect of Appeal A. That does not mean that the enforcement notice falls away but it does mean that it ceases to have effect insofar as it is inconsistent with the planning permission granted, on account of the terms of s180(1) of the Town and Country Planning Act 1990.
55. In other words, the requirement to demolish the retaining wall and outbuilding, at section 5(i) of the Notice will not apply to any element of the development for which planning permission has been granted. Consequently, there is little point in assessing arguments as to whether lesser steps would remedy the breach of control in relation to required demolition which will not, in any event, have to be undertaken.
56. In this case there appear to be no major discrepancies between the elements of the buildings that have been constructed to date and the plans submitted in respect of Appeal A. I have attached conditions to that permission requiring certain works to be carried out in a set timescale. It would be a matter for the Council to enforce those conditions.
57. Accordingly, I shall take no further action in respect of ground (f).

Conclusion in Respect of Appeals B & C

58. For the reasons given above, I conclude that the appeals should not succeed and I shall uphold the enforcement notice.

Chris Preston

INSPECTOR

SCHEDULE OF CONDITIONS IN RESPECT OF APPEAL A:

- 1) The development hereby permitted shall be carried out in accordance with drawing numbers: 10-01 B (Site Plan General Arrangement, dated August 2021); P10-04 (Site Plan – Areas @ 2021, dated August 2021); P12-02 B (Site Cross Section, dated November 2020); P12-03 (Site Cross Section, Pool House/ Gym, Long Section up Rake Road, dated November 2020); P12-04 (Cross Section Showing Green Wall, dated November 2021; P14-01 (Floor Plan and Elevations, dated November 2021); P10-01 (Location and Block Plan, dated January 2022); P12-05 (Cross Section Showing Pool, dated January 2022); and P12-06 (Long Section Up Rake Road, Trees Removed, dated February 2022).
- 2) There shall be no external lighting installed in connection with the development hereby approved unless details of the lighting have first been submitted to and agreed in writing by the Local Planning Authority.
- 3) The outbuilding and retaining wall hereby permitted shall be demolished to ground level and all equipment and materials resulting from the demolition shall be removed within three months of the date of failure to meet any one of the requirements set out in i) to vi) below:
 - i) Within 3 months of the date of this decision a landscaping scheme, including a living wall to screen the retaining wall and outbuilding and additional woodland screen planting, based on the principles set out in the Deacon Design vision document submitted with the application, shall have been submitted for the written approval of the local planning authority. The scheme shall include details of planting schedules, the design of the living wall, a timetable for its implementation and details of a maintenance schedule which shall provide for the replacement of any plants that die or become seriously diseased within a period of five years of the scheme being implemented.
 - ii) Also within 3 months of the date of this decision details of the external cladding to be attached to the outbuilding shall be submitted for the written approval of the local planning authority along with a timetable for implementation.
 - iii) Within 12 months of the date of this decision, the air conditioning units shall be relocated away from the rear elevation of the structure to the side elevation, as shown on the approved elevations (Drawing No. P14-01).
 - iv) If within 11 months of the date of this decision the local planning authority refuse to approve the landscaping scheme and/or details of cladding required by subsections (i) and (ii) or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - v) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - vi) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.