Planning Inspectorate

Appeal Decision

Site visit made on 6 October 2026

by T C King BA(Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 November 2026

Appeal Ref: APP/A2280/C/24/3352630
9 Rushdean Road, Rochester, Kent ME2 2PA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr C Agar against an enforcement notice issued by Medway Council.
- The notice was issued on 23 August 2024.
- The breach of planning control as alleged in the notice is described as *' Without the benefit of planning permission, the carrying out of unauthorised operations to facilitate land level alterations on the land to the rear of the dwellinghouse.'*
- The requirements of the notice are to:
  1) Remove all retaining sleepers and associated steps (front) that facilitate the unauthorised development in their entirety from the Land;
  2) Reprofile the Land to the previous land levels;
  3) Remove all resultant debris and associated materials & soil/waste arising from compliance with the above requirements from the Land.
- The period for compliance with the requirements is within two calendar months from the date when the notice takes effect.
- The appeal is proceeding on the ground[s] set out in section 174(2)(a), (b) and (e) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Preliminary Matter

1. I have particular concerns about the enforcement notice, both in terms of its scope and also its main requirement. I discuss these matters later in this decision letter. The notice is not a nullity, though, as it satisfies the provisions of s173 of the 1990 Act, as amended. Accordingly, I shall firstly consider the legal grounds of appeal lodged.

The appeal on ground (e)

2. S172(2) of the 1990 Act requires copies of an enforcement notice to be served (a) on the owner and on the 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.

3. In this particular instance the Council has confirmed that the enforcement notice was served on five separate parties; these being the owner/occupier of no 9 Rushdean Road, Charles Agar (the appellant), Santander UK, Terance Butler Holdings Ltd, DGB Sols for Terance Butler Holdings Ltd.

4. Notwithstanding the above the appellant considers that the enforcement notice was incorrectly served, yet he has not explained precisely why he believes this to be the case. Indeed, Charles Agar personally lodged the appeal.

5. In the circumstances I consider that the enforcement notice was properly served as legally required, and I am satisfied that neither he, nor any of the other parties with an interest in the land, have been prejudiced by the enforcement notice and its requirements.

6. Accordingly, the appeal under this ground fails.

The appeal on ground (b)

7. An appeal made under ground (b) is where the appellant considers - and can demonstrate - that the alleged breach has not occurred as a matter of fact. The Town and Country Planning (General Permitted Development) Order (England) 2015, as amended (the GPDO) gives no express permitted development rights to carry out engineering operations which would involve significantly raising or lowering garden ground levels.

8. Apart from a discretionary 'rule of thumb', referred to by the Council, which informally allows for works where the change in levels does not exceed 30cm – and for which it is still open for Councils to consider whether it is expedient to enforce – the Council may lawfully take remedial action to remedy any harm caused from an identified breach.

9. In this particular instance the enforcement notice's stated allegation refers to *'unauthorised engineering operations to facilitate land level alterations on land to the rear of the dwellinghouse.'* Indeed, the appellant accepts that he carried out works to change the rear garden's land levels. Accordingly, this matter is not actually in dispute, and the benefit of planning permission was required for the works undertaken.

10. In the circumstances, the appeal on ground (b) does not succeed.

The planning position and the enforcement notice, the subject of this appeal

11. From my site visit's observations it is clear that no 9's rear garden's land level, following the works undertaken, roughly aligns with that of the neighbouring properties running westwards ie nos 11 and 13 onwards. However, the rear garden level at no 7 sits below that of no 9.

12. Despite the above, in its appeal statement, the Council says that the altered land levels has resulted in the overlooking and loss of privacy to neighbouring properties; in particular, no 11. Given the said levels I do not consider that no 11 has been affected by the works. Instead, the relationship with no 7, is the one pertinent to this appeal. Accordingly, I will take this as a typographical error.

13. The appellant says that when he and his family moved to no 9, in 2022, it was badly overgrown. He indicates that he removed in excess of 40 tons of earth, and then levelled the land to its current state. From my observations and the various representations made I would agree that the land levels have been lowered towards the rear of the garden, but the levelling works have seemingly involved heightening the land towards its boundary with no 7. That said, I consider that the existing fencing running the boundary between nos 7 and 9's rear gardens reasonably serves its purpose as far as the respective ground levels are concerned.

14. I did, though, observe a plethora of children's play equipment within no 9's rear garden, some moveable, but some apparently fixed in position One such feature is a timber structure which an interested party has seemingly referred to as a climbing frame, and a bridge platform close to the boundary with no 7. This accesses a children's downward slide. From the representations made in support of the enforcement action, due to considered overlooking and loss of privacy, it would seem to me that potential for such might arise from children climbing the apparatus.

15. With the above in mind, it is Important to note that the enforcement notice specifically relates only to *engineering operations to facilitate land level alterations*, and this clearly does not cover any play equipment affixed to the ground that may not satisfy the provisions of the GPDO due to specified height restrictions etc. That, though, is a separate matter and it is not for me to consider amending the enforcement notice should it have significant limitations.

16. An obvious concern is its second requirement ie *'Reprofile the land to the previous land levels'.* The Council has provided no detailed information or measurements in this regard and, as such, this requirement is clearly open to wide interpretation. The reference in requirement 1 to *'associated steps (front)'* is also vaguely worded.

17. For obvious reasons it is necessary that a notice's stated requirements have a significant degree of precision, and the enforcement notice does not satisfy this test.

18. Under the provisions of section 176(1) of the 1990 Act, as amended it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation will not cause any injustice. The Courts interpret the power to correct a notice so as to put it on a proper footing. However, this power cannot be used if the amendments are too extensive or would cause injustice to the appellant. I consider this to be a case in point, and I find that the enforcement notice as it stands is not reasonably capable of correction.

19. For the reasons given above I must, therefore, conclude that the enforcement notice is invalid and I hereby direct that it be quashed.

T C King

INSPECTOR