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## Appeal Decisions

Site visit made on 10 November 2015

**by Martin Joyce DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 08 December 2015**

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**Appeal Refs: APP/H0738/C/15/3002588 & 3002589**

**Land at 12 Teesbank Avenue, Eaglescliffe, Stockton-on-Tees TS16 9AY**

- The appeals are made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Gary and Mrs Angela Munro against an enforcement notice issued by the Stockton-on-Tees Borough Council.
- The Council's reference is 13/0395/EWKS.
- The notice was issued on 10 December 2014.
- The breach of planning control as alleged in the notice is the earthworks (engineering operation) conducted (*sic*) to create a large level area of ground, the installation of metal uprights on the levelled ground and the erection of a northern boundary fence of over 2 metres high, at the rear of the land (adjacent to the River Tees) without planning permission.
- The requirements of the notice are to:
  - (i) Remove from the land all the metal uprights that have been installed on the levelled ground;
  - (ii) Undertake earthworks to restore the land back to the condition and gradient that existed prior to the breach of planning control took place;
  - (iii) Reduce the northern boundary fence to 2 metres in height for a distance of 30 metres, from its starting position at the edge of the River Tees in a westerly direction (towards the dwelling house); and,
  - (iv) Remove from the land all the resultant debris/materials associated with complying with points 5 (i) and 5 (iii) above.
- The period for compliance with the requirements is four months.
- The appeals are proceeding on the grounds set out in Section 174(2)(a), (d) and (f) of the Town and Country Planning Act 1990 as amended. The deemed planning applications also fall to be considered.

**Summary of Decision: The appeals are allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.**

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### Matters Concerned the Notice

1. The allegation contained in the notice is phrased rather awkwardly in respect of the first element of the alleged breach of planning control. This concerns the undertaking of engineering operations to create a large area of level ground. I consider that the notice, and the corresponding description of development in the deemed planning application under ground (a), would be better phrased as I have stated in the preceding sentence. I do not consider that such alteration to the wording of the notice would cause any prejudice or injustice, thus I shall use my powers of correction under Section 176(1) of the Town and Country Planning Act 1990 (The Act) accordingly.

## **Other Preliminary Matters**

2. The appellants contend that they have complied with the third requirement of the notice, as the fence along the northern boundary has been reduced in height to 2m, or less, for 30m as measured from the edge of the river in a westerly direction. I checked the height of the fence at my inspection and confirmed that it had been reduced to that required by the notice. In this respect, therefore, the notice has been complied with and no further consideration needs to be given to that element of the unauthorised development under the various grounds of appeal.

## **THE APPEALS ON GROUND (d)**

3. The appeal on this ground relates to the levelling of a large area of land, measured at my site inspection to be about 18m in length, across the plot in a north-south direction, and 10m in width. The Council do not dispute that this level area was created in 2010, as shown in contemporaneous photographs produced by the appellants, and as confirmed in a number of statutory declarations submitted on their behalf. However, they contend that the operational development at which the notice is aimed was not substantially completed and that the levelling was merely part of an overall scheme that had not been completed at the date of issue of the notice.
4. The notice concerns three elements of operational development – the creation of a level area, the installation of metal uprights and the erection of a fence along the northern boundary of the site. At my inspection I saw that there are two level areas; one adjacent to the river, and one about 1.5m higher, with the latter being that attacked by the notice<sup>1</sup>. Between the two is a retaining wall, comprising nine metal stanchions or uprights, with timber sleepers inserted between them to create a retaining wall in order to prevent land slippage.
5. I consider that the retaining wall is clearly an essential component of the land levelling exercise, as the large area created on a terrace above that adjacent to the river needs supporting. At the date of issue of the notice, the only part of that retaining wall in place was the metal uprights, hence the inclusion of these features in the allegation contained in the notice, rather than reference to a retaining wall. As other parts of the wall have been added since then it is clear that the overall development was incomplete. There can be no argument, therefore, that the scheme for the levelling of the land was substantially completed more than four years before the date of issue of the notice, as this essential element of the scheme was not finished at the date at which the notice was issued. It follows, therefore, that the appeals on ground (d) must fail.

## **THE APPEALS ON GROUND (a)**

### **Main Issue**

6. The main issue in these appeals is the effect of the development on the character and appearance of the surrounding area.

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<sup>1</sup> This point was confirmed as factually correct by the Council's representative at my site inspection.

## Reasoning

7. The character of the surrounding area is mixed, albeit semi-rural. The substantial gardens of large houses on the eastern side of Teesbank Avenue slope down to, and border, the River Tees. To the north are the grounds of Preston Hall, a public park with extensive wooded areas on its southern side, whilst east of the river is open agricultural land and, beyond, the large housing estates of Ingleby Barwick, albeit that the latter are some distance away. In terms of appearance, the area has particular scenic quality, as a consequence of the varied topography either side of the River Tees, which curves through this part of its valley, and the substantial mature vegetation, including that within the gardens of Teesbank Avenue.
8. The area around and including the appeal site is designated as a Special Landscape Area (SLA) in the Council's adopted Local Plan (LP)<sup>2</sup>, and Policy EN7 states that development which harms the landscape value of such areas will not be permitted. Policy CS3 of the more recent Core Strategy Development Plan Document (CS)<sup>3</sup>, concerning Sustainable Living and Climate Change, requires *inter alia* that, in designing new development, proposals will make a positive contribution to the local area, by protecting and enhancing important environmental assets, biodiversity and geodiversity, responding positively to existing features of natural, historic, archaeological or local character, including hedges and trees, and seek to safeguard the diverse cultural heritage of the Borough, including features, sites and areas of national importance and local significance. Although these Plans predate the publication of the National Planning Policy Framework (The Framework), I am satisfied that they meet the aims of relevant policies within that document, thus they carry significant weight in the context of these appeals.
9. I also understand that the Council have published a submission version of a potential new Local Plan<sup>4</sup> which proposes the designation of the Tees Heritage Park, within which the appeal site would be situated. However, this Plan is at an early stage in the adoption process and is not relied upon by the Council in their statement. Consequently it carries very little weight in my consideration of these appeals.
10. The Council contend that the engineering operations and other works that have taken place have resulted in a formalisation or urbanisation of the SLA which, at this point, is a semi-natural river bank. The regrading and levelling works across most of the plot's width have some dominance and have become a feature in its own right which, together with the retaining wall and the fencing, are contrary to the aims of Policy EN7 of the LP. In relation to Policy CS3(8) of the CS, the works fail to make a positive contribution to the area, as they neither protect nor enhance the semi-natural character of this area and have not taken account of the natural features of the site, which include its previous landform and the wider appearance of the river bank.
11. The appellants, however, argue that the works carried out are merely the stabilisation of an existing garden area to create level terracing, as has been carried out in other riverside properties in the vicinity. Moreover, the

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<sup>2</sup> Stockton-on-Tees Local Plan, adopted 23 June 1997.

<sup>3</sup> Stockton-on-Tees Borough Local Development Framework, Core Strategy Development Plan Document, adopted 24 March 2010.

<sup>4</sup> Stockton-on-Tees Regeneration Environment Local Plan (Publication Draft) 2015.

landscape quality of the area has not been materially harmed as the site is not readily visible in public views, except from the river itself, when the site is viewed in the context of other gardens. Additionally, the works are currently seen in a raw state, but increasing maturity of landscaping will soften their impact. The terms of the Council's policies are not, therefore, infringed.

12. In considering these matters, I start by observing that the works carried out have clearly involved more than the mere stabilisation of the existing garden area, as two level terraces have been created, albeit that it is only the higher one that is the subject of the notice. Significant earth-moving operations have been required, including the installation of a retaining wall to insure against land slippage. However, I accept that the works lie entirely within the existing garden area of the appellants' plot, and that they are aimed primarily at increased enjoyment of their land, including the creation of a level area next to a mooring for their boat.
13. I was able to see that other plots along this part of the river bank have been altered, to varying degrees, to similarly make fuller use of their waterside location, including that to the north (No 11). Others to the south have lawns, garden structures and ornate fencing, as well as timber retaining walls to enable boats to be moored. This is not, therefore, an unspoilt and natural river bank, rather it shows how domestic features have been integrated into the landscape over a period of time following the construction of the various houses in Teesbank Avenue. I see no reason why the same would not apply to the appeal site as planting matures, both that already undertaken and that which may take place in the future as suggested by the appellants.
14. I note also that the Council have not sought to enforce against the lower terrace, or an area of decking and a garden summerhouse-type structure adjacent to the higher terrace. Such features could also be considered to "urbanise" the area, albeit that I consider that any formalisation is slight, given the very limited views available of the site, and the likelihood that shrubbery and other planting will screen such features, at least partially, in the future.
15. My conclusion on this issue is that the development does not materially harm either the character or the appearance of the surrounding area, and does not conflict with relevant Council policies or The Framework. The appeals on ground (a) therefore succeed and planning permission will be granted. In such circumstances, the appeals on ground (f) do not need to be considered.

### **Conditions**

16. The Council has not suggested any conditions in the event of the appeals succeeding and planning permission being granted. I have considered whether a condition is required relating to the submission and implementation of a landscaping scheme but, in the absence of any request from the Council for such a condition, I have decided that it would be unfair to impose one. In any event, it is in the appellants' own interests to make their land look attractive, and they have already undertaken planting along the retaining wall. This will reduce the rawness of that aspect of the development as it matures.
17. One condition is, however, required. This concerns the fence along the northern boundary, as it is necessary to ensure that it is maintained at a height of 2m or lower for the 30m from the edge of the river, given that the deemed planning applications would include the words in the allegation of the notice of

the "erection of a northern boundary fence of over 2 metres high". Such a condition could not be prejudicial to the appellants, given the reduction in height already undertaken, but it ensures that the undisputed aims and requirements of the notice, in this respect, would apply to any future landowners.

### **Other Matters**

18. I have taken account of all other matters raised in the written representations, including those put forward by third parties. In this context, I visited the neighbouring plot to the north at my inspection and viewed the development from there. I have taken account of the concerns raised by the occupier of that land in my consideration of the appeals under ground (a), so far as they are relevant to my deliberations. These and the other matters raised do not, however, outweigh the conclusions I have reached in respect of the main issues and grounds of these appeals.

### **Conclusions**

19. I have concluded that the description of the development in the enforcement notice is awkwardly phrased and would benefit from correction. I am satisfied that no injustice will be caused by this and I will therefore correct the enforcement notice in that respect, in order to clarify the terms of the deemed applications under Section 177(5) of the 1990 Act as amended.
20. For the reasons given above, however, I conclude that the appeals should succeed on ground (a) and I will grant planning permission in accordance with the applications deemed to have been made under Section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation.

### **FORMAL DECISION**

21. The enforcement notice is corrected by the deletion of the words "The earthworks (engineering operation) conducted to create" in Section 3, and the substitution therefor of the words "The undertaking of engineering operations to create".
22. Subject to this correction the appeals are allowed and the enforcement notice is quashed. Planning permission is granted on the applications deemed to have been made under Section 177(5) of the 1990 Act as amended, for the development already carried out, namely the undertaking of engineering operations to create a large level area of ground, the installation of metal uprights on the levelled ground and the erection of a northern boundary fence of over 2 metres high on land at 12 Teesbank Avenue, Eaglescliffe, Stockton-on-Tees TS16 9AY, subject to the following condition:
- 1) The northern boundary fence hereby permitted shall be kept and maintained at a height of 2 metres or lower for a distance of 30 metres from the edge of the River Tees as measured in a westerly direction (towards the dwelling house).

*Martin Joyce*

INSPECTOR