



Appeal Decision

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 29/07/2024

Appeal reference: CAS-02963-Z2Q7S9

Site address: Land at Philadelphia Lane, Hafod, Swansea SA1 2ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Kenneth Foulston against an enforcement notice issued by the City and County of Swansea Council.
 - The enforcement notice, numbered, ENF2023/0104 was issued on 15 August 2023.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a building.
 - The requirements of the notice are to:
 1. Demolish the building marked A and shaded in green on the attached plan.
 2. Remove all the resultant materials from the site.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
 - No site visit was made.
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Decision

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

Procedural Matters

2. The appeal is proceeding by ground (f) only, and having regard to the submissions made, it was considered that a site visit was not needed in this instance. PEDW wrote to the parties indicating that no site visit was necessary.

The ground (f) appeal

3. The ground of appeal is that the steps required in the notice to be taken, exceed what is necessary to remedy any breach of planning control or, to remedy any injury to amenity which has been caused by any such breach.
4. The appellant asserts that planning permission for the retention of replacement commercial premises was refused on 27 March 2023. The reason for refusal was based on the failure to demonstrate a suitable sustainable drainage system (SuDS).

5. The appellant's representative had not submitted a SuDS application to the SuDS Approval Body. However, the appellant has instructed a different representative and a revised planning application with SuDS in mind would be submitted to the local planning authority for consideration. Further, a SuDS application would be submitted to the Approval Body (SAB). The appellant contends that a revised planning application dealing with the SuDS issue is a lesser step that would overcome the objection rather than having to demolish the building.
6. The local planning authority (LPA) has issued an enforcement notice (EN) and notes that no planning application has been received. The LPA considers that the appellant has failed to demonstrate appropriate drainage solutions, and this would not amount to a lesser step.
7. In later correspondence responding to the appellant's request to hold the EN appeal in abeyance the LPA clarifies that no new planning application has been submitted to date. The LPA are also not aware that the appellant has submitted a SAB application which is dealt with separately and under different legislation.
8. The LPA confirm that the development enforced against has taken place before the SAB legislation was introduced. Prior to serving the EN, the drainage implications of the development were considered under a planning application. The application was refused on drainage grounds which then instigated enforcement action. The result was the serving of the EN.
9. No ground (a) appeal and the deemed application is before me, and no case can be made relating to planning merits under a ground (f) appeal.
10. The EN requires the demolition of the building and the removal of all resultant materials from the site.
11. Having regard to the requirements of the notice it appears that the purpose of the notice is to remedy the breach of planning control within Section 173(4)(a) of the Act as amended. The local planning authority has confined itself to the purpose specified in Section 173(4)(a) and I am similarly bound by that purpose.
12. The lesser step which has been put forward by the appellant relates to an issue pertaining to the planning merits of the case. This is based on the prospect that planning permission would be submitted and then granted for the development with a separate application to the SAB Approval body. This is on the basis that these issues which are yet to be confirmed to be acceptable would overcome the planning objections in the EN.
13. Case law indicates that in the absence of a ground (a) appeal reliance on varying the EN under Section 176(1)(b) to some lesser step, cannot properly be used to challenge the substance of the EN where no ground (a) is pleaded. In this case there is no pleaded ground (a) appeal.
14. I cannot therefore deal with general planning considerations through ground (f) alone.
15. The appeal on ground (f) therefore fails and the enforcement notice is upheld.
16. Should a planning permission be submitted and approved by the LPA for this development then the EN would cease to have effect so far as being inconsistent with that permission under Section 180 of the Act as amended.

Iwan Lloyd

INSPECTOR