

Appeal Decision

Hearing held on 18 November 2016

Site visit made on the same day

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 16 January 2017

Appeal Ref: APP/Q3820/C/15/3141077

Land East of Crawley College, Three Bridges, Crawley, West Sussex

- 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 Ansar Khan against an enforcement notice issued by Crawley Borough Council.
- The enforcement notice was issued on 27 November 2015.
- The breach of planning control as alleged in the notice is 'Without planning permission the change of use of public amenity land to private garden detached from a dwelling.'
- The requirements of the notice are:
 - Restore the land to its former use as open amenity land; and
 - Remove from the land the fencing installed as part of the unauthorised change of use.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed following correction of the enforcement notice in the terms set out below in the Decision.

Preliminary matters

1. The letter to those with an interest in the land introducing the Notice sets out that the Notice allows a one month compliance period. The letter was served with the Notice plan and annex, and formed one document bundle. I am therefore satisfied that the document bundle contains a compliance period.
 2. The allegation refers to a 'change of use'. However, the act of development is a 'material change of use'. I will therefore correct the Notice to refer to a material change of use in both the allegation and the second requirement.
 3. The first requirement requires the land to be used as open amenity land which would be excessive, as it could ostensibly prohibit other lawful uses. As such, I will vary the requirement to simply state cease the use.
 4. A revised plan with the appeal site cross hatched and only relating to the land within the ownership of the appellant was agreed by both parties. I will substitute this new plan and vary paragraph 2 of the notice to refer to the land being identified by cross hatching on the plan.
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Appeal on ground (e)

5. The ground of appeal is that the enforcement notice was not correctly served as required by section 172 of the Act. The appellant states that the land identified on the plan attached to the Notice included land outside his ownership and that the Notice was not served on the owner of that additional land.
6. The Council confirmed that the Notice was intended to relate only to the land within the ownership of the appellant. A revised plan was submitted by the Council and agreed with the appellant relating to land only within his ownership. As such, I consider that the Notice in relation to the revised plan was correctly served.
7. .Thus the appeal made under ground (e) fails.

Appeal on ground (b)

8. An appeal on ground (b) is directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the '*balance of probabilities*'.
9. The appeal site is roughly triangular in shape and is bounded to the north by gardens associated with flats in Gales Drive (Nos 2, 4, 8 and 10). To the northwest is Northgate Avenue, a major arterial road leading to the centre of the town (the A2004) and to the west is a footpath running between Northgate Avenue and Three Bridges Road. To the east it is bounded by private gardens of houses located in Friars Rookery and Priors Walk.
10. The appeal site was owned by the New Towns Commission prior to being sold to the appellant in 1997. No history of any planning application before the appellant purchased the appeal site has been provided by either party.
11. The appeal land appears to have been land left over after the nearby houses were constructed as part of the new town development and has been left as open land or amenity land since then. A number of plans showing the appeal site identified in a particular way were provided by the Council. The first was the Crawley New Town Masterplan and it was shown as a green coloured area. The second was in a document entitled The Green Way 1996 -1999 which appears to have been a historic supplementary planning document but not part of the adopted development plan, which shows the site as green space. It is stated by the Council to be part of the Greenway intended to provide alternative routes for pedestrians around the Borough away from main roads. The third is within the Crawley 2030 Local Plan Map where the appeal site is shown to be Structural Landscaping. The Crawley Borough Local Plan 2015-2030 known as Crawly 2030 was adopted in December 2015.
12. I was advised that the grass used to be cut by the Council, probably as part of an agreement with the New Towns Commission. However, the appeal site was never transferred to the Council and it was sold by the New Towns Commission to the appellant in 1997.
13. The appellant has maintained the land with grass cutting every so often and removal of rubbish left on the site by others. However, it is not used for any particular purpose. There is no evidence of any active use of the land as a 'private garden' by the appellant or any other person. Although the appellant

has erected a fence, this of itself has not resulted in a material change of use of the land to a private garden, it has simply enclosed the land and the land otherwise remains open and is maintained through grass cutting by the appellant as before.

14. While I understand that the Council and local residents consider that the erection of the fence detracts from the openness of the area, this of itself does not demonstrate a material change of use. There is no substantiated evidence produced to demonstrate that the appellant's use of the land which amounts to its maintenance, is materially different from how the land has always been used. The erection of the fence does not alter how the land is used. Albeit it does alter the way the land is seen within its setting, this does not amount to a material change in use.
15. In my view, the appellant explained how the land was used and on the evidence available it was clear that this did not amount to use as a 'private garden detached from a dwelling'. As such, I find on the balance of probabilities that the appeal site is not used as a private garden detached from a dwelling and as such, as a matter of fact the matters alleged in the notice have not occurred. The appeal is allowed on ground (b).

Conclusion

16. In view of the success on legal grounds, the appeal under grounds (a), (c), (f) and (g) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Formal decision

17. It is directed that the enforcement notice is corrected:

- by the insertion of the word 'cross' between 'Sussex' and 'hatched' in paragraph 2;
- by the insertion of the word 'material' between 'the' and 'change' in paragraph 3 and between 'unauthorised' and 'change' in the second requirement in paragraph 5;
- by the deletion of the first requirement in paragraph 5 and its substitution with 'Cease the use';
- by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

Subject to these corrections the appeal is allowed and the enforcement notice is quashed.

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr B Woods BA MRTPI	Managing Director of WS Planning and Architecture, agent for the Appellant
Mr Khan HND	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Flooks LLB	Senior Planning Investigations Officer, Crawley Borough Council
Mr H Walke BA MCD MRTPI	Principal Planning Officer, Crawley Borough Council

INTERESTED PERSONS:

Mr J Cooban	Interested party
Cllr Burgess	Three Bridges Ward, Borough Councillor
Cllr Jaggard	Maidenbower Ward, Borough Councillor
Mr S Saville	Interested party

DOCUMENTS AND PLANS SUBMITTED AT THE HEARING

- 1 Site plan with area cross hatched submitted by the Council.
- 2 Two letters dated 29 July 2009 and an Order dated 2 September 2009 from the Tribunal Service – Adjudicator to HM Land Registry submitted by the Appellant
- 3 Plan of Green Space not part of the Development Plan submitted by the Council
- 4 Crawley New Town Masterplan pre 1960 submitted by the Council
- 5 Crawley 2030 Local Plan Map submitted by the Council
- 6 Cycle Crawley Map – cycling, pedestrian and public transport information October 2016 submitted by the Council
- 7 Three Bridges Landscape Heritage Trail 1842-2012 leaflet submitted by Mr Cooban



Plan

This is the plan referred to in my decision dated: 16 January 2017

by Mrs H M Higenbottam BA (Hons) MRTPI

Land at: Land East of Crawley College, Three Bridges, Crawley, West Sussex

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Scale: nts

