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## Appeal Decision

Site visit made on 4 September 2019

**by Stephen Brown MA(Cantab) DipArch RIBA**

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

**Decision date: 13 September 2019**

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**Appeal Ref: APP/K1935/C/18/3212141**

**4 Oakdell, Stevenage SG2 8BZ**

- 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 by Kenny Storton against an enforcement notice issued by Stevenage Borough Council.
- The enforcement notice, ref. 19/00461/ENF, was issued on 6 September 2018.
- The breach of planning control alleged in the notice is:

*The construction of a bridge structure over the brook to the rear of the residential curtilage of NO.4 Oakdell, using breeze blocks for support on the brook banks, and a timber frame with wood boards over, in the approximate position marked with a cross on the attached plan. The area constructed would measure approximately 14m in length and 4.6m in width with a total footprint of 64.4m square.*

- The requirements of the notice are to:

*Cease the construction of and remove the bridge structure, removing all materials associated with its construction from the land, and where necessary make good the land such that it maintains the appearance of a wildlife/green area. Erect fencing along the rear residential boundary as approved under planning permission reference '15/00720/RMM, or close boarded timber fencing up to 2m in height to match the side boundary treatments of the property.*

- The period for compliance with the requirements is 4 months.
  - The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. I direct that the enforcement notice be varied by:

OMISSION of the words '*Erect fencing along the rear residential boundary as approved under planning permission reference '15/00720/RMM, or close boarded timber fencing up to 2m in height to match the side boundary treatments of the property'*' from the requirement of the notice;

and corrected by:

OMISSION of the words '*a total footprint of 64.4m square.*' from the allegation; and,

SUBSTITUTION of the words '*a total footprint of 64.4 square metres.*'

Subject to that variation and correction the appeal is dismissed and the enforcement notice is upheld.

## **Background matters**

2. No. 4 Oakdell is a detached two-storey house, built relatively recently as part of a small development of four similar houses. They were built following grant of outline planning permission and approval of reserved matters in 2014 and 2015<sup>1</sup>, on land previously owned by the Council and used as a garage compound. The site is on a short cul-de-sac to the back of houses in Broad Oak Way to the east. The Fairlands Valley Stream runs across the rear of nos. 3 and 4 Oakdell, to the west of those two houses, and along the western side boundary of no. 1 Oakdell. Land to the west of the stream, up to the boundary with St Margaret Clitherow Roman Catholic Primary School is in the same ownership as the Oakdell house plots and was sold by the Council when the main site was sold.
3. The stream, which was relatively dry at the time of my visit, is within a wide and relatively deep channel. The bridge structure, which is more or less the full width of the plot, has been built across this channel.

## **The enforcement notice**

4. Although the reserved matters permission shows a chain-link fence along the top of the eastern bank of the stream, it has not been erected. However, the chain-link fence is a part of the planning permission. The Council have not put in the relevant decision notice, so I am not aware of any conditions that might have been imposed. However, if there is a condition requiring the fence to be erected, the Council have other means to ensure this happens. If there is no such condition, then it appears to me it is a choice to be made by the appellant as to whether or not he erects the fence, and if not, that it would not be in breach of planning control. It is therefore beyond the power of this enforcement notice to require those works to take place. I am going to vary the notice to omit the requirement to erect the chain-link or other fence.
5. I also notice that the allegation refers to '*a total footprint of 64.4m square*'. This should read '*a total footprint of 64.4 square metres*'. I shall correct the notice accordingly.

## **The appeal on ground (b)**

6. In an appeal on ground (b) – known as one of the 'legal grounds' – the burden of proof is on the appellant to show that on the balance of probabilities the matters stated in the notice as being in breach of planning control have not occurred as a matter of fact.
7. The appellant argues principally that the bridge structure is entirely on land that he owns, and that this is all within the residential curtilage of the appeal property. He needs the bridge to provide safe access across the brook for himself and his family. Furthermore, the structure should be regarded as permitted development.
8. I saw that the bridge structure very clearly exists, and it follows that on the balance of probabilities the alleged breach has occurred as a matter of fact. The Ground (b) appeal must therefore fail.

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<sup>1</sup> Decision notices 14/00581/REG3 & 15/00720/RM.

9. However, the appellant's arguments are not so much that the alleged unauthorised development has not occurred, but that the development is not in breach of planning control. This is a matter properly considered under ground (c) as set out in s.174(2)(b) of the Act, and that is the basis on which I have determined this case. I do not consider any party to be substantially prejudiced by this approach.

### **The 'hidden' ground (c) appeal**

10. As noted above this ground is that the development is not in breach of planning control. As for ground (b), this is a legal ground, and the burden of proof remains the same.
11. The outline planning permission for the development shows the application site outlined in red, and the land within the same ownership but outside the application site outlined in blue. The red and blue-lined areas are contiguous along the eastern side of the stream. The blue-lined land is within a wildlife area forming part of the Fairlands Valley Green Link, a feature designated in the Local Plan, and described as an essential part of the urban structure of the town. The amended site plan approved at reserved matters stage shows there is to be a chain-link fence along this eastern edge of the bank. Furthermore, a note on that drawing specifies that the green link area is to be managed as a wildlife area.
12. It is readily apparent from the Land Registry entry for no. 4 Oakdell that the appellant owns the land on which the house and garage are built together with the land up to the footway to the front, and up to the boundary with the school to the back. The stream runs across the area within the appellant's ownership, with the edge of the eastern bank very roughly 7 metres to the back of the rear outshot of the house.
13. An effect of the outline planning permission was to change the use of the red-line area from the previous – probably *sui generis* - use as a Council garage compound to residential use. However, this change would not apply to the blue-line area, which was specifically excluded from the application site, with the intention of it being fenced off. It appears to me that the residential curtilage extends as far as the eastern bank of the stream, which forms a clear barrier with the other land to the west and which is recognised in the planning permissions as having a different function. That is, it is part of a designated green link that performs a significant planning purpose, rather than being domestic garden land.
14. The fact of ownership does not in itself predicate the use of land, or any change of use. Indeed, land in the same ownership can well be in several uses. Overall, I am of the opinion that the land to the west of the red line in the outline planning permission, and of the intended chain-link fence in the reserved matters approval does not form part of the residential curtilage of no. 4 Oakdell.
15. It is argued that the bridge structure, should be regarded as development permitted under the provisions of Class A of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This is on the basis that although construction of a raised platform is precluded by paragraph A.1(k)(i) of Class A, this structure is less than 300mm above the general ground level of the site, and the government's

Technical Guidance - Permitted Development Rights for Householders – advises that a raised platform is any platform with a height greater than 300mm.

16. However, the allowances under Class A of Part 1 to Schedule 2 are specifically applicable to development within the curtilage of a dwellinghouse. I have found that the land owned by the appellant and beyond the eastern bank of the stream is not within the residential curtilage. It follows that this GPDO allowance is not available.
17. I conclude that on the balance of probabilities the development is in breach of planning control, and it follows that had an appeal been made on ground (c) it would have failed.

### **Other matters**

18. The appellant argues that he and his family require safe access across the stream and is concerned a child may fall into the water. However, the Council have made clear that a plank bridge across the stream might be provided, and it is also part of the reserved matters permission that a fence should be erected along the eastern bank. Such provisions would meet these concerns.

### **Conclusions**

19. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed, and the enforcement notice should be upheld.

*Stephen Brown*

INSPECTOR