



Appeal Decision

Site visit made on 17 February 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 03 April 2020

Appeal Ref: APP/F2415/C/19/3237375

**Land to the rear of 33 Lea Close, Broughton, Astley, Leicestershire
LE9 6NW**

- 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 Mrs Y Hobbs against an enforcement notice issued by Harborough District Council (the Council).
- The enforcement notice was issued on 20 August 2019.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land from open space to an extended residential garden serving 33 Lea Close, Broughton Astley, LE9 6NW.
- The requirements of the notice are: -
 - (a) Cease the use of the land as an extended residential garden
 - (b) Remove the close board fence from the land in its entirety
 - (c) Restore the land to its previous condition before the planning breach set out in this notice took place.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

The Notice

1. The Notice is clearly directed at a material change of use of the land. The deemed planning application is derived from the description of the alleged breach of planning control, in other words the material change of use of the land.
2. A close-boarded timber fence and gate has been erected marking boundaries with Croft Way. The construction of the fence and gate amounts to operational development falling within scope of section 55(1) and (1A) of the 1990 Act and the evidence is that it is integral to and solely for the purpose of facilitating the material change of use.
3. An enforcement notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune. Moreover, it is clear from the reasons for issuing the enforcement notice that the Council considers that harm arises from the erection of the fence and gate.

4. Nevertheless, there is no reference to the fence and gate with the description of the alleged breach. Even though, it is not strictly necessary for the works to be referred to in the description as there is a ground (a) appeal and a deemed planning application I have to ensure that the breach of planning control as stated in the enforcement notice consists of an accurate description of the alleged breach as it is the basis for considering the deemed planning application. Taking into account the evidence before me, the appellant clearly understands that the notice is directed at the material change of use and the associated fence and gate.
5. Consequently, to ensure clarity I intend to add the wording "*and the construction of a fence and gate to facilitate that change of use*" to the end of the description of the alleged breach.
6. The steps required to comply should flow from the corrected allegation. Therefore, the wording of step (b) needs to be corrected to comply with the alleged breach if the enforcement notice is upheld.
7. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. I consider that I can carry out the corrections cited above without injustice to either main party.

The ground (a) appeal and deemed planning application

Main Issue

8. The main issue is the effect of the development, including the fence and gate, on the streetscene of Croft Way.

Reasons

9. The appeal site is a strip of land that is to the rear of 33 Lea Close (No 33) and is adjacent to the pavement associated with Croft Way. Croft Way is one of the main thoroughfares within the modern housing estate that the appeal property forms part of. It appears that the site contains a number of mature trees and it is likely that, as is very widely common on this type of housing estate, that they were provided as part of the landscaping and layout of the estate to add to the overall character and appearance of the area. The visual impact of the material change of use is associated with the enclosure of the land with a close boarded, timber fence and gate that are around 1.8 metres in height.
10. Landscaped and planted areas around buildings and along the highways in the locality contribute to the verdant and spacious appearance of the wider surroundings. However, the area of land enclosed by the fence and gate adjoins an area of land that is within the garden of a neighbouring dwelling that is bounded by a brick wall/fence. That brick wall/fence is of a similar height to that erected around the appeal site and the fence elements are of a similar design. Therefore, the fence and gate have a visual affinity to that boundary treatment which appears to have been part of the planned layout of the estate.
11. Because the fence is adjacent to the pavement, it is not set back like the former boundary treatment to the rear of No 33 and the landscaped area is now enclosed and only the canopies of the trees are visible. Moreover, there is

no longer any space left for planting adjacent to that pavement. I note that the colour of the untreated fence and gate at the current time draws the eye.

12. However, in my experience the colour of the fence will fade and weather similar to others in the locality ensuring that its visual impact would be reduced. In addition, even though the fence and gate are clearly visible from Croft Way they are seen in the context of the adjoining boundary treatment. Furthermore, an appreciably sized landscaped area remains adjacent to the appeal site. As such, the development has not created a substantially more enclosed or urbanised feel in the street scene, nor has it resulted in the fence and gate appearing as a significantly more obtrusive feature when compared with the adjoining boundary treatment. Therefore, the overall verdant and spacious appearance of the area is/would be retained, and its pleasant setting safeguarded.
13. The Council have brought to my attention appeal decisions¹ relating to a similar development on a nearby property. Whilst, the issues involved in that case are similar, from the limited evidence before me, it appears that the piece of land was appreciably larger and its boundary with Croft Way longer than in this case. Moreover, there is no indication that the fence in that case adjoined another similar boundary treatment fronting Croft Way, as in this case. As such, in my judgement, it is not directly comparable to the development before me. In any case, I am required to determine the appeal on its individual merits.
14. Consequently, I consider that the development does not harm the streetscene of Croft Way and it does not conflict with Policy GD5 of the Harborough Local Plan which, amongst other things, seeks development to be located and designed in such a way that it is sensitive to its landscape setting. It follows that it complies with Policy SD1 of the Broughton Astley Neighbourhood Plan which relates to the presumption in favour of sustainable development. The development also complies with paragraph 127 of the National Planning Policy Framework (the Framework) which states, amongst other things, that planning decisions should ensure that developments are sympathetic to local character including the surrounding built environment and landscape setting and that they maintain a strong sense of place.

Other matters

15. Broughton Astley Parish Council (PC) have objected to the development on a wider basis including in relation to the impact of the development on wildlife corridors, setting a precedent and that the appellant does not appear to own the appeal site. The impact on wildlife corridors did not form part of the Council's reasons for issuing the enforcement notice and I have no substantive evidence before me that would lead me to consider that the development has harmed wildlife corridors in the area.
16. I have considered the appeal entirely on its own merit and in the light of all the information before me and any future similar development in the locality would also need to be considered in the same manner. Hence, allowing the appeal would not necessarily set a precedent for further similar development in the area and a generalised concern of this nature does not justify withholding permission.

¹ APP/F2415/W/18/3208660, APP/F2415/C/18/3208661 & 3208662

17. In addition, ownership issues are a private matter and not within my jurisdiction. A grant of planning permission would not override any legal rights in relation to ownership.
18. Whilst I understand that my decision will be disappointing for the PC, the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be an over-riding issue warranting dismissal of the appeal.
19. I note the appellant's concern regarding the Council's methods of dealing with the enforcement notice on the appeal site in comparison to its dealings with other enforcement notices on nearby sites, the history of other issues arising since she has lived at the above address and the way those matters been dealt with by the Council and other organisations. However, these are not matters for my consideration in the context of this appeal decision.

Conditions

20. I have not been provided with any suggested conditions by either party and given my findings above I do not consider that any conditions are required or necessary to make the development acceptable.

Conclusion

21. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act, which will now relate to the corrected allegation. The appeal on ground (f) does not therefore need to be considered.

Formal Decision

22. It is directed that the enforcement notice be corrected by: -
 - adding the wording "*and the construction of a fence and gate to facilitate that change of use*" to the end of the description of the alleged breach.

Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act, for the development already carried out, namely the material change of use of the land, edged red on the plan attached to the enforcement notice, from open space to an extended residential garden serving 33 Lea Close, Broughton Astley, LE9 6NW and the construction of a fence and gate to facilitate that change of use.

D. Boffin

INSPECTOR