



Appeal Decision

Site visit made on 18 February 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 March 2021

Appeal Ref: APP/X0360/C/20/3257540

1 Holmes Close, Wokingham, Berks RG41 2SG

- 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 Ian Christopher Poole against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice was issued on 10 July 2020.
- The breach of planning control as alleged in the notice is *without planning permission the material change of use of amenity land to residential*.
- The requirements of the notice are to:
 1. Cease the use of the Land coloured yellow as shown on plan 1 for residential purposes and all associated activities to residential use and remove all residential paraphernalia.
 2. Remove the fence, concrete posts and gravel boards shown in the approximate position on plan 1 and as shown in photographs numbered 1, 2 and 3.
 3. Remove the hardcore as shown in the approximate area coloured yellow on plan 1 and as shown in photograph number 4.
 4. Remove all resultant material and debris from steps 1, 2 and 3 from the Land.
 5. Plant 2 no. Cupressocyparis leylandii plants (minimum height at planting 2m) and 1 no Berberis thunbergii 'Green Carpet' plant (minimum height at planting 0.5m) in the locations shown on photograph 5 and in the locations shown on plan 2.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

1. Correspondence from the appellant in the course of the appeal has raised a number of matters that do not relate to the grounds of appeal and which do not require my consideration. I have had regard to all relevant matters in determining the appeal. No appeal has been made on ground (a) which would have raised a deemed planning application for the matters alleged in the notice, and I am therefore unable to consider the security issues or any other matters relating to the planning merits of what has taken place.

Main Issues

2. The main issue arising on the appeal on ground (b) is whether the use alleged by the Council has occurred as a matter of fact. If it has, then the main issue on the appeal on ground (d) is whether the use began more than 10 years prior to the issue of the notice.

Reasons

The appeal on ground (b)

3. It is unnecessary for an enforcement notice expressly to identify the former land use, and here there is no dispute that the land is now being put to a residential use. The appellant disputes whether it has changed from the 'amenity land' alleged in the notice but concedes that its use will have materially changed to its present residential use at some point in the past, even if that was not from an amenity land use but from the presumed former agricultural use prior to the building of the estate.
4. Given this concession, namely that the land use has at some point materially changed to the residential use alleged in the notice, I find that the matter constituting the breach of planning control alleged in the notice has occurred as a matter of fact and thus the appeal on ground (b) must fail.

The appeal on ground (d)

5. Although the appellant concedes that the land is presently in a residential use, he denies that this use began in association with the removal of the former planting and the erection of the boundary fence that is shown on the plan and photographs attached to the notice. Rather the appellant's case is that the land has constituted part of the garden, and thus has been in a residential use, since before he purchased the property in 1998 and has not been used other than for this residential use since well before then. If correct, that would mean the enforcement notice was issued when it was too late to take enforcement action.
6. The erection of the fence, which has occurred at some point since 2013, has had the effect of enclosing the land the subject of the notice within the appellant's fenced rear/side garden. An aerial image from 2013 appears consistent with what is shown on Photograph 5, both appearing in the Council's Expediency Report. The images show the former condition of the appeal site prior to the more recent erection of the boundary fence. A wooden fence surrounded the side of the property, separated from the adjacent footway by a grassed verge of around a metre wide at the side of the property and then widening into a roughly triangular area to the side at the front. This triangular area (with the topmost part of the strip to the side) forms the appeal site.
7. None of the original planning documents concerning the development of the estate have been made available to me, but on viewing the locality I saw that open front gardens prevailed in the area, with few boundary enclosures immediately adjoining the estate footways. Areas of amenity land were also identifiable, distinguishable from those front gardens, one example being the land opposite the site surrounding the side and rear garden of the property on the opposite corner of Holmes Close. That garden is substantially enclosed by a well-established hedge with an open buffer to the footway beyond, comprising a grassed strip at the side and widening to the front, and with a further grassed strip beyond the footway separating it from the estate road.
8. This provision of 'amenity land' areas in the development of post-war housing estates, forming strips of land between the edges of residential gardens and the footways forming part of the highway, was not uncommon. Nor was the transfer of the title to those amenity areas from the developer to the owners of

the properties adjoining them, often in a separate conveyance. Here, the appellant says that title to the property is comprised in 2 different title numbers, although he does not state the exact extent to which each part of the land owned is comprised in each title. Although the appellant states that nothing concerning the use of the appeal site was revealed in pre-contract enquiries, no documents have been provided to me and I am unable to draw any firm conclusions about the nature of the conveyancing documents, which could not be conclusive as to the land use in any event.

9. The Council, although not providing the original planning documents relating to the estate, has reproduced a 1978 application plan showing the residential garden area to be clearly defined by a close-boarded fence wrapping around the side of the property which appears to be on the same alignment as that shown on the 2013 aerial image. From the evidence of this and of my site visit, and particularly on viewing the layout of the land surrounding the site including that opposite, I find it probable that the appeal site, falling outside that 1978 fence, will have originally formed part of the 'amenity land' of the estate and thus given over to a materially different use from a private residential garden.
10. The 2013 image shows what appears to be substantial planting in the 'triangle' by way of the leylandii, as well as other planting, which appears very well established by the date of the 2013 aerial image. The appellant does not refer to any particular planting that he has carried out but refers to the maturity of the area by the date of his purchase in May 1998 and his continuous maintenance of the area ever since.
11. I do not however consider that this planting and maintenance of the appeal site by the appellant (or his predecessors in title) will have been sufficient to materially change the use of the land. Although largely planted over, the land appears to have remained open and to function as amenity land within the design context of the housing estate. Until after 2013, it was not marked by any form of enclosure indicating that it had been taken into a private residential use. Although maintained by the appellant, its primary purpose appears to have remained as a contributor to the spatial characteristics of the area as amenity land rather than as a private residential garden.
12. Based on the evidence before me as a matter of fact and degree I therefore conclude that the land has been in the residential use alleged by the notice only since the erection of the present fence. As the aerial imagery shows the fence not to have been in existence in 2013, it follows that the material change of use in the land did not take place more than 10 years prior to the Council's issuing of the notice. Therefore the appeal on ground (d) fails.

Conclusion

13. For the reasons given above I conclude that the appeal should not succeed, and I shall uphold the enforcement notice.

Formal Decision

14. The appeal is dismissed and the enforcement notice is upheld.

Laura Renaudon

INSPECTOR