



Appeal Decision

Site visit made on 18 May 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

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

Decision date: 28 June 2021

Appeal Ref: APP/X0360/C/20/3263904

**Land at and adjacent to 3 Arbor Meadows, Winnersh, Wokingham
RG41 5ED**

- 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 Clive Lister against an enforcement notice issued by Wokingham Borough Council.
 - The enforcement notice was issued on 2 November 2020.
 - The breach of planning control as alleged in the notice is:
Without planning permission the material change of use of the land from amenity land to residential garden curtilage
 - The requirements of the notice are:
 - i) *cease the use of the land for residential purposes and remove all residential paraphernalia;*
 - ii) *remove the fence including concrete posts and timber panels between the points marked A to B and between points A,D,C on the attached plan from the land, and*
 - iii) *remove all resultant material and debris resulting from steps ii and iii from the land.*
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by the substitution of the plan attached to the notice with the plan attached to this decision, by the deletion of word "curtilage" at the end of the allegation of the breach of planning control, and by the renumbering of the numbers "ii and iii" in requirement iii) to read "i and ii". Subject to these corrections, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matters

2. The plan attached to the notice does not show any area of land; rather it purports to mark the line of fencing between the land the use of which is alleged to have been changed and the woodland to the south west. It is clear that this is an error. Furthermore, the depiction of the line of the fencing is inaccurate. The parties have submitted an agreed plan which accurately shows the area of land concerned and the line of the fencing. Both parties have argued their cases on the basis that the land affected is that enclosed wholly by a line from point B to point C on the plan, and therefore no-one would be prejudiced by my correcting the notice to incorporate the revised plan.

3. The notice alleges a change of use to “residential garden curtilage”. Curtilage is not a use of land; I shall therefore correct the notice by deleting the word “curtilage”. No prejudice would be caused by my doing so.
4. Requirement iii of the notice requires the removal of all resultant material and debris resulting from steps ii and iii; this is a typographical error and should refer to steps i and ii. Again, no prejudice would arise from correcting the notice.

Main Issues

5. The main issues are:
 - i) the effect of the development on the character and appearance of the surrounding area, and
 - ii) the effect on biodiversity

Reasons

Character and appearance

6. Arbor Meadows is a cul-de-sac of large, modern detached houses. The dwelling at 3 Arbor Meadows backs onto an area of woodland, part of which has been enclosed at the rear of the garden. The woodland is part of a larger amenity area known as Winnersh Meadows, which provides a green buffer between the residential development of which Arbor Meadows forms part and the large business site at Winnersh Triangle. The amenity area stretches from the junction of Arbor Meadows with Arbor Lane, wrapping round the western part of Arbor Meadows before widening out to provide a wider area of open space with ponds and play areas south of the A329M motorway. Various groups of trees within Winnersh Meadows are the subject of a 1979 Tree Preservation Order, including a group of 7 oaks in the vicinity of the appeal site.
7. The site lies within the southern part of the Type B1 Loddon River Valley and Open Water character area as identified in the Wokingham Borough Landscape Character Assessment (LCA) November 2019. The Loddon River runs in a roughly north to south direction, just over 1km away to the west of the appeal site. The appraisal notes various characteristics of the area, including the urban influence of encroaching peripheral development, particularly modern commercial buildings at Winnersh Triangle. Amongst its valuable attributes are valued areas for recreation.
8. The area of land that has been enclosed cannot be seen from the footpath that runs through Winnersh Meadows, as it is screened by vegetation and a mound. However, there are a number of tracks that run through the woodland near to the appeal site, from where the fencing can be seen. The tracks are well-defined enough to show that they are regularly used, perhaps by children playing in the woods.
9. The appeal site has been partly enclosed by 1.8m high close-boarded fencing with concrete fence posts on the side of the woodland and a wooden post and rail fence with a large gap in the central part, which separates it from the lawn of 3 Arbor Meadows. A number of trees have been retained within the appeal site, including oak, holly, and sycamore. Some non-native planting has also been carried out within the site, including conifers, azaleas and other shrubs.

10. The site can only be seen by close neighbours, and from Winnersh Meadows to the limited extent that I have identified. Nevertheless, the change from open woodland to an enclosed garden area results in harm to the intrinsic character and appearance of the area, albeit that the extent of that harm is limited by the relatively small size of the area involved and the limited length of fencing. The appellant has suggested that a management programme could be adopted, but few details have been provided. I consider that the only way that such a programme could fully overcome the harm would be by removing the fencing and the non-native planting, and allowing the natural undergrowth to regenerate, which would largely negate the effect of the development.
11. Policy CC03 of the Wokingham Borough Adopted Managing Development Delivery Local Plan deals with green infrastructure, trees and landscaping. It says, amongst other things, that development proposals which would result in the loss, fragmentation or isolation of areas of green infrastructure will not be acceptable. The incorporation of the appeal site into a domestic garden results in the fragmentation of an area of green infrastructure; although trees have been retained, the woodland undergrowth has been removed and domestic non-native planting has taken place, resulting in loss. The area of land has changed its character and represents a loss of green infrastructure, contrary to the policy, and to the LCA guideline which aims to conserve and enhance the integration of urban edges on the edge of the floodplain through hedges, wooded boundaries, occasional scrub planting, and large-species trees to provide visual screening.
12. The development also conflicts with Policies CP1 and CP3 of the Wokingham Borough Core Strategy which respectively deal with sustainable development and general development principles, and which seek to maintain the high quality of the environment and a high quality of design without detriment to the amenities of adjoining land users, including open spaces or occupiers and their quality of life.

The effect on biodiversity

13. The site has no designated ecological significance. Nevertheless it is part of an extensive area of open space, with tracts of woodland which form a sizeable contiguous area of habitat. The Council has utilised the Natural England Biodiversity Metric 2.0 tool for assessing the implications of development on biodiversity. The Council says that the tool indicates that the status of the land concerned has changed from 'Urban - Woodland' to 'Urban - Vegetated garden' with a halving in biodiversity value. Although I have not been provided with the full details of the inputs used, or the details of the outputs, and recognising that the tool is a simplified assessment, I nevertheless consider that using common sense, the biodiversity value of an open area of contiguous woodland, with an understorey of native species of plants like brambles and nettles, is likely to offer significantly greater value to wildlife than a domestic garden, cut off from adjoining woodland by a close-boarded fence.
14. I therefore consider that the development has resulted in a net biodiversity loss, which is contrary to the advice in paragraph 170 of the National Planning Policy Framework, which requires planning decisions to contribute to, and enhance, the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services as well as minimising

impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

15. The Council has referred to the presence of veteran trees in the woodland, but has not identified a veteran tree as being affected by the development. Whilst footings of the concrete fence posts may be within the root protection area of some large trees, without further evidence, I am not convinced that these would be sufficient to pose any significant threat to the health of the trees.
16. Given the small area of land involved, and the lack of any significant biodiversity value of the site prior to development taking place, I consider that the development has not resulted in significant harm to biodiversity. Rather the degree of harm is low and is not sufficient to engage with paragraph 175 of the Framework.
17. Even so, I conclude that the development results in modest harm to biodiversity, and conflicts with national policy.

Other matters

18. There are no public benefits to be weighed against the harm that I have found and the conflict with the development plan. Whilst the area has been cleared of brambles, this has little aesthetic benefit, and is likely to be harmful to biodiversity interests. The appellant has referred to the removal of litter and dumped items in the area enclosed, and whilst I appreciate that litter is an almost ubiquitous problem in areas accessible to the public, from what I saw on my visit, it is not a significant one in the vicinity of the site.
19. There is a private benefit in providing additional garden space, but the dwelling already enjoys a spacious garden, commensurate with the size of the dwelling, and I therefore afford it little weight.
20. I note that the Council has served an enforcement notice on the nearby property at 26 Arbor Lane for a similar development, and that an appeal has yet to be determined. An application, as yet undetermined, has also been to change the use of an area adjacent to the boundary of 1 Arbor Meadows to garden. These indicate to me that there is local pressure to incorporate amenity space into gardens, and if planning permission were to be granted in this case, it would make it difficult for the Council to resist similar developments, resulting in an incremental erosion of green space which I consider to be important to the locality.
21. Notwithstanding the uncertain status of landownership, upholding the notice would engage with the right to respect for property, under Article 1 of the First Protocol, which is a Convention right enshrined into UK law by the Human Rights Act 1998. However, this right is not absolute, and interference may be justified in the public interest. In this case, upholding national and local planning policy, the importance of preserving and enhancing the character and appearance of the area and the need to promote biodiversity are matters of legitimate public interest.
22. There are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the right to respect for property would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.

Overall planning balance and conclusion

23. The harm that I have found both to character and appearance and biodiversity is small, and there is a degree of conflict with the development plan policies to which I have referred. There are no material planning considerations which justify my not determining the application in accordance with the plan. Accordingly, for the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

JP Roberts

INSPECTOR



Plan

This is the plan referred to in my decision dated: 28 June 2021

by **JP Roberts BSc(Hons) LLB(Hons) MRTPI**

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Not to scale

