



Appeal Decision

Site visit made on 15 June 2021

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 July 2021

Appeal Ref: APP/Y0435/C/20/3263233

Land adjacent to 25, 27 and 29 Keel Way, Oxley Park, Milton Keynes MK4 4TZ; 6,7,9,11,13 and 15 Gomez Close, Oxley Park, Milton Keynes MK4 4SX; and 44, 46, 48 and 50 Randall Drive, Oxley Park, Milton Keynes MK4 4SZ

- 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 Barrett Homes Northampton (BDW Trading Ltd) against an enforcement notice issued by Milton Keynes Council.
 - The enforcement notice was issued on 15 October 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised change of use of the allocated public open space to private amenity garden land associated with the properties specified at Paragraph 2 of the enforcement notice and shown edged blue on the plan attached to it.
 - The requirements of the notice are:
 - a) Cease the use of the Land for private garden amenity space; and
 - b) Remove any enclosures or paraphernalia associated with private garden use.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

The appeal on ground (d)

The matter to be decided

2. The appeal relates to a strip of land in front of some houses on a modern housing estate. The basis of an appeal on ground (d) is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. In accordance with s171B of the Act, the relevant period for taking enforcement action in this case is 10 years. Thus, the question to be determined is whether the use commenced and continued for a 10 year period before the notice was issued on 15 October 2020. To succeed, the appellant must demonstrate, on the balance of probability, that this has occurred.

The available evidence

3. The appellant has provided the following information in support of its case:
 - Signed letters from the residents of each of the houses to which the land has been serving as garden land;

- Signed letters from third parties;
 - Photographs of the land taken at various dates since 2008; and
 - Images taken from Google Street View captured in October 2010 and August 2012
4. The letters provided by the residents are in a standard format. In each case the letter states that a particular plot has been maintained by the resident 'as if it were part of our private residential garden land'. The letters state when each resident moved into the property. In the case of one property, a letter from a previous occupier is also provided. In the case of 11 of the 13 properties, the period covered by the letters extends back prior to 15 October 2010 (10 years before the notice was served). In the remaining 2 cases the residents moved in in 2012 and 2013.
 5. The letters from third parties include:
 - The builder of an extension at 15 Gomez Close in 2010/2011
 - A former occupant of 15 Gomez Close, who lived there for a number of years from June 2009.
 - Someone who has carried out maintenance tasks at 44 Randall Drive since 'around 2008'.
 6. The writer of each letter supports the appellant's claim in respect of the property concerned.
 7. The photographs supplied by the appellant show various parts of the site apparently maintained as gardens, including closely mown lawns and low boundary hedging around some of the plots. The appearance of the appeal site is in contrast to the adjoining land (along which a public right of way runs), which is clearly maintained differently and has a semi-natural appearance. Some of the photographs date back to more than 10 years before the notice was issued, others are later.
 8. A range of Street View images captured in October 2010 show the site with a lawned appearance, closely mown and with newly-planted boundary treatment around many (but not all) of the plots. Images from August 2012 show the land in a similar condition.
 9. The Council has provided aerial images showing that a large number of the plots were still under construction at some point in 2009, although the precise date of the images is unknown. It also advises that Land Registry data shows that some of those plots were occupied by December of that year. This is consistent with the letters provided by the residents.

Evaluation

10. The evidence provided by the appellant consistently supports its claim relating to the use of the site. While the standardised letters provided by residents do not carry the weight of more formal declarations, they nevertheless provide coherent and relevant evidence in support of the appellant's case, particularly in those instances where the residents moved into the property more than 10 years before the notice was issued, which is in all but 2 cases.

11. Although the photographic evidence does not conclusively prove the use of each plot as garden over the relevant period, the appearance of the land in the images is consistent with garden use in my view. The images give a very clear indication that some of the plots at least had started to be used as garden more than 10 years prior to the issuing of the notice, and I have no reason to suppose that such use would have stopped at any time during that period. I can see nothing in the photographs to contradict the appellant's claim in relation to any of the plots.
12. All of the areas captured in the photographs appear well-tended, consistent with use as garden, as they were when I viewed the site. Some of the plots do not have boundary treatment around them, either now or in the photographs, but that is not necessarily inconsistent with garden use, particularly in an area to the front of the properties which is clearly not intended to be screened from public view. Nor does it seem surprising, for such a prominent area, that people have not used it to accommodate outbuildings or much in terms of domestic paraphernalia.
13. The fact that some of the houses were still being built in 2009 is not inconsistent with the appellant's case. A number of those properties were occupied by December of that year and I have no evidence to suggest that any still not occupied by then were lagging far behind. Accordingly, it seems perfectly likely to me that the remaining properties would have been occupied in time for the residents to be tending the areas to the front as garden by October 2010, as the appellant claims.
14. The Council considers that the site has been publicly accessible during the relevant period, but I have no evidence of actual use by the public in any way that would undermine the appellant's claim.
15. Considered as a whole, the evidence provided by the appellant is sufficiently clear, consistent and precise to make its version of events the most likely, on the balance of probability. Any gaps in the information provided are relatively minor and there is no clear evidence to contradict the claim.

Conclusion

16. For the reasons given above I conclude that the appeal should succeed on ground (d). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Peter Willows

INSPECTOR