
Appeal Decision

Site visit made on 11 October 2022

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2023

Appeal Ref: APP/W4705/W/22/3295795

59 Midland Road, Frizinghall, Bradford BD9 4HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss Tahira Iqbal against the decision of City of Bradford Metropolitan District Council.
 - The application Ref: 21/04390/FUL, dated 16 July 2021, was refused by notice dated 20 January 2022.
 - The development proposed is described as: Change of use from unadopted highway to private garden attached to the property.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use from unadopted highway to private garden attached to the property at 59 Midland Road, Frizinghall, Bradford BD9 4HX, in accordance with the terms of the application, Ref: 21/04390/FUL, dated 16 July 2021, subject to the following condition:
 - 1) The use hereby permitted shall cease and the boundary fence shall be repositioned to its previous location and all materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to vi) below:
 - i) Within 3 months of the date of this decision, the boundary fence shall be altered and repositioned in accordance with the details shown on drawing numbers BD/572/P01, BD/572/P02 and BD/572/P02A.
 - ii) Within 3 months of the date of this decision, a scheme shall be submitted for the written approval of the local planning authority for the breaking up and removal of any areas of hardstanding that have been laid beyond the red line boundary shown on drawing number BD/572/P01 and the scheme shall include a timetable for its implementation.
 - iii) If within 11 months of the date of this decision the local planning authority refuse to approve the above scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

- iv) If an appeal is made in pursuance of iii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- v) The approved works shall have been carried out and completed in accordance with the approved timetable.
- vi) Within 5 working days of the completion of the works, the Local Planning Authority shall be notified in writing of the date of completion.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matters

2. The works have already been carried out and I was able to see these when I visited the site. I noted, however, that there is a discrepancy between the works that have been carried out and the plans submitted with the planning application in so far as the fence that has been erected projects beyond the red line boundary of the application site shown on the drawings, resulting in a greater area of land being enclosed than is shown on the submitted drawings, and a gap of approximately 1.5 to 2 metres between the fence that has been erected and the boundary fence of the railway line. I have determined the appeal based on what is shown on the submitted plans as that is the development for which permission was sought.
3. It was clear from the site visit and the submissions made by the parties that Drawing Numbers BD/572/P02 and BD/572/P02A have been given incorrect titles (in that the titles have been reversed) and that Drawing Number BD/572/P02 (labelled Existing Fencing Details) is the Proposed Fencing Details plan whilst Drawing Number BD/572/P02A (labelled Proposed Fencing Details) shows the Existing Fencing Details.
4. The description of the development on the planning application form is very lengthy and detailed. On the Decision Notice issued by the Council, the description is given as 'Retrospective application for change of use from unadopted highway to private garden'. I have noted that the appellant has adopted the Council's description on the appeal form.
5. Section 55 of the Town and Country Planning Act 1990 (the TCPA) describes development as the carrying out of building operations, or the making of material changes of use, as opposed to their retention or continuation. Section 73A of the TCPA makes allowance for the submission of a planning application for development which has been carried out before the date of the application and, consequently, I have considered the appeal on that basis. I have also used the Council's description of the development as it accurately and succinctly sets out what is proposed. For the reasons set out above, I have omitted the word "retrospective" from the description.
6. The appellant had stated in the sections of the application form and appeal form relating to the requirements of Article 14 of the Town and Country Planning (Development Management Procedure) Order 2015 (the DMPO) that they were the owners of the land in question. However, it was clear

from other sections of the planning application form describing the proposed development and the pre-application advice, and from other evidence submitted by both parties that the appellant does not own the land in question, nor does it appear that the ownership is known.

7. Article 13 of the DMPO requires applicants for planning permission to serve notice on any person who is an owner of the land on the date of the application. Article 13(1) (b) requires that where the applicant has taken reasonable steps to ascertain the names and addresses of every such person but has been unable to do so, service of notice is fulfilled by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated. This had not been done and the appellant was therefore requested to arrange to have the notice published in a local newspaper. This was subsequently done, and no representations were received during the relevant period. The appellant had also written to nearby property owners and posted a site notice. From the evidence that I have before me, no other parties have come forward to assert ownership.
8. The planning system through Articles 13 and 14 of the DMPO makes allowance for a planning application to be made in respect of land which is not owned by the applicant/appellant. However, it is important to note that this is solely in relation to the process of making and determining a planning application, or appeal, and does not confer ownership, or give rise to any claim to title of the land in question. These matters are subject to separate legal processes that must be pursued independently of the planning process.
9. Consequently, I am satisfied that the appellant has taken all reasonable steps to comply with the requirements of Articles 13 and 14 of the DMPO and I have determined the appeal on that basis.

Main Issue

10. Planning permission was refused on the grounds that there was insufficient information, particularly in respect of land ownership, to allow proper consideration of the planning application. This notwithstanding, the Council Planning Officer's report does not identify any conflict with relevant development plan policies, nor does it raise any concerns with regard to the principle of the development; the effect on the character and appearance of the area; the effect on the living conditions of neighbouring occupiers; or highway safety.
11. However, there have been approximately 12 representations made by interested parties with regard to the planning application. These primarily raise concerns in respect of access and use of the land that is affected by the proposal as a highway. This is clearly a matter that is considered to be important by people living in the vicinity of the appeal site.
12. The main issue in this appeal is, therefore, the effect of the proposal on the operation of the highway network in the vicinity of the appeal site.

Reasons

13. The land which is the subject of this appeal forms part of an overgrown rear lane, identified as Midland Terrace on the Ordnance Survey maps, that runs parallel to Midland Road. The long perimeter block formed by Midland Road,

Midland Terrace, Highfield Road and Beamsley Road contains a number of short terraces of houses fronting Midland Road and Highfield Road, a school building, a multi-use games area, a community centre, and two pairs of semi-detached houses fronting Beamsley Road.

14. The submitted evidence indicates that the northern section of Midland Terrace, running generally southwards from Beamsley Road, is an adopted highway and that the adopted stretch terminates just to the north of number 59 Midland Road. The southern section, linking to Highfield Road is not adopted for maintenance purposes by the Highway Authority.
15. At the northern end of Midland Terrace, a cobbled surface is visible with a width of approximately 4 metres. However, after a short distance, starting at the rear of the community centre building the width narrows, most likely due to soil formation on top of the cobbled wearing course, until only a narrow section of cobbles is visible between grassed areas. To the rear of the multi-use games area, the cobbled surface becomes completely obscured and the route becomes a beaten earth path. Between the new fence that has been erected around the appeal site and the boundary fence of the adjacent railway, I saw that paving blocks had been loose laid, and, at the time of my visit, these were uneven, and the surface was becoming unconsolidated.
16. A number of the residential properties at the southern end of Midland Road have garages to the rear which are accessed from the unadopted section of Midland Terrace. The surface of this southern section beyond the appeal site is also predominantly beaten earth, although towards the point where it meets Highfield Road, this becomes twin tracks, likely formed by vehicle movements from the garages accessed from it. It was not possible to determine at the time of my visit whether there is a cobbled or metalled surface below the level of the soil. Two streetlighting columns are present on the southern section of Midland Terrace but the northern section did not appear to have lighting.
17. I also saw that within the immediately surrounding area there are a number of other, similar, cobbled rear lanes in various states of maintenance with some being very overgrown and others almost clear.
18. There is no substantive evidence from any of the parties in respect of the level of use of Midland Terrace. It was clear from my site visit that there are some pedestrian movements along the route. It was also apparent that there are a small number of vehicle movements from the garages and hardstanding areas associated with numbers 73 and 74 Midland Road. Although there are further garages to the rear of the terrace of houses that contains number 59 Midland Road, it was evident from the level of vegetation growth in front of these and the state of repair of the garage buildings that these are not in regular use.
19. The present configuration of the fence does restrict the width of the remaining unadopted highway to approximately 2 metres. This would not prevent passage on foot along the route past the appeal site and the walking surface would not be dissimilar or any worse than the walking surface elsewhere on the route. However, this configuration is not what permission is sought for. The submitted drawings show a much smaller area of the

unadopted highway being enclosed within the boundary fence. This would result in a greater width being available for pedestrian use.

20. Concerns have been raised in respect of access by persons with physical or visual impairments. However, the current surface of much of the length of Midland Terrace is uneven and overgrown and as such not particularly suitable for use by people with health conditions or impairments. The walking route to and from Frizinghall Station and Beamsley Road via Midland Road is not significantly longer and is properly surfaced and lit.
21. The appeal proposal would not prevent vehicular access to those properties at the southern end of Midland Road which currently have garages to the rear as access is available from Highfield Road. From what I saw when I visited the site, the evidence on the ground indicates that those residents that currently utilise Midland Terrace with vehicles access the adopted highway network via Highfield Road rather than traversing the whole length of Midland Terrace. The overgrown condition of the wearing course of the adopted section of Midland Terrace indicates that there is little, if any, vehicular use of much of the length of the adopted section. Whilst the proposal as shown on the submitted drawings would reduce the width of the unadopted highway to an extent that a vehicle may have difficulty in traversing that short section behind number 59, there is no substantiated evidence that would indicate that there is anything other than very infrequent vehicular use of Midland Terrace.
22. Whilst I have noted the point made in respect of vehicular access to the rear of the community centre and multi-use games area, I saw when I visited that although there is a gate in the rear fence of the community centre grounds, the doorway on the south elevation of the building had been blocked up. I also noted that ramped access is provided at the front of the premises accessed from Midland Road. Similarly, there is unobstructed access to the multi-use games area from Midland Road. There is also unrestricted on-street parking provision on Midland Road.
23. Many of the representations received raise concerns in respect of access for emergency services vehicles to the rear of the properties and access for delivery vehicles. Due to the constrained width of the access points from both Beamsley Road and Highfield Road, it is not clear how easily a large vehicle such as a fire appliance, ambulance, or rigid lorry could access Midland Terrace. Nonetheless, the position of the appeal site is such that the proposed development would not prevent access to any properties, although I accept that a reversing manoeuvre would be necessary. This notwithstanding, there is no evidence that such access would be required on anything other than a very infrequent basis.
24. I am also mindful that the Highway Authority have not raised any fundamental objection to the proposal beyond stating that a stopping up order would be required to legally extinguish the highway rights on the affected section of unadopted highway.
25. The works as they have been carried out restrict the width of the route for pedestrians and create a narrow and slightly oppressive pathway between to high fences which does not result in a particularly pleasant walking environment. However, as set out above the proposed development which is

shown on the submitted drawings would not have such a marked effect and would be very similar to the pre-existing situation. The implementation of the scheme which has been applied for could be achieved through the use of a suitably worded planning condition.

26. Within this context, I therefore find that the proposed development would not prejudice the safe operation of the highway or the proper functioning of the highway network in the vicinity of the appeal site. It would not conflict with the relevant requirements of Policy DS4 of the City of Bradford Core Strategy 2017 which seeks to ensure that development proposals encourage people to walk, cycle, and use public transport, and take an approach to highway design which supports the overall character of the place.

Other Matters

27. I have noted that the Council have not raised any concerns in respect of the effect of the development on either the character and appearance of the area, or the living conditions of the occupiers of neighbouring properties. Nor has it raised any fundamental objection to the principle of the development. From what I have read and from what I saw when I visited the site, I have no reason to find differently.
28. Concerns have been raised by interested parties that the development may set a precedent for further enclosure of the unadopted highway. No specific examples of where this may occur have been cited and, in any event, any future planning applications would be determined on their own merits. A generalised fear of precedent is not sufficient to warrant withholding planning permission.
29. The proposed development will encroach onto an area of highway land. It is not in dispute that the land in question is a highway over which members of the public have a right to pass and repass, albeit not one that is maintainable at the public expense.
30. A grant of planning permission does not authorise the obstruction, extinguishment, or diversion of a highway and this matter falls outside of my purview in the context of determining an appeal under Section 78 of the TCPA, notwithstanding that the appeal concerns changing the use of the land. The status of the land as highway is a matter for the appellant to resolve with the Highway Authority separately from this planning appeal, and it should not be assumed that following my decision in this appeal, any subsequent Order to divert, or extinguish, the highway will automatically be confirmed.

Conditions

31. The Council has not suggested any conditions that it would wish to see imposed in the event that the appeal was to be allowed. Nevertheless, as the works that have been carried out do not correspond with the works for which permission has been sought, it is necessary to impose a condition that requires the works on the ground to be altered to reflect what is shown on the submitted drawings. The condition imposed is necessary in order to ensure that the works are implemented in accordance with the submitted drawings so as to make the development acceptable in planning terms.

32. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of this outstanding matter before the development takes place. The condition will ensure that the development can be enforced against if the works are not altered in accordance with the submitted drawings within the period given by the condition.

Conclusion

33. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed subject to the condition set out above.

John Dowsett

INSPECTOR