
Appeal Decisions

Site visit made on 29 June 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3RD JULY 2023

Appeal A: APP/J0405/C/21/3285648

27 Campbell Lane, Pitstone, Buckinghamshire LU7 9FT

- 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 Michelle Underwood against an enforcement notice issued by Buckinghamshire Council.
 - The enforcement notice, numbered 20/00443/CONB, was issued on 4 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a fence to enclose open amenity land, materially changing the use to enclosed residential land.
 - The requirements of the notice are (i) dismantle and permanently remove the 1.8m close boarded fence and all fence posts as annotated on the attached plan from the Land; (ii) remove all debris and materials arising from compliance with step one; (iii) reinstate the 1.8m brick wall in the position annotated on the attached plan, Map 2, using materials to match the dwelling at 27 Campbell Lane. For the avoidance of doubt, this brick wall shall re-instate the boundary treatment for the residential garden space for 27 Campbell Lane, as per the original planning permission 09/01189/APP, and (iv) reinstate the open amenity land to the side of 27 Campbell Lane to its condition prior to the breach of planning control taking place. This includes (but is not limited to) filling any holes arising from the removal of fence posts, compacting the ground and seeding areas as required with a seed mix appropriate for the land use.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended (the Act).
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Appeal B: APP/J0405/W/21/3285646

27 Campbell Lane, Pitstone, Buckinghamshire LU7 9FT

- 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 Mrs Michelle Underwood against the decision of Aylesbury Vale District Council.
 - The application Ref 21/01413/APP, dated 1 April 2021, was refused by notice dated 28 September 2021.
 - The development proposed is change of use of land to garden land and erection of fence.
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Decisions

Appeal A: APP/J0405/C/21/3285648

1. It is directed that the enforcement notice be varied by replacing the word '*filing*' with '*filling*' in the last sentence of step four of section 5. Subject to this variation, the appeal is dismissed and 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.

Appeal B: APP/J0405/W/21/3285646

2. The appeal is dismissed.

Procedural Matters

3. In respect of Appeal B, I have taken the description of development from the Council's refusal notice as it more accurately and succinctly describes the proposal. The evidence is that this development has already commenced and therefore I shall determine such an appeal on a retrospective basis.

The Notice

4. The breach of planning control includes a material change of use of the land. In section 4 of the Notice, it refers to the breach of planning control occurring within the last four years. In respect of a material change of use of the land the relevant immunity period is ten years. I am satisfied that this error has not caused injustice to the main parties in so far that the appellant has not appealed under section 174 (2) (d) of the Act and, furthermore, there is no evidence before me that the use has taken place for ten or more years. Indeed, the appellant's own evidence in respect of the planning application form for Appeal B is that the development started on 15 September 2020 and was completed on 11 October 2020. Therefore, there is no evidence that the development occurred more than four years ago, let alone ten years ago.
5. The last sentence of step four of section 5 of the Notice states '*This includes (but is not limited to) filing any holes arising from the removal of fence posts, compacting the ground and seeding areas as required with a seed mix appropriate for the land use*'. The word '*filing*' should in fact read '*filling*'. I shall accordingly vary step four of section 5 of the Notice and in doing so I am satisfied that no injustice would be caused to any of the main parties.

Main Issue

6. Both appeals relate to the same development. I have considered the reasons for issuing the enforcement notice and the reasons for refusal of planning permission and the main issue in respect of both appeals is the effect of the development on the character and appearance of the area.

Reasons

Appeal under ground (b) (Appeal B)

7. An appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control have not occurred. The appellant's evidence in respect of the ground (b) appeal relates to there being no objection by residents or the Parish Council, views expressed relating to other landscaped and open space areas in the housing estate, and comments about the effect of the development on the character and appearance of the area.
8. There is no evidence before me to indicate that the breach of planning control has not occurred. The evidence is that a fence has been erected and the appellant does not dispute that a material change of use of the land has

occurred in terms of the enclosed residential land. I therefore conclude that the ground (b) appeal fails.

Ground (a) appeal and the deemed planning application and s.78 appeal

9. The appeal site falls within a modern housing estate. This part of the housing estate has a more open and spacious feel when compared to the pattern of development within the part of the estate at the start of Campbell Lane. Nevertheless, the environment as a whole is experienced as being one which includes modern dwellinghouses in close proximity to one another. Front and side gardens are generally landscaped and either include low hedges or railings thereby offering some welcome open and green relief to the otherwise built form.
10. The areas of undeveloped and landscaped spaces add positively and distinctively to the character and appearance of this part of the housing estate. Indeed, it is clear that when the housing estate was approved under planning permission 09/01189/APP, the land to the side of No. 27 Campbell Lane was deliberately planned to be undeveloped and landscaped. At this time, it did not form part of an enclosed area of garden land associated with the appeal property.
11. The appeal fence has enclosed the former landscaped space to the side of the appeal property. Owing to its height, length, position and appearance, it is appreciated as a dominant and incongruous structure in the street-scene, unacceptably detracting from the sense of space that is appreciated around the front and sides of most of the residential plots in the locality.
12. The above harm to the pattern of development in the area is exacerbated in so far that the predominant means of enclosure around garden spaces in the housing estate is either hedges, railings or brick walls. In this respect, the fence is seen as an incongruous addition in the street. Owing to its location, tight up against the pavement, it detracts from the green and undeveloped space that previously existed to the side of the dwelling.
13. For the collective reasons outlined above, I conclude that the development that is the subject of appeals A and B causes significant harm to the character and appearance of the area. Therefore, it does not accord with the design, character and appearance requirements of policy BE2 of the 2021 Vale of Aylesbury Local Plan 2013-2033, policy 6 of the 2016 Pitstone Neighbourhood Plan 2013-2033 and chapter 12 of the National Planning Policy Framework 2021.

Other Matters

14. In reaching the above findings, it is of note that planning permission was refused for the same development in 2015.¹ I acknowledge that the appellant claims that they were not aware of this when they purchased the freehold from the Housing Association. Indeed, they comment that they *'were not made aware by them or our Solicitor that a previous application to do the same had been made and rejected'*. This is a matter that would need to be separately discussed with the appellant's Solicitor and/or the Housing Association. It does not in itself justify allowing harmful development from a planning point of view.

¹ Planning application Ref 14/03189/APP

15. The appellant claims that before erecting the fence, the area was littered with rubbish and animal faeces. I accept that by enclosing the land to form an enlarged residential garden, this would likely assist in helping to eradicate some of these issues. However, this must be balanced against the clear and significant harm that has been caused to the character and appearance of the area.
16. The appellant takes issue with the Council's reference to the subject appeal site as 'amenity land'. I acknowledge that the evidence is that the land is owned by the appellant. However, reference to 'amenity land' is not predicated on land ownership. The undisputed evidence is that the land was not originally enclosed and was not used as garden space in association with No. 27 Campbell Lane. The evidence is that the planning permission for the housing estate² showed this land as functioning as a landscaped and undeveloped amenity space. It is therefore in this context that 'amenity land' has been referenced by the local planning authority.
17. None of the other matters raised alter or outweigh my conclusion relating to the adverse impact of the development on the character and appearance of the area.

Conclusions

Appeal A: APP/J0405/C/21/3285648

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Appeal B: APP/J0405/W/21/3285646

19. For the reasons given above, I conclude that the development would not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

D Hartley

INSPECTOR

² Planning application Ref 09/01189/APP