



Appeal Decisions

Site visit made on 27 June 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2023

Appeal A Ref: APP/J0405/C/22/3301703

Land at 28 Border Lane, Buckingham, Buckinghamshire MK18 7SE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr William Tarr against an enforcement notice issued by Buckinghamshire Council - North Area (Aylesbury).
- The notice was issued on 26 May 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to residential facilitated through the erection of a 2.5m high closeboard fence and gate.
- The requirements of the notice are to:
Step 1: Permanently cease the unauthorised residential use of the Land.
Step 2: Permanently remove (demolish) the fence and gates from the land and ensure all materials used in its construction are removed from the Land.
- The period for compliance with the requirement is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal B Ref: APP/J0405/C/22/3301704

Land at 28 Border Lane, Buckingham, Buckinghamshire, MK18 7SE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Kimya Tarr against an enforcement notice issued by Buckinghamshire Council - North Area (Aylesbury).
- The notice was issued on 26 May 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to residential facilitated through the erection of a 2.5m high closeboard fence and gate.
- The requirements of the notice are to:
Step 1: Permanently cease the unauthorised residential use of the Land.
Step 2: Permanently remove (demolish) the fence and gates from the land and ensure all materials used in its construction are removed from the Land.
- The period for compliance with the requirement is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Applications for costs

1. An application for costs was made by Mr William Tarr and Mrs Kimya Tarr against Buckinghamshire Council - North Area (Aylesbury) in relation to the appeals. This application is the subject of a separate Decision.

The ground (c) appeal

2. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the enforcement notice (the Notice) do not constitute a breach of planning control. The burden of proof is upon the appellant.
3. The breach of planning control alleged in the Notice is a material change of use of land to residential facilitated by the erection of a 2.5m high fence and gate. The reasons for issuing the Notice under paragraph 4 of the Notice state that the alleged breach of planning control occurred within the last ten years, which is the period of immunity for a material change of use rather than operational development. The use of the words ‘...facilitated through the erection of a 2.5m high closeboard fence and gate’ clearly indicates the fence is alleged to be part of the material change of use rather than a separate breach in and of itself. Were the allegation to read ‘...the material change of use of the land to residential *and* the erection of a 2.5m high closeboard fence and gate’ then that would indicate that there are two breaches. However, that is not the case. Therefore, within the four corners of the Notice, there is an alleged single breach of planning control – the material change of use of the land to residential.
4. The land in question is a narrow parcel of land to the side and rear of 28 Border Lane. Photographic evidence of the previous metal estate fencing shows that the fence was set in closer to the dwelling than the existing timber fence. It shows a significantly narrower gap between the detached garage and metal fence than the existing, which now enables access down the side of the garage to the rear garden.
5. The Council rely on the landscaping plan¹ for the planning permission² for the wider estate, asserting the original boundary has been moved. The drawing indicates there would be a Beech hedge (zig-zag line) on the subject land which would abut the northern elevation of the garage. However, this hedge is on the inside of a thick grey line, with nothing in the legend on the drawing stating what the grey line indicates. Following this grey line to the southeast corner of the dwelling and its continuation past properties to the south and throughout other properties on the drawing, it is reasonable to conclude that this grey line demarks property boundary lines. If that’s the case, the appeal land appears to fall within this boundary line.
6. Moreover, drawing 16496/1161F attached to the same planning permission indicates a 1500mm high black metal parkland fence running along the same line as the thick grey line in drawing c-738-208. Both of these lines are setback from the northern elevation of the detached garage and follow the approximate position of the existing timber fence.
7. The Council refer me to the s106 agreement for the wider estate and state that the plans attached to it show the land that was amenity land has now been

¹ Drawing number c-738-208

² Council reference 13/02997/ADP

enclosed by the appellants. However, neither of the two plans attached to the agreement show the appeal property, with Plan 2 appearing to show a different part of the wider estate.

8. Overall, based on the evidence before me and my own observations made on site, it would appear that the original black metal estate fence was erected in a different position to the approved drawings and was set in from the actual boundary line of the appeal property. Therefore, the land which has now been enclosed by the timber fence appears to follow the boundary line of the property as identified on the approved drawings attached to the planning permission for the estate. I conclude on the balance of probabilities that the alleged material change of use of the land to residential has therefore not occurred as it has always been lawfully part of the residential land incidental to 28 Border Lane, in accordance with the planning permission for the property.
9. Based on my findings above, I have considered whether it would be possible to vary the Notice to omit the reference to the material change of use from the alleged breach of planning control, the reasons for issuing the Notice and the requirements, without causing injustice. However, as I have set out above, the Notice only identifies one breach of planning control and that is the material change of use. The omission of the material change of use from the allegation and the retention of the reference to the erection of the fence would create an entirely new allegation.
10. Moreover, as the alleged breach is for a material change of use, for which the 10 year period of immunity applies, a variation of the Notice to refer to the erection of the fence as a separate operational development breach would result in the appellants being denied the opportunity to make a ground (d) appeal that the fence is immune from enforcement action. Therefore, it is not possible to vary the Notice without causing injustice to the appellants.

Conclusion on the ground (c) appeal

11. For the reasons given above, I conclude that the appeals should succeed on ground (c). The Notice will be quashed.
12. In these circumstances, the appeals under grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not therefore fall to be considered.

Formal Decision

13. The appeals are allowed and the enforcement notice is quashed.

Alexander Walker

INSPECTOR