



Appeal Decision

Site visit made on 24 July 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th AUGUST 2023

Appeal Ref: APP/J0405/C/22/3306119

Land at 16 The Comfrey, Watermead, Aylesbury, Buckinghamshire HP19 0FL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Dr Aasim Shaikh against an enforcement notice issued by Buckinghamshire Council - North Area.
- The notice, numbered 21/00205/CONB, was issued on 26 July 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 by the erection of a wooden closeboard fence, gate and laying of hardstanding.
- The requirements of the notice are to:
 - Step 1- Permanently cease the unauthorised residential use of the Land.
 - Step 2- Permanently remove (demolish) the closeboard fence, gate and hardstanding from the Land and ensure all materials used in its construction are removed from the Land.
 - Step 3- Back-fill, using soil, any holes created by the removal of fence posts, cement and hardstanding from the Land and sow the Land with grass seed.
 - Step 4- Permanently remove any debris or materials from the Land that comes as a result of complying with Steps 1, 2 and 3 of this Notice.
- The period for compliance with the requirements is: three (3) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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 Decision: The appeal is dismissed, and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Matters Concerning the Enforcement Notice

1. In paragraph 5 (Step 1)- delete the words 'permanently' and 'unauthorised'. The word permanently is unnecessary, and the use does not need to be described as 'unauthorised' when it is already identified via the allegation.
2. In paragraph 5 (Step 2) delete the words 'permanently' and '(demolish)' as they are unnecessary. Also, delete the words 'and ensure all materials used in their construction are removed from the Land.' Although I appreciate the Council are only seeking works to clear the Land, paragraph 5 (Step 4) already requires removal of the debris and materials resulting from compliance with the requirements of steps 1 to 3.
3. In paragraph 5 (Step 3), delete the words 'Back-fill, using soil, any holes created by the removal of fence posts, cement and hardstanding from the Land and sow the Land with grass seed.' It is unnecessary to provide such detail when the works could go beyond what is required to remedy the breach. The appellant would be best placed to know the previous condition of the Land, as such, I will substitute the deletion with the words 'restore the Land to its previous condition.'

4. In paragraph 5 (Step 4), delete the word 'permanently'. It is unnecessary and provides consistency to the wording of the enforcement notice (Notice).
5. The above-mentioned corrections do not fundamentally change the matters alleged or its requirements. As such, they would not cause injustice to either party.

Background and Preliminary Matters

6. Prior to the Notice being issued, the planning history indicates a planning application, reference 22/00684/APP, was submitted to regularise the laying of the hardstanding and the erection of the fence on the Land. The planning application was refused, and the Notice subject of this appeal was issued.
7. I note that as part of the planning application the appellant contended that the proposal did not amount to a material change of use of the Land. However, an appeal on ground (b) which considers whether the matters alleged have not occurred or ground (c), which considers whether the matters alleged do not constitute a breach of planning control have not been plead in this appeal. Furthermore, no information has been submitted with the appeal that amounts to a hidden ground (b) or (c) appeal.
8. The appellant has confirmed that the Land was previously an open area of grassland, but the Land is privately owned and has been maintained by him. As such, based on the evidence before me, I have considered the Land to be a private area of open grassland within the estate but not a designated area of public open space.

The Appeal on Ground (a) and the Deemed Planning Application

9. The **main issue** is the effect of the development on the character and appearance of the area and pedestrian safety.

Reasons

Character and Appearance

10. The Comfrey is a residential cul-de-sac of two storey detached, semi-detached and terraced properties. For the most part, the dwellings have shared design features and front the road with a slightly staggered but largely consistent building line. The dwellings are set behind a mixture of front gardens and driveways, which are open with either no enclosures or low-lying fences and landscaping. The consistent building line together with low-lying fences and landscaping results in a sense of openness that positively contributes to the distinctive character and uniformity to the area.
11. The appeal site is an area of land to the side of 16, The Comfrey; a detached residential property located at the end of the cul-de-sac. Unlike the majority of dwellings in the vicinity, No 16 fronts a shared drive with the side elevation of the dwelling having a similar building line to the properties fronting the road. Prior to the works, the Land to the side was open and landscaped with no enclosures, which is consistent with the sense of openness that adds value to the distinctive character and uniformity described above.
12. The front of the property retains a grassed garden area and the hardstanding, albeit extended, remains open with no fences or enclosures. The hardstanding is also similar in size and appearance to other block paved driveways that are

present within the immediate vicinity. On its own, I am of the view that the hardstanding is typical of the area and does not impact upon the sense of openness. However, the material change of use is also facilitated by the erection of the fence, which diminishes the open space to the side by enclosing it with a high, close boarded designed fence, which is uncharacteristic of the low-lying fences in the vicinity.

13. As such, the material change of use facilitated by the position, height and design of the fence adversely impacts on the open character and uniformity in the street scene. This is exacerbated by its prominence from public vantage points on The Comfrey as well as the adjoining pedestrian access and bridleway. I note that the appellant considers the fence to be consistent with other fence enclosures in the locality. Although I accept that there are fences of similar height and design that back onto the rear lane, from what I saw on site, there are no fences of this height and design to the front of The Comfrey.
14. Accordingly, the development has an unacceptable impact upon the character and appearance of the area. As such, it is contrary to the aims and objectives of Policy BE2 of The Vale of Aylesbury Local Plan 2021 (Local Plan) and the advice and guidance set out in the National Design Guide 2021. These policies, and guidance, seek amongst other things, to ensure that development respects and complements the characteristics of the site and its surroundings. To maintain the quality of the built environment by ensuring development harmonises with the local context and has no adverse impact on the character, appearance, or quality of the wider area.
15. The Council cite Policy BE3 of the Local Plan in its reasoning for issuing the Notice. However, this policy is mainly concerned with the protection of the living conditions or 'amenity' of residents. As there are no concerns raised over the impact of the development on neighbours living conditions, I do not consider it to be relevant to this issue.

Pedestrian Safety

16. In the reasons for serving the Notice, the Council state that the development harms the enjoyment of the public bridleway. Expanding upon this in their Statement of Case, the Council outline that the encroachment towards the public footpath has a harmful impact on the amenity and convenience of the route. They have also received multiple reports of individuals being knocked over as a result of the Land being enclosed and their views being obstructed.
17. The public bridleway is referenced as WAT/2/4, and a map has been provided showing its route. The bridleway is located to the rear of No 16, and the route extends from a residential street known as Ayleswater to a field to the east of The Comfrey. A pedestrian access route between The Comfrey and Kestrel Way also intersects the bridleway where the fence has been erected at the corner.
18. Policy C4 of the Local Plan states, amongst other things, that planning permission will not normally be granted where the proposed development would cause unacceptable harm to the safe and efficient operation of public rights of way.
19. From what I saw on site, movement along the bridleway and the interconnected pedestrian access is not impeded by the erection of the fence along the boundary. Furthermore, The Comfrey and Kestrel Way appear to be quiet residential locations where the number of pedestrians, cyclists and horse riders

using the route is likely to be low. The position of the fence and its height at the corner reduces visibility at the intersection, but views towards The Comfrey are not completely obscured. In this context, I am of the view that the risk to pedestrian safety is negligible.

20. Accordingly, the impact of the development on the enjoyment and the safe and efficient operation of the bridleway does not result in unacceptable harm. The development is, therefore, compliant with the aims and objectives of Policy C4 of the Local Plan.

Other Matters

21. The appellant has drawn my attention to other works to form hard standings on 11 and 12, The Comfrey, as well as a fence enclosing a side garden at 10, Willow Herb and a side extension erected at 11, Willow Herb. I have not, however, been provided with the dates for the permissions at these sites, or the full details that would have been available to the previous decision makers when determining these cases. As such, it is difficult to make a comparison when I am not aware of the full facts of the cases and if the same policies were applied.
22. However, from what I saw on site, the hard standings highlighted are smaller, remain open to the front and do not include any high fence enclosures. The side extension at 11 Willow Herb does extend to the side and can be seen from the street, but it is set back from the road with a low fence, which helps to retain the sense of openness. The garden to the side at No 10 has been enclosed with a fence, but in contrast to the matters alleged, it is a low-lying fence with a hedgerow behind. As such, the development subject of this appeal has a greater impact on the sense of openness than the examples highlighted in proximity of the site.
23. The appellant states that the appeal site is difficult to maintain if left open; dogs foul on the area, litter accumulates and it encourages loitering, the misuse of drugs and anti-social behaviour. The appellant has also indicated that the litter and waste left behind amounts to a health and safety issue.
24. I note the issues raised, but I have limited evidence with the appeal to show the state of the Land prior to the works, or details of any incidents of anti-social behaviour and subsequent complaints. I appreciate that these matters can be concerning but enclosing the Land with a high fence is not the only solution to remedy these concerns. In this context, the state of the Land, the fear of crime and the potential health and safety implications do not outweigh the harm identified to the character and appearance of the area.
25. I have also had regard to representations from neighbours supporting the development, as well as the positive aspects of providing off-street parking within the street. However, the level of support shown as well as alleviating parking pressures on the street do not outweigh the impact the development has on the character and appearance of the area.

Conclusion on Ground (a) and the Deemed Application for Planning Permission

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the 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.

The Appeal on Ground (g)

27. This ground of appeal is that any period specified in the Notice falls short of what should reasonably be allowed. The period for compliance with the requirements is within three months of the Notice taking effect. The appellant contends that additional time is required, due to contractors having to be sourced and the work being carried out. The appellant requests a nine month compliance period.
28. Having regard to the works that are required to comply with the Notice, and the time needed to employ a contractor to carry out the works I consider that a period of time in excess of three months can be justified. However, extending the period of compliance to nine months would be excessive, particularly given the identified harm to the character and appearance of the area.
29. On this basis, I consider that a period of six months for the appellant to comply with the corrected Notice would be reasonable. This time frame would strike an appropriate balance between having to find a contractor to complete the works and the harms identified. To this limited extent, the appeal on ground (g) succeeds. I shall vary the terms of the Notice accordingly.

Formal Decision

30. It is directed that the Notice is corrected by:

In paragraph 5 (Step 1), delete the words 'permanently' and 'unauthorised'.

In paragraph 5 (Step 2), delete the words 'permanently' and '(demolish)' and the words 'and ensure all materials used in their construction are removed from the Land.'

In paragraph 5 (Step 3), delete the words 'Back-fill, using soil, any holes created by the removal of fence posts, cement and hardstanding from the Land and sow the Land with grass seed.' and substitute it with the words 'restore the Land to its previous condition.'

In paragraph 5 (Step 4), delete the word 'permanently'.

In paragraph 6, the deletion of the word 'three' and the substitution with the word 'six'.

31. Subject to the corrections, the appeal is dismissed, the 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.

M. P. Howell

INSPECTOR