



Appeal Decisions

Site visit made on 20 April 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2023

Appeal A Ref: APP/J0405/C/22/3291937

Land adjacent to 2 New Meadow, Aylesbury, Buckinghamshire HP21 7AN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Munir Hussain against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 31 January 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the change of use of land from amenity land to residential land and the erection of a garage and creation of a hardstanding driveway.
- The requirements of the notice are:
 - Step 1: Cease the use of the land for residential purposes.
 - Step 2: Permanently remove (demolish) the garage structure (including foundations) and the driveway (including any base layers) from the Land and ensure all arising materials and debris are removed from the Land.
 - Step 3: Topsoil the land level with the adjacent amenity land and spread grass seed.
- The period for compliance with the requirements is three months of the notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (e) of the Town and Country Planning Act 1990 as amended.

Summary Decision: Appeal A is allowed in part and the enforcement notice is upheld with corrections and variations in the terms set out in the Formal Decision.

Appeal B Ref: APP/J0405/X/22/3290102

Land at 2 New Meadow, Aylesbury, Bucks HP21 7AN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Munir Hussain against the decision of Buckinghamshire Council.
- The application ref 21/04057/ACL, dated 15 October 2021, was refused by notice dated 17 December 2021.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the use of land adjacent to 2 New Meadow Aylesbury as garden/drive.

Summary Decision: Appeal B is allowed.

Appeal C Ref: APP/J0405/W/21/3284824

Land at 2 New Meadow, Aylesbury, Bucks HP21 7AN

- 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 Mr M Hussain against the decision of Buckinghamshire Council.
- The application Ref 21/01904/APP, dated 30 April 2021, was refused by notice dated 12 October 2021.
- The development is the change of use of land from amenity land to domestic residential garden.

Summary Decision: Appeal C is dismissed.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 24th July 2023.

Preliminary Matters

1. Appeal A was originally made only under section 174(d)¹ of The Town and Country Planning Act 1990 as amended (the 1990 Act). However, in his grounds of appeal, the appellant suggests that a garage has not been erected. This is a matter that falls squarely to be considered under ground (b), which is that the matters stated in the enforcement notice have not occurred. A ground (b) appeal was, therefore, subsequently added and the parties have made submissions with regard to this.
2. On a separate matter, Appeal A relates to an enforcement notice issued on 31 January 2022. The copy of the enforcement notice submitted by the appellant with Appeal A differs from the copy of the notice submitted by the Council with the appeal questionnaire. The notice submitted by the appellant includes an allegation of “the change of use of land from amenity land to **domestic residential garden land**” (my emphasis).
3. The Council say that the Notice submitted with the questionnaire, which refers to an allegation which includes “the change of use of land from amenity land to **residential land**” (my emphasis), is the only notice that was issued on 31 January 2022. It confirms that this is the notice that it has placed on the public register. The Council say that the notice submitted by the appellant with his appeal is a draft notice, despite it having been signed and dated.
4. Having regard to the Council’s position, that it issued only one notice, there is a case being made that the appellant has not been served correctly with that notice. That the notice he received differs in some way from the notice issued by the Council is a matter that would fall to be considered under a ground (e) appeal², which is that copies of the enforcement notice were not served as required by section 172 of the 1990 Act. In view of this, I wrote to the parties to confirm that there is a ground (e) appeal to be considered and to asked for comments on this matter. I have taken any comments received into account in determining this appeal.
5. On a final matter, the description of the breach of planning control and requirements of the notice referred to in the banner heading above have been taken from the version of the Notice the Council says has been issued.

The Notice (Appeal A) and the LDC Application (Appeal B) – Description of the Use

6. Before considering the grounds of appeal on Appeal A, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of the 1990 Act include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the

¹ S.174(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

² Section 174(e) of the 1990 Act.

correction or variation would not cause any injustice to the appellant or the local planning authority.

7. In the case of Appeal B, the powers of correction include those set out in section 191(4) of the 1990 Act.
8. In addition to operational development, the enforcement notice refers to a use of the land. The description of this use given in the enforcement notice differs from that given in the LDC application form. The first refers to a use as residential land and the second refers to a use as a garden/drive. Whilst the difference between the two might be limited, it is important to clarify the nature of that use.
9. Having considered the evidence before me, this points to an existing use of the land that is functionally connected to the dwelling at 2 New Meadow. Although the land is fairly open on the two sides adjoining the highway and the remaining amenity land to the north, it is occupied by the appellant who resides at No 2. It also has the appearance of land that is physically connected to the dwellinghouse at No 2. It is clear, therefore, that land is used in a way that is incidental to the dwellinghouse at No 2, and that it falls within the same planning unit as this adjoining property. Although an incidental use of the land is not specified in the evidence, I am satisfied that I would not be at odds with either parties' case, were I to determine Appeal A and Appeal B on this basis.
10. Notwithstanding this, whilst the enforcement notice refers to a residential use of the land, it does not make clear that this residential use is incidental to No 2, rather than it being a stand alone residential use occurring within its own planning unit. Accordingly, and in the interests of clarity and precision, I intend to correct the notice so that it refers to a residential use of the land that is incidental to the dwellinghouse at No 2. In doing so, I am satisfied that injustice would not be caused to either party, not least because this would be consistent with the parties' evidence of how the land is currently used.
11. In view of the above, and notwithstanding my conclusions on the ground (b) or (d) appeal, it will also be necessary to vary step 1 of the requirements, so that it is consistent with this allegation.

The Notice – Remaining Matters (Appeal A only)

12. Still on the matter of the alleged use, I note that part 1 of the enforcement notice states that there has been a breach of planning control falling within section 171A(1)(a) of the 1990 Act, which is the carrying out of development without the required planning permission. Development is defined in section 55(1) of the 1990 Act as including 'the making of any material change in the use of any building or other land'.
13. The notice does not, however, allege that a **material** change in the use of the land has occurred. It therefore follows that the allegation in the notice would not constitute development for the purposes of section 55(1) of the 1990 Act.
14. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Because the breach of planning control as alleged in the notice does not constitute the development of land, it follows that planning permission would not be required for it. The notice is defective in that respect.

15. Having considered the appellant's case, he has clearly understood that the allegation was intended to refer to a material change of use. As such, I am satisfied that a correction of the notice to include reference to a material change of use would not cause injustice in this case.
16. Finally, I find the word 'creation' used to describe the laying of the hardstanding driveway to be vague. There is no dispute that this is an operation and, so, has been constructed. As such, this part of the allegation would be more precise if described as the construction of a hardstanding driveway. So that the associated requirement is consistent with the allegation, I also intend to correct step 2 of part 5 of the notice, to include the word 'hardstanding' before the word 'driveway'. In making such minor corrections, I am satisfied that injustice would not be caused.

Ground (e) Appeal for Appeal A

17. An appeal on ground (e) is that copies of the enforcement notice were not served as required by section 172 of the 1990 Act.
18. Whilst the Council maintain that the appellant was served with the version of the notice it submitted with the appeal questionnaire, this is disputed by the appellant. Notwithstanding this, the appellant confirms that he has received a version of the notice that has been signed and dated, and that his appeal was made on this basis.
19. The principal difference between the two versions of the notice relates to the allegation of a [material] change of use and the associated requirement. Whilst one refers to residential garden land and garden land, the other refers to residential land. There is little difference between the two. Indeed, in their evidence both parties refer to a use of the land for residential purposes in association with the adjoining dwelling at No 2. It is this consistency in this element of the parties' evidence that has prompted me to use my powers of correction to make the allegation and associated requirement more precise in its reference to the nature of the residential use.
20. Having regard to the above, I am mindful of the provisions of section 176(5) of the 1990 Act. The appellant received a version of the notice that alleges a breach of planning control that is not materially different to the breach alleged in the version the Council says was issued. Regardless of whether or not the appellant received the version of the notice the Council says was issued, a valid appeal has been made against it. Even if the appellant has only received the version of the notice submitted with his appeal, I can see no reason why his case would have been any different, had he received the correct version of the notice. Accordingly, if it were the case that the Council had failed to correctly serve the appellant with a copy of the enforcement notice, I cannot conclude that the appellant has been substantially prejudiced by this.
21. For the reasons given above, I conclude that the appeal on ground (e) should fail.

Ground (b) for Appeal A

22. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred. In order to succeed on this ground, the appellant must

- demonstrate that on the balance of probability the matters stated in the enforcement notice have not occurred.
23. The appellant's ground (b) appeal relates only to the allegation of the erection of a garage. The appellant says that he had intended to build a garage and that he constructed the rear wall. However, he says that the garage has not been constructed and what is there is a back garden wall.
 24. The Council acknowledge that what is on site is not a garage, but suggest that there is no doubt that a garage is under construction. It points to the dimensions of the foundations and the partly constructed walls, and suggests that these match the dimensions of a garage building for which an application for planning permission had recently been made by the appellant.
 25. The appeal site is to the side of the dwelling at No 2, adjacent to its gable end. Having visited the site, I noted the concrete block wall to the rear of the site, in line with, and extending from the main rear wall of No 2. This has three pillars and a doorway leading to the rear of No 2.
 26. The concrete block wall is taller than most domestic means of enclosure and its three pillars suggest that it has been designed to support more than a simple boundary enclosure. Indeed, there is a small return at the end of the wall that suggests an intention for a further wall parallel with the gable end at No 2.
 27. I can agree that the allegation of the erection of a garage is not correct. However, in view of the above, I find it more likely than not that the development on the appeal site includes the partial construction of a garage. In finding as such, I do not consider myself at odds with the appellant, particularly as he says that he was 'intending to build a garage there so we replaced the back wall'. This suggests that the concrete block wall was to be part of the garage he had intended to construct.
 28. The Council invite me to correct the allegation relating to the garage and replace it with an allegation of 'a partially built structure'. Whilst the Council suggest that the appellant would not have advanced any different grounds of appeal were I to do so, I cannot be satisfied of this.
 29. The appellant's ground (d) appeal relates to the use of the land and to the hardstanding driveway. It does not relate to any other matter alleged in the notice. Had the allegation been of a partially built structure, whatever that might be, the appellant may have suggested that the matter does not constitute a breach of planning control.
 30. Furthermore, the appellant says that what is there is a back garden wall for his neighbour's garden. It clearly performs some function in enclosing adjoining land. Accordingly, I cannot be satisfied that a ground (a) appeal is unlikely to have been made, were I to correct the allegation as suggested. For this reason, I can only conclude that injustice would be caused to the appellant were I to correct the allegation as it relates to the erection of a garage.
 31. My conclusion above is not, however, fatal to the notice. The allegation of the erection of a garage is a discreet matter and can, therefore, be removed from the notice without causing detriment to the notice as it relates to the remaining matters.

32. Furthermore, by removing the part of the allegation that relates to the garage, injustice would not be caused to the Council, particularly in view of the provisions of section 171B(4) of the 1990 Act, which allow the Council to issue a further enforcement notice in respect of this matter, should it be considered expedient to do so.
33. Having regard to the above, as a matter of fact and degree I find that the development consisting of the erection of a garage has not occurred, on the balance of probability. The ground (b) appeal should, therefore, succeed insofar as it relates to this matter. I will remove this element from the allegation, along with the associated requirements. The remaining grounds of appeal, including the ground (a) appeal and the deemed planning application, do not fall to be considered insofar as they relate to the erection of a garage.

Ground (d) for Appeal A and Appeal B

The Main Considerations

34. An appeal on ground (d) is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The starting point for the ground (d) appeal is the date of the breach.
35. In addition to the use of the land alleged in the notice, the appellant's ground (d) appeal also relates to operational development, referred to in the notice as a hardstanding driveway. With regard to the use, in order to succeed on this ground, the appellant must show that, prior to the issue of the enforcement notice, the use subject of the notice, once corrected as intended, had been continuous for a period of ten years beginning with the date of the breach³.
36. As for the operational development, the appellant does not suggest that the driveway is lawful because it is permitted. Such a matter would, of course, form the basis of a ground (c) appeal⁴, which has not been made in this case. Accordingly, for the appeal as it relates to the hardstanding driveway to succeed, the appellant must show that it had been substantially completed more than four years prior to the issue of the enforcement notice.
37. Turning to Appeal B, it is worth noting that this relates only to the use of the appeal site, and not to any operational development, including that referred to in the paragraph above. Section 191(4) of the 1990 Act indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. For the appellant to succeed, he must demonstrate that on the date the LDC application was made, the use for which the LDC was sought had been continuous for a period of ten years or more. The date ten years prior to the date the LDC application was made is 15 October 2011.

³ In accordance with section 171B (3) of the 1990 Act.

⁴ Section 174(c) of the 1990 Act - that the matters stated in the enforcement notice (if they occurred) do not constitute a breach of planning control.

38. The test of the evidence in the case of both the ground (d) and Appeal B is the balance of probability and the burden of proof is on the appellant. Paragraph 006 of the Planning Practice Guidance document on Lawful development certificates advises that, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. This advice is relevant to the ground (d) appeal, as well as Appeal B.

Reasons

- The material change of use

39. For the reasons I have already given, Appeal B and this element of the ground (d) appeal will be considered on the basis of a residential use of the land that is incidental to the dwellinghouse at No 2.
40. The appellant's evidence points to a material change of use of the land to an incidental residential use in 2006, when he started to park his vehicles on the land. He says that at this time he carried out works to the land, which included the laying of an aggregate base, followed by a rubber matting. He suggests that this was then laid with topsoil and grassed.
41. The appellant has provided a series of statutory declarations to support his case, three of which are from local residents. The first resides some distance along New Meadow and so is not within sight of the appeal site from her property. Furthermore, she does not say how often she passes the appeal site. Nevertheless, Ms Mann says that the appellant and his wife have used the land since 2006 to park their cars on. She says she also recalls the building work in 2006.
42. The other resident of New Meadow lives in the property opposite the appeal site. As such, it is likely that she would observe the appeal site on a daily basis. Ms Roberts also refers to the works to the land in 2006 and its use since that time by the appellant for vehicle parking. She also says that the appellant has maintained the land as his personal garden and drive.
43. With regard to the work to the appeal site in 2006, the appellant has provided a statutory declaration from Mr Eggleton, who says he was a building inspector in 2006, and that he inspected the work to extend No 2 at that time. He says that he noted the works to the appeal site at the time of his inspection of the works at No 2. Mr Eggleton lives on Queens Mead, which is the road that forms a junction with New Meadow, close to the appeal site. He says he walks past the site on a daily basis and so confirms that the appellant and his wife have used the land to park their vehicles on, and that they use the land as their personal garden.
44. The final statutory declaration is from the contractor (Mr Wiggins) who carried out the work to the land in 2006. His description of the work is consistent with the appellant's. The appellant has provided a document from Absolute Installations, which he says is an invoice for the works. This is dated November 2006 and provides a description of the works undertaken.

45. The accounts provided in the declarations are consistent and corroborate the appellant's claims with regard to the works to the land, when he started using the land, and how he has continued to use it since that time.
46. I note the Council's suggestion, that the declarations should be afforded limited weight as the evidence has not been tested under cross examination. However, the declarations still carry with them the sanctions imposed under the Perjury Act 1911. The weight attributed to them should reflect this, and reflect that the evidence given in each declaration is consistent with that given in the others.
47. On the matter of the evidence of Mr Wiggins and the works invoice, I have had regard to the Council's case, that it has not been able to find any reference to the company Absolute Installations, and that this company are not mentioned in Mr Wiggins' declaration. Further to this, I note that the invoice does not provide a VAT breakdown of the cost or an invoice number, which are matters usually seen on such documents. Nevertheless, I do not find the invoice document to be inconsistent with the evidence of Mr Wiggins, as suggested. Rather, I give the document limited weight in corroborating Mr Wiggins' evidence, particularly as Mr Wiggins himself does not explain the link between the two.
48. I note that the Council say that the land is publicly maintained highway. I have also had regard to the Council's grass cutting plan from June 2014, which the Council suggest shows that it continues to mow and maintain the land. This evidence does not, however, discount the possibility that the appellant has also maintained the land since 2006 and that he has used the land for vehicle parking since that time.
49. I have had regard to the two street view images provided by the Council. I agree that the works the appellant says were undertaken in 2006 are not obvious in these photographs. However, I do not find this surprising. The finished surface of the works described by the appellant and other of his witnesses was a return of the land to grass. There has also been a gap of some two years between the works and the earliest street view photograph, during which time it is likely that a grass finish would establish. I can see some patchy areas of grass on the land in both photographs that might indicate vehicle movements on the land. I also note that the land is open to the remainder of the amenity land to the north. The photographs are, in my judgement, inconclusive in demonstrating a use of the land at that time (i.e. 2008 and 2012) consistent with either the appellant's or the Council's claim.
50. Notwithstanding this, I acknowledge that there is a marked change in the appearance of the land now, when compared to its appearance in the 2012 and 2008 street view images. The land has a similar appearance to the remainder of the amenity land in these images, whereas now its appearance is of land that is associated with the property at No 2. Nevertheless, I have insufficient evidence to contradict the appellant's claim that there has always been a functional connection between the use of the land and No 2 since 2006. Neither is there anything before me that leads me to conclude that the change in the use of the land occurred only on completion of the more recent works to lay the hardstanding driveway. Indeed, I have no evidence to indicate that there has been any change in how the appellant has used the land since 2006, either before or after these more recent hard surfacing works.

51. The appellant's evidence in this case is precise and unambiguous. The statutory declarations are consistent and corroborate the appellant's claims. These carry substantial weight in this case. The Council's evidence casts some doubt over the appellant's claims. However, in the balance, it is not sufficient to make the appellant's version of events less than probable. Accordingly, I conclude that, on the balance of probability, the use of the land for a residential use incidental to the dwelling at No 2 has continued substantially uninterrupted for a period in excess of 10 years from the date of the breach and was, therefore, lawful on the date the LDC application subject of Appeal C was made and on the date the enforcement notice subject of Appeal A was issued.

- Hardstanding

52. To confirm, the hardstanding driveway does not form part of the development subject of Appeal B (i.e. the LDC appeal). The enforcement notice subject of Appeal A alleges the creation of a hardstanding driveway. Whilst the appellant has referred to a driveway in his grounds of appeal, his evidence on this matter as it relates to a ground (d) appeal is limited.
53. Firstly, the appellant refers to the gravel and rubber matting, overlaid with topsoil and grass in 2006 as a hard standing. He then refers to Google maps from 2017 which he says shows a dropped curb installed. He then refers to a gravel driveway in photographs from 2018 and 2020.
54. With regard to the works undertaken in 2006, I have noted the Council's 2008 and 2012 street view photographs, which show an established area of grass. The surfacing visible in these photographs, and described in the appellant's evidence, is materially different to the hardstanding driveway that is the subject of the notice, and as I observed during my site visit.
55. Moving on to the gravel driveway described by the appellant, I note the lack of evidence, including the photographs the appellant refers to, to substantiate his claim with regard to the laying of a gravel driveway on or before 2018. Notwithstanding this, it would not be reasonable to describe the hard surfacing that is the subject of the enforcement notice as a gravel driveway. Although it might well form a hard surface, a gravel driveway suggests a loose finished material, whereas the surfacing I observed on site forms a solid finish without any loose material.
56. It may have been the case that gravel was laid prior to the laying of the hardstanding on site today. If so, this demonstrates that the hardstanding driveway that is the subject of the notice was not substantially completed on or before 2018. Indeed, there is a lack of evidence to demonstrate the date when the hard surfacing I observed on site was laid.
57. Having regard to all evidence before me, I conclude that the appellant has not discharged the burden of proof that is upon him with regard to the hardstanding driveway. I find it more likely than not that this operation had not been substantially completed more than four years prior to the issue of the enforcement notice subject of Appeal A.
58. In view of this conclusion, the enforcement notice must be upheld so that it remains in effect in so far as it relates to the hardstanding driveway. I will,

therefore, vary the notice in so far as it relates to the material change of use. In this regard, as there is no dispute that the material change of use has occurred, reference to it (in its corrected form) will remain in the allegation. However, as I have concluded that no enforcement action may be taken against it, the notice will be varied so as to remove the requirement for the use to cease.

The Appeal Against the Refusal of Planning Permission - Appeal C

Main Issues

59. Notwithstanding my conclusions above, I must still determine Appeal C, which relates to the change of use of land from amenity land to domestic residential garden.
60. The main issue in this case is the effect of the development on the character and appearance of the surrounding area.

Reasons

61. The appeal site is within a predominantly residential housing estate. The estate has a fairly spacious layout, where most properties enjoy a front garden and driveway that is separated from the carriageway by a pavement and a grass verge. The appeal site is close to the junction of New Meadow with Queens Mead, and is adjacent to a parcel of open land that has been laid to grass. This has been referred to by the parties as 'amenity land'. There is a similar open and grassed parcel of land on the opposite corner of the junction.
62. Having viewed New Meadow and other surrounding streets, I note that grass verges and open grassed areas at road junctions are a common feature throughout. These open, undeveloped areas are important as they give the estate a well designed landscape setting. They add to its spaciousness and, overall, make a substantial contribution to the pleasant character of the area.
63. The appeal site previously formed part of the adjacent amenity land. Its current use is described in the application form as domestic residential garden. It has been laid with a hard surface and at the site visit I noted that it is being used for the parking of four vehicles.
64. Although the site is open on two sides, its current use means that the site no longer has the character of a shared space. Rather, the land clearly has a visual and functional relationship to No 2 alone; it has the character of private land. I acknowledge that the development has not resulted in the total loss of the whole parcel of amenity land. Nevertheless, the development is a significant encroachment of an active private use into the land and has, therefore, resulted in the loss of a parcel of land that makes a positive contribution to the character of the area.
65. I conclude, therefore, that the development has had a detrimental effect on the character and appearance of the surrounding area. For these reasons, I find the development in conflict with Policy BE2 (Design of New Development) of Vale of Aylesbury Local Plan 2013 – 2033 adopted September 2021. This is because the development fails to respect and complement the physical characteristics of its surroundings and the local distinctiveness of the locality. As the development is unsympathetic to, and fails to respond to, the local

character, I also find it in conflict with paragraph 130 of the National Planning Policy Framework, as well as the National Design Guide.

Other Matters

66. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.
67. I have had regard to the examples of similar development that have been drawn to my attention, some of which I was able to view on the site visit. Whilst some of these examples compare to the development subject of the appeal, most were not within the context of the appeal site and do not, therefore, provide examples of development that is characteristic of the area surrounding the appeal site.
68. Notwithstanding this, I do not have the full details of the examples given. As such, I do not know whether the development is historic, whether permission has been granted for the development shown, or the circumstances under which the development may have been permitted. I cannot, therefore, make an informed comparison with these cases and the development that is before me. Notwithstanding this, none of the examples justify the grant of permission for development that is, in my judgement, harmful.
69. Although the development may be of benefit to the appellant, I have been unable to identify any benefit to the wider community.

Planning Balance and Conclusion

70. I have identified conflict with the development plan in this case. I have had regard to all material considerations, but find these of insufficient weight to indicate that my determination should be made otherwise than in accordance with the development plan when read as a whole. Neither can I be satisfied from the evidence before me that the imposition of conditions would overcome the harm I have identified. Accordingly, I conclude that planning permission ought not to be granted.

Conclusions - Appeal A

71. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect in so far as it relates to the erection of a garage. The appeal succeeds on ground (b) to that extent.
72. I also conclude that, on the balance of probabilities, the appeal on ground (d) should succeed in part in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control. Those matters, once corrected as I intend, are the material change of use of the land from a use as amenity land to a residential use incidental to the dwellinghouse at 2 New Meadow.
73. Otherwise, the appeal is dismissed. I will uphold the notice with corrections and variations.

Conclusions – Appeal B

74. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of land adjacent to 2 New Meadow, Aylesbury, Bucks HP21 7AN as garden/drive was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

Conclusions – Appeal C

75. For the reasons given above, I conclude that the appeal should be dismissed.

Formal Decision – Appeal A

76. It is directed that the enforcement notice is corrected and varied by:

- The deletion from part 3 of the words 'the change of use of land from amenity land to residential land and the erection of a garage and creation' and their substitution with the words 'the material change of use of land from a use as amenity land to a residential use incidental to the dwellinghouse at 2 New Meadow, Aylesbury, Buckinghamshire and the construction';
- The deletion from part 5 of the words 'Step 1: Cease the use of the land for residential purposes';
- The deletion from part 5 of the words '(demolish) the garage structure (including foundations) and';
- The deletion from part 5 of the words 'Step 2' and their substitution with the words 'Step 1'; and
- The deletion from part 5 of the words 'Step 3' and their substitution with the words 'Step 2'.

77. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Formal Decision – Appeal B

78. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Formal Decision – Appeal C

79. The appeal is dismissed.

J Moss

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 15 October 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated, on the balance of probability, that the use of the land as a garden/drive incidental to the dwellinghouse at 2 New Meadow has continued substantially uninterrupted for a period in excess of ten years, and that the use was lawful on the date the application for a lawful development certificate was made.

Signed

J Moss

Inspector

Date:

Reference: APP/J0405/X/22/3290102

First Schedule

The use as a garden/drive incidental to the dwellinghouse at 2 New Meadow.

Second Schedule

Land at 2 New Meadow, Aylesbury, Bucks HP21 7AN

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 30 August 2023

by **J Moss BSc (Hons) DipTP MRTPI**

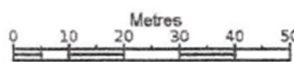
Land at: 2 New Meadow, Aylesbury, Bucks HP21 7AN

Reference: APP/J0405/X/22/3290102

Scale: Not to scale



ced 20 Oct 2020 from the Ordnance Survey MasterMap (graphy) Database and incorporating surveyed revision ble at this date.



2, New Meadow, Aylesbury
HP21 7AN