



Appeal Decision

Site visit made on 25 July 2023

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

an Inspector appointed by the Secretary of State

Decision date: 11 October 2023

Appeal Ref: APP/J0405/C/22/3311059

Land at 1 Langstone Close, Aylesbury, Buckinghamshire HP20 2DE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Miss Deborah Lockyer against an enforcement notice issued by Buckinghamshire Council - North Area.
- The notice, numbered NC/22/00509/OPHH, was issued on 27 October 2022.
- The breach of planning control as alleged in the notice is that without planning permission, the material change of use of the Land shown hatched in black on the attached plan, to residential facilitated through the erection of close board fencing, a wooden pergola and wooden decking.
- The requirements of the notice are to:
 - Step 1- Permanently cease the unauthorised residential use of the Land.
 - Step 2- Permanently remove the close board fencing, wooden pergola and decking from the Land and ensure all materials used in their construction is permanently removed from the Land.
 - Step 3- Reinstate the Land to its appearance immediately prior to the unauthorised development which consisted of open grassland and back-fill, using soil, any holes created by the removal of fence, fence posts and cement from the Land.
 - Step 4- Permanently remove any debris or materials from the Land that arise as a result of complying with steps 1, 2 and 3 of this notice.
- The period for compliance with the requirements is six (6) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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 allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Matters Concerning the Notice

1. In paragraph 3, delete the words 'shown hatched in black on the attached plan' as it is unnecessary. Paragraph 2 has already described 'the Land' to which the notice relates, as such, there is no requirement to refer to the attached plan in the notice.
2. 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 been identified via a plan and the allegation.
3. In paragraph 5 (Step 2) delete the word 'permanently' as it is unnecessary. Also, the words 'and ensure all materials used in their construction is permanently removed from the Land.' Although I appreciate the Council are only seeking works to clear the land, paragraph 5 (Step 4) already requires the removal of the debris and materials resulting from the works in Steps 1 to 3. As such, there is no need to repeat this requirement.

4. In paragraph 5 (Step 3), delete the words 'reinstate the Land to its appearance immediately prior to the unauthorised development which consisted of open grassland and back-fill, using soil, any holes created by the removal of fence, fence posts and cement from the Land' and substitute it with the words 'restore the Land to its previous condition.'
5. Although I accept that the Council are being clear about the required work, it is unnecessary to provide such detail when those works could be going beyond what is required to remedy the breach. The appellant would be best placed to know the previous condition of the Land, and this is sufficiently precise to provide the appellant with an understanding of what is required.
6. In paragraph 5 (Step 4), as the word is unnecessary and for consistency throughout the notice, delete the word 'permanently'.
7. The above-mentioned corrections do not fundamentally change the matters alleged or its requirements. As such, they would not cause injustice to the appellant or Council.

Background and Preliminary Matters

8. The appellant accepts a fence has been erected, however, it is disputed that the Land amounts to 0.01 hectares (100 sqm) and the fence erected is 2.5m high, as suggested by the Council in their Statement of Case. The appellant confirms the Land amounts to approximately 364 sq ft (32 sqm) and the fence is 1.8m high. Based on the evidence before me, and with the benefit of my site visit, I have no reason to disagree with the appellant's position regarding the size of the site and the height of the fence. I have considered the appeal on this basis.
9. The Council describes the Land as 'amenity land', which they indicate is an important element of the open plan design of residential estates such as this. However, no details of the original estate approval have been submitted with the appeal, which clarifies what is meant by the designation of 'amenity land'. The appellant has confirmed that the land was an open area of grassland, but the Land is privately owned and has been maintained by her. 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.
10. It is acknowledged that the adjoining neighbour at 2, Turner Close has carried out a very similar development to that alleged in the notice. An indication from the Council is that these works are being investigated as a breach of planning control, but no formal action has been taken yet. An informal agreement is in place for the owner of No 2 to relocate the fence to its original position. Although relevant information to the appeal, it should be confirmed that the works at No 2 do not form part of the Land or the allegation set out in the notice.

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

11. The **main issue** is the effect of the development on the character and appearance of the area.

Reasons

Character and Appearance

12. The area identified as 'the Land' is to the side and rear of 1, Langstone Close, but also adjoins Cleveland Park. Due to its position, the Land is more prominent and

has a stronger visual relationship with Cleveland Park rather than Langstone Close. Cleveland Park is a long and winding residential street with several cul-de-sacs located directly off it. The dwellings on Cleveland Park and the adjoining cul-de-sacs are a mix of two storey, semi-detached and terraced dwellings, which are similar in scale and appearance, finished in brick.

13. There is an openness in the vicinity, which adds value to the character and appearance of the area. This sense of openness is largely derived from the properties that front Cleveland Park set behind gardens and driveways, which are largely open with low or no enclosures. Also, there are appreciable gaps in the built form created by the junctions into the cul-de-sacs. However, there is an equal mix of properties along Cleveland Park, which do not front the road but are orientated so that they back onto it or adjoin at junctions. These properties typically have high fences close to Cleveland Park, enclosing the side and rear private garden areas.
14. The development has enclosed a rectangular strip of grass between the side boundary of 1 Langstone Close and Cleveland Park. The pergola and decking are not visible from Cleveland Park, but the fence is visible and extends from the side of No 1 to the rear boundary. The fence is approximately 1.8m high with concrete posts and timber panels. Due to the position of the fence and its relationship to Cleveland Park, I am of the view that it would be typical of many properties that have enclosed land to the side and adjoin Cleveland Park in this manner. Further to this, the materials, length and height of the fence are also comparable to other fences in the locality.
15. The design, height and position of the fence together with its relationship to the road means it would not appear as a dominant or incongruous feature in the street scene. Although the development has enclosed an open area of grassed land to the side, the front and corner of No 1 remains open by virtue of the driveway, the garden and a hedgerow. In this respect, the enclosing of the land to the side but with the retention of the open frontage means it is not damaging to the sense of openness, which adds value to the character and appearance of the area.
16. 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. Paragraph 8.47 of the subtext to the policy suggests amenity can be harmed by impacting on privacy, noise, light pollution, fumes or odours, excessive or speeding traffic, loss of light and outlook. As the issues raised relate to the character and appearance of the area, and there are no concerns raised over the impact of the development on neighbour's living conditions I do not consider the policy as relevant to this issue.
17. Accordingly, the effect of the development on the character and appearance of the area is acceptable. The development complies with the overall 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. This policy, 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.

18. The appeal scheme would also comply with section 12 of the National Planning Policy Framework 2021, which seeks good design that is sympathetic to local character.

Other matters

19. The Council has drawn my attention to an appeal decision¹ at 18 Chequers End. I have not been provided with the full details of this case, and so it is difficult to make a comparison. However, based on the evidence before me, this appeal site is not within proximity to Langstone Close, and is situated in a cul-de-sac with a different character and appearance. The developments are not therefore directly comparable, and as such, I have considered the appeal proposal before me on its own merits.
20. I have considered the Council's argument that the grant of planning permission would set a precedent for other similar developments. However, as I have concluded that this development would be acceptable, I can see no reason why it would lead to harmful developments on other sites in the area. Furthermore, each application and appeal must be determined on its individual merits, and a generalised concern of this nature does not justify withholding permission.

Conditions

21. No conditions have been suggested by the Council in this instance. The development is completed, and the proposal is to regularise the works as built. As I have found the material change of use of the land, together with the fencing, pergola and decking is acceptable, no conditions are necessary.

Conclusion on Ground (a) and Deemed Planning Application

22. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the material change of use of the Land to residential facilitated through the erection of close board fencing, a wooden pergola and wooden decking, as described in the notice as corrected. The appeal on ground (f) does not therefore fall to be considered.

Formal Decision

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

In paragraph 3, *delete the words 'shown hatched in black on the attached plan'.*

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

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

In paragraph 5 (Step 3), *delete the words 'reinstate the Land to its appearance immediately prior to the unauthorised development which consisted of open grassland and back-fill, using soil, any holes created by the removal of fence, fence posts and cement from the Land' 'and substitute it with the words 'restore the Land to its previous condition.'*

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

¹ Appeal Ref: APP/J0405/W/21/3283886

24. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out. Namely, the material change of use of the Land to residential facilitated through the erection of close board fencing, a wooden pergola and wooden decking on land at 1 Langstone Close, Aylesbury, Buckinghamshire HP20 2DE as shown on the plan attached to the notice.

M. P. Howell

INSPECTOR