



Appeal Decision

Site visit made on 6 September 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

Appeal Ref: APP/J0405/C/22/3313990

Land at 285 Prince Rupert Drive, Aylesbury, Buckinghamshire HP19 9DF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Kane Dick against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 25 November 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 close board fence.
- The requirements of the notice are:
 - Step 1: Permanently cease the unauthorised residential use of the Land.
 - Step 2: Permanently remove (demolish) the closeboard fencing, concrete posts and concrete gravel boards as shown with a black line on the attached plan (number 2), the railings and hedgerow shown with a red line on the attached plan (number 2), and grass 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 the fence posts from the Land.
 - Step 4: Reinstate the Land to its appearance immediately prior to unauthorised development which consisted of a tarmac pathway, hedgerow planting to the eastern side and 1m black iron picket fencing to the eastern side.
 - Step 5: Permanently remove any debris or materials from the Land that arise as a result of complying with Steps 1, 2, 3 and 4 of this Notice.
- The period for compliance with the requirements is:
Within 4 months of the Notice taking effect.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The copy of the Enforcement Notice provided by the appellant, which appears to be a photograph of the copy they received, does not contain a date of issue. However, the Council have provided a copy which contains the date 25 November 2022. This matter has not been raised by the appellant. Notwithstanding, there is no contention that the appellant did not receive the notice, and an appeal has been made against it within the requisite time. As such, there has been no prejudice to the appellant, and I am able to proceed to determine the appeal on this basis.
3. The appellant contends that the notice does not identify, at steps 1 and 2 of the requirements, which land is referred to. The notice does identify that it relates to the whole of the land surrounding the property of 285 Prince Rupert

Drive. However, it is clear from the submissions of both the main parties that issue is taken with the alleged change of use of a previously tarmacked path and the erection of fencing to facilitate this. As such, notwithstanding that the plan does not identify the specific area of this path, I am satisfied that the requirements are sufficiently unambiguous, particularly as step 4 of the requirements outlines how the land is to be reinstated.

4. At final comment stage, the appellant states that they would have appealed under ground (a) if they had been aware of the Council's full case. However, no fee has been paid and as such I am unable to consider the appeal under this ground.

Ground (c)

5. This ground is that those matters alleged in the Enforcement Notice do not constitute a breach of planning control.
6. The appeal site comprises an area of land located to the side of an existing dwelling. The area is enclosed by close boarded timber fencing to the side and rear, with metal railings to the front. At the time of my site visits, I observed that the entirety of the enclosed area appeared to be a grassed area.
7. The Council have submitted details of a "Streetview" image of how the site appeared previously. This comprised a strip of garden to the side of the dwelling, enclosed by metal railings, bordered by a tarmacked pathway running along the length of the railings.
8. It is clear from this information that the part of the appeal site to the side of the dwelling previously comprised both an area of garden associated with it and an area that was open and allowed access to members of the public to pass over, thereby comprising an area of amenity land. I note that the appellant owns the entirety of the area of land and asserts that the public have no right to pass over it. Nonetheless, in land use terms it was an area open to the public and did not form part of the garden of the dwelling. As such, while the appellant contends that the appeal site has always been part of the curtilage of the property, in my view, the area formerly occupied by the footpath was not curtilage. The part of the site which was formerly outside of the area enclosed by railings, that has now been enclosed, has therefore been subject to a change of use to residential.
9. In respect of the boundary fencing, the appellant asserts that as this is below 2 metres in height, this has been carried out in accordance with Class A, Part 2 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015. The appellant states that there are no restrictions relating to the removal of fencing, or the type of fencing that may replace it. There is reference to restrictions being in place only until the end of July 2013. However, this would appear to refer to restrictive covenants imposed as part of the purchase of the property.
10. The Council highlight that condition 11 of the reserved matter approval in respect of landscaping states:

"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification), no enlargement of any dwelling nor the erection of any garage shall be carried out within the curtilage of any dwelling

the subject of this permission, no fences, gates, or walls shall be erected within the curtilage of any dwellinghouse forward of any wall of that dwelling which fronts onto a highway, and no buildings, structures or means of enclosure shall be erected on this site which is the subject of this permission, other than those expressly authorised by this permission." (my emphasis)

11. This condition prevents the erection of means of enclosure within the appeal site, which includes the area of land where the fencing has been erected. As such, the erection of the fencing is not permitted development and, without planning permission, is a breach of planning control.
12. Even if the fence was permitted development, the courts have held that where an enforcement notice alleges a material change of use and requires certain works to be removed, the works must have been integral to the making of the material change of use. In this particular case, it is clear to me that the fence has been erected to facilitate the unauthorised material change of use of land from open amenity space to residential. Consequently, it cannot be considered as permitted development in any event.
13. The appellant also contends that the works should not be considered development under Section 55 (2)(d) of the Town and Country Planning Act 1990. However, this section refers to the use of any buildings or land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse. The development enforced against does not comprise a building and I have found above that the part of the appeal site where the fencing has been erected is not part of the curtilage of the dwelling. As such, this does not dissuade me that a breach of planning control has occurred.
14. For the foregoing reasons, the appeal under ground (c) fails.

Hidden ground (f)

15. Ground of appeal (f) is that the requirements of the notice are excessive and that lesser steps would overcome the objections. In this case, the enforcement notice seeks the cessation of the use, removal of the fencing and reinstatement of the land. As such the purpose is clearly to remedy the breach.
16. While not indicated on the appeal form, the appellant in their final comments makes reference to step 2 of the requirements of the notice being excessive, in that the removal of all posts is not necessary given that they could be required for other fencing and the fence panels can be slotted out. While these are lesser steps that could be undertaken, to allow the fence posts to be retained would not address the purpose of the notice in that it would not remedy the entire breach of planning control. As such, I consider that the steps outlined in the notice are reasonable and necessary.
17. The hidden appeal on ground (f) therefore fails.

Other Matters

18. The appellant mentions that they consider the EN to be unclear, in that no breaches are stated and that there is no reference to the removal of permitted development rights. However, I consider the EN to be clear in what is alleged, and the appellant is able to understand what is alleged to have been done and what is required to put that right. There is further reference to the timing of

the issuing of the notice, being late in November and coming into effect at the start of January. While I am sympathetic that this would have covered the period of the Christmas holidays, the notice provides in excess of the required 28 days between issue of the notice and it coming into effect. As such, the necessary requirement has been met.

19. My attention is drawn to the use of other fences in the area, the previous growth of landscaping and its lack of maintenance, that the erection of the fencing facilitates enhanced safety and privacy. However, these relate to the planning merits of the development and in the absence of a ground a) appeal, they also are not matters that influence my decision.
20. In terms of Step 4 of the requirements of the notice, the appellant states that there is no detail of the style, size or position of any hedgerow that is to be reinstated. However, the appellant is best placed to know what existed at the site prior to the unauthorised works taking place and thus is likely to be aware of what should be reinstated, if in fact any reinstatement is necessary given that it is also stated that the hedge remains beyond the fencing. The requirement is to reinstate the land to its appearance immediately prior to the unauthorised development and this is in my view a reasonable and sufficiently precise requirement.

Conclusion

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

Martin Allen

INSPECTOR