



Appeal Decision

Site visit made on 21 November 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 30 January 2024

Appeal Ref: APP/D1835/C/23/3324987

71 St Marks Close, Worcester WR5 3DB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr and Mrs Bevan against an enforcement notice issued by Worcester City Council.
- The notice was issued on 31 May 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, materially changed the use of the land from woodland to garden including through site clearance and operational development comprising the erection of an outbuilding, raised platform, steps, a hard surface seating area purposes, and also the siting of composting and waste bins, and pallets.
- The requirements of the notice are to:
 - i) Remove the outbuilding, raised platform, and steps.
 - ii) Remove the hard standing used as a seating area.
 - iii) Remove all chairs, bins, plant pots, pallets and any other domestic items from the land.
 - iv) Cease the use of the land as garden.
 - v) Restore the land to its condition prior to the unauthorised change of use and operational development referred to at 3.1 above, namely to semi-natural woodland, by:

a. planting the following trees and shrubs, to be evenly distributed across the Land

Number	Species	Minimum size when planted
4	Field Maple	10-12cm feathered
3	Oak	10-12cm feathered
4	Wild Cherry	10-12cm feathered
3	Native Holly	8-10cm post grown or root wrapped
6	Hazel	6-9cm pot grown
6	Hawthorn	6-9cm pot grown
6	Blackthorn	6-9cm pot grown

b. Watering all planting as necessary to ensure successful establishment.

c. In the case of any trees or plants that die or are removed; or become seriously damaged or diseased within a period of five years from the completion of the planting, replacing them in the next planting season with others of similar size and species.

- The period for compliance with the requirements i), ii), iii) & iv) is 3 (three) months and with requirement v) is 5 months from the date this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Decision

1. It is directed that the notice be corrected by deleting the alleged breach of planning at paragraph 3.1 and substituting it with '*Without planning permission, the material change of use of the land from woodland to domestic garden including site clearance, the siting of composting and waste bins, and pallets, and operational development comprising the erection of an outbuilding, a raised platform, steps, and a hard surfaced seating area*'.
2. It is directed that: the notice be varied by deleting requirement v) and substituting it with 'v) Restore the land to its condition before the breach took place'; and the period for compliance with requirement v) be deleted and substituted with '3 months from the date this notice takes effect'.
3. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

The Notice

4. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council. The wording of the notice is reasonably clear, but the correction as set out above would improve clarity, without fundamentally changing the notice.

Preliminary Matters

5. The allegation is of unauthorised development and the notice distinguishes between a material change of use and operational development in the form of the erection of an outbuilding (the shed), raised platform, steps and hard surface area. The reasons for issuing the notice state that the breach has occurred within the last ten years 'in the case of the use of the land'. However, as the operational development cited in the notice is not alleged to facilitate the material change of use of the land, it is a separate breach in itself.
6. Accordingly, pursuant to s171B(1) of the Act, where there has been a breach of planning control consisting in the carrying out without planning permission of building or other operations on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Thus, for the operational development to be immune from development, it must be demonstrated that the shed, raised platform, steps and hard surface area were individually substantially completed by 31 May 2019.

Ground (b)

7. An appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control have not occurred as a matter of fact. It concerns the circumstances leading up to, and at the time of the issuing of the notice. The appellant must therefore demonstrate, on the balance of probabilities, that what is alleged in the notice has not taken place.
8. The appeal relates to an area of semi-natural woodland beyond the rear garden belonging to 71 St Mark's Close (No. 71). The appeal land forms part of an

area known as Broomhall Green which is described as a Green Space¹ and is within the Conservation Area. The area forms a corridor of protected public open space between housing to the east and the River Severn to the west.

9. At my site visit I observed that wire fencing surrounded the appeal land to separate it from the wider woodland. There was no physical boundary to divide it from the formal garden land belonging to No. 71 and steps had been constructed for ease of access. Within the appeal land and adjacent to the end of the rear garden, a platform of timber decking partially enclosed by rudimentary post and rail fencing had been constructed. Underneath was an area for storage of garden/domestic items and atop was a small wooden shed.
10. There was evidence of vegetation clearance in the form of up-limbed trees and tree stumps. Cut lengths of wood were sited around the perimeter and in a wood store. The size of the stumps and cut wood indicate these were mostly small trees or shrubs. The appellant has provided in their submissions that they have 'gained a small amount of recreational enjoyment from the land and they also maintain that the space is used 'by family and friends' 'for sitting and walking 'peacefully in the woodland, listening to the wildlife and appreciating its tranquil nature'.
11. The Council's photographs dated 27 January 2023 show stacked pallets, garden furniture and plant pots on an area of hardstanding. This suggests to me that the land had been used for purposes in association with the domestic use of the dwellinghouse. This is also demonstrated by the chairs and table on the raised platform. At the time of my visit, there was little visible signs of domestication; the items had been cleared from the ground and the chairs and table on the platform had been removed. The area of hardstanding referred to in the notice was not visible, although it may have been covered by autumnal debris. The land had been cleared of pallets, planters, garden furniture and other domestic items.
12. From the appellant's submissions there is no dispute that the land is used by the occupants of the dwellinghouse, and in my view that use is a residential use. Although the area has been retained, for its part, in a natural state and I appreciate that the appellant has no intention of cultivating the land or developing it, the appeal site no longer forms part of the wider Green Space as woodland. Having been integrated into land belonging to No. 71, it has become part of and used as the appellant's private outdoor space, and the raised platform, shed and steps have been erected on that land. Therefore, I conclude on the balance of probabilities that the matters alleged in the notice have occurred and the appeal on ground (b) fails.

Ground (c)

13. The carrying out of "development" (s55(1) of the Act) includes the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of land. The carrying out of development without any required planning permission constitutes a breach of planning control, s171A(1)(a).
14. The appeal on ground (c) is a claim that the matters alleged in the notice, if they did occur, do not constitute a breach of planning control. In pursuing an

¹ Identified on the South Worcestershire Development Plan Policies Map

appeal on these legal grounds, the onus firmly rests with the appellant to show that, on the balance of probabilities, the matters alleged do not constitute a breach of planning control. The planning merits of the use or operations are not relevant, and they are not an issue for me to consider in the context of an appeal under ground (c).

15. While the appellant does not dispute that the land is used by the occupants of the dwellinghouse, they maintain the land retains its green character and natural state and would not be cultivated as a garden. Thus, it would appear that they consider that there has not been a change of use in the land that would have required permission.
16. The present situation encloses the section of woodland, and the appeal site which was once open is now enclosed, and the appellant and her family have made use of the land as an extension to their garden. For the reasons set out under the ground (b) appeal I have found that the matters constituting the breach of planning control alleged in the notice have occurred. The character of the use of the land as semi-native woodland Green Space is materially different, as a matter of fact and degree, to its use as residential garden, such that there has been a material change of use, which is development by reference to s55 of the 1990 Act.
17. Planning permission would be required for its use and as no planning permission has been granted for the development it constitutes a breach of planning control. Furthermore, the operational development is not development that might otherwise be permitted under Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 which applies only to development within the curtilage of a dwellinghouse.
18. The appeal on ground (c) therefore fails.

Ground (d)

19. From the appellant's submissions it seems to me that there is a hidden ground (d) appeal. This is because the appellant states that their 'involvement with the land began as long as 14 years ago', and that they 'did not erect any buildings on the sight [sic] until approximately 2019'.
20. The case was first brought to the council's attention in September 2019 and a site visit was conducted on 19 September 2019. It was noted that a shed and raised platform had been erected on land that encroached into an area designated as Green Space. During a visit by the Council in January 2023, it was noted that further works had taken place to extend the raised platform and introduce steps down to the appeal land. It was also noted that a 'significant amount of clearance of previously unmanaged shrubs and vegetation' had taken place. An area of hard standing had been added and this is shown in photographs dated 27 January 2023. These photographs also show stacked pallets, garden chairs and planters on an area of hardstanding and a small wood store in the top corner.
21. An appeal under this ground is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control alleged in the notice. The onus to prove the case lies with the appellant, with the case being made on the balance of probabilities. Time limits after which no enforcement action may be taken against a breach

of planning control are set out in s171B of the Act. Its terms relevant to this appeal are: s171B(1) of the Act, where there has been a breach of planning control consisting in the carrying out without planning permission of building or other operations on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed; and s171B(3) in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

22. The appellant has referred to their involvement with the land supposedly going back several years during which time they have enjoyed exclusive use of it. They claim that it was originally divided from their garden by a wire fence and that it was overgrown with brambles and was a dumping ground for building debris from when the houses were built. The appellant maintains that they have secured and protected the land, planting trees and shrubs having cleared the land of dead vegetation, rubble, building materials and litter. While I have no reason to doubt that this all took place, there is no evidence to show when the appellant actually began to use the land in a 'domestic manner' as an extension to the residential use of No.71 to an extent that comprised a material change of use.
23. Furthermore, and with regard to the operational development, in answer to question 7 in the Planning Contravention Notice (PCN), dated 20 January 2023, the shed and raised decking area are stated as having been constructed in 2018. There is no reference to the steps in the PCN. I note that in the appellant's grounds of appeal, the construction work is said to have occurred in 'approximately 2019' which would be broadly consistent with the commencement of the Council's enforcement investigations. For the operational development to be immune from enforcement action, it is for the appellant to show that the platform, shed and steps, individually had been substantially completed by 31 May 2019.
24. The Council's timeline produced in its 'Planning Enforcement Decision Report' dated 22 May 2023 states that during a site visit conducted on 19 September 2019, it was noted that a shed and raised platform had been 'sited' on land that encroached into an area of land designated as Green Space. A site visit on 27 January 2023 noted that further works had taken place to extend the raised platform and introduce steps. It also noted that a significant amount of vegetation had been cleared. Domestic features such as an area of hard standing area had also been added, which was likely used as a seating area, and there were composting bins on the land. Photographs taken on the 2023 visit support the allegation.
25. Although the shed and raised platform were reported as having been erected by 19 September 2019, there is nothing before me to show that they were substantially completed on 31 May 2019, the material date for immunity for the operational development. Furthermore, the steps were noted during the Council's second visit and that leads me to assume they were constructed at some point between September 2019 and January 2023.
26. The onus is on the appellant to demonstrate that on the balance of probabilities the matters alleged in the notice had occurred before the material date and were therefore immune from enforcement action. Overall, I find that the limited evidence to support their case is imprecise and ambiguous and thus, on

the balance of probability, I am not persuaded that the material change of use of the land occurred before 31 May 2013 or that the operational development as alleged was substantially completed before 31 May 2019.

27. Consequently, the appeal on ground (d) cannot succeed.

Ground (f)

28. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or any injury to amenity. Since the notice requires the cessation of the use of the land as garden and the removal of operational development, the purpose is to remedy the breach by restoring the land to its condition before the breach took place. For the appeal on ground (f) to succeed, the appellant must propose alternative steps which would remedy the breach.

29. The appellant argues that the requirement to restore the land to its condition prior to the unauthorised change of use and operational development would mean returning it to an insecure dumping ground of no environmental value. Although it is reasonable for the appellant to question the requirement in such a way, the purpose of the notice is to cease the use of the land as an extension to the residential garden and the removal of operational development from that land. Accordingly, a common sense reading of the requirement would be that the land should be returned to its previous semi-natural woodland state by ceasing to use it in a domestic manner, thus restoring it to its prior condition.

30. Notwithstanding this, requirement v) includes substantial planting of native trees and shrubs. While there is evidence of vegetation removal, the appellant maintains that some had occurred prior to their involvement with the land or as part of their own maintenance clearing dead vegetation. In the absence of clear evidence to show the extent of planting within the area previously, and from what I observed at my visit, I consider that the requirement to plant native trees and shrubs across the land would exceed what is necessary to remedy the breach of planning control which is the material change of use of the land and the operational development that has occurred.

31. Accordingly, I will vary the terms of the notice to that extent and therefore the ground (f) appeal succeeds in part.

S A Hanson

INSPECTOR