



Appeal Decision

Site visit made on 29 January 20024

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 February 2024

Appeal Ref: APP/N4720/C/23/3323710

9 Bramble Square, East Ardsley, Wakefield WF3 2JN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Stuart Wingrove against an enforcement notice (EN) issued by Leeds City Council (the LPA).
 - The enforcement notice was issued on 9 May 2023.
 - The breach of planning control as alleged in the notice is the change of use of landscaped amenity green space to enlarged domestic garden, the erection of a timber boundary fence and the siting of a wooden outbuilding.
 - The requirements of the notice are as follows:
 - Step 1:
Cease the use of the area outlined in red on the attached plan as residential garden.
 - Step 2:
Remove the wooden outbuilding and any other associated domestic paraphernalia within the area outlined in red on the attached plan.
 - Step 3:
Reposition the fence to the original boundary line as outlined in blue on the attached plan.
 - Step 4:
Make good the land in the area outlined in red on the attached plan once steps 1-3 have been completed.
 - The period for compliance with the requirements is Four Months.
 - The appeal is proceeding on grounds (a), (c), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed. See formal decision below.

The site and the surrounding area

2. The appeal site is land adjacent to the appellant's property at No 9 Bramble Square. The modern, brick-built, terraced properties around the square form part of a larger housing development to the south of Thorpe on the Hill and to the east of Fall Lane. The housing development was granted approval under application 07/04144/FU and was for 71 houses and 9 flats. The appeal site did not initially form part of the garden area to the property and was shared open amenity land.

Background information

3. In 2015 an enquiry was made to the LPA relating to the removal of the low boundary fence; the erection of a 1.84m high timber fence to the side of the property; the erection of a fence to the side/front; the erection of a shed on the amenity land and the erection of a greenhouse to the rear. The LPA advised that the fence constituted permitted development but that the change of use of the shared

open amenity land to residential use and the erection of any outbuildings on the land, would require planning permission.

4. The appellant owns the land, the subject of the EN, and had enclosed it over 8 years ago to form a garden area. More latterly he constructed the timber outbuilding alongside a small electricity sub-station which had been in place since the housing was completed.

5. In 2020 the appellant submitted a retrospective application (20/07882/FU) for the change of use of the shared open space to form part of the domestic curtilage (garden) to No 9. This was refused permission on 1 April 2021.

6. It is indicated that, because the land is in the ownership of the appellant, it is his responsibility for its upkeep and maintenance and not that of the developer/management company, which is contracted to maintain the wider green space land. It is stressed that there is no right of access or use over the land for any other individual or business and that the hard-surfaced footpath is the only element of the pedestrian link which is not owned by the appellant.

Relevant Policy

7. The development plan comprises the adopted Local Development Framework Core Strategy (As Amended) 2019 (CS), and policies saved from the Leeds Unitary Development Plan (Review 2006) (UDP). Relevant supplementary planning guidance and documents are material considerations.

8. The most relevant CS policies are Policy P10 (Design) and P12 (Landscape). In the UDP, Policy GP5 (Planning considerations and loss of amenity) and N25 (boundaries of sites) are material considerations, as is Policy HDG1 of the Leeds City Council Householder Design Guide.

9. The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. It is a major material consideration in this case and the most relevant policies are in section 12, 'Achieving well-designed places and beautiful places'. The NPPF was amended in December 2023 but the relevant policies remain unchanged.

The appeal on ground (c)

10. It is accepted by the Council that the erection of the fence, in itself, constituted permitted development. However, the fence had been erected to enclose land which does not have planning approval for a change of use (COU) from open amenity land to residential garden use. The operational development of the fence has facilitated the unauthorised use of the land. Furthermore, planning permission had been refused for the COU under application 20/07882/FU.

11. In the case of *Murfitt v SSE and East Cambridge DC 1980*, which is referred to by the Council, the principle was established that ancillary operational development may be required to be removed where it facilitates an unauthorised change of use. In this case there can be no doubt that the main reason for the erection of the 1.84m high fence was to create a private garden area adjacent to No 9. This constituted a COU and the area is being used as such without approval meaning that the garden area is unauthorised garden.

12. The allegation in the EN clearly refers to the unauthorised COU of the land to an enlarged garden and the erection of the timber fence. The unauthorised land use and the operational development to facilitate the use are inextricably linked. If the land had simply been enclosed by the fence and had not been used as an extended residential garden, then the fence in itself could not be targeted by the notice.

However, this is not the case and I consider that the fence, therefore, constitutes unauthorised development.

13. The third element set out in the EN allegation is the timber outbuilding. Because this is not within a lawful residential curtilage it cannot benefit from any permitted development rights. There is no planning permission in place for its construction in this particular location adjacent to No 9.

14. Having considered all of the representations relating to the appeal on this ground, I consider that as a matter of fact and degree, there has been a breach of planning control. I do not accept the contention made on behalf of the appellant that *'once the land in question was enclosed by the permitted development fencing, it no longer formed 'amenity greenspace'*. It clearly retained its initial land use and permission had not been granted for any COU to domestic residential use. In conclusion on these points, I consider that the appeal should fail on ground (c).

15. I agree with the statement made on behalf of the appellant that *'the enclosure of the land... and the usage of the land as domestic garden are entwined as one development'*. However, this is an unauthorised development and whether or not it should be supported is a matter of planning judgement based upon the effects that the works have had in this particular part of the residential estate. This brings me therefore to the appeal on ground (a).

The appeal on ground (a)

16. From all of the representations including the photographic evidence and from my inspection of the appeal site and its immediate surroundings, I consider that the main issues in this appeal are as follows:

- Firstly, the effect of the unauthorised works on the character and appearance of this part of East Ardsley and, secondly,
- The effect on the living conditions of the occupiers of the nearest neighbouring dwellings.

Effect on character and appearance

17. Having seen the fencing and the outbuilding, I share the Council's concerns about the visual effects they have had in this part of the residential estate. It seems clear to me that the open amenity space had been a fundamental part of the landscape design in this corner of the square. The open space (whether private or public land) would have played a significant part in providing an attractive corner to the square, with the footpath leading off past Nos 11 and 12 and beyond past other dwellings shown as Nos 38 to 52 Violet Lane.

18. The fence borders the adopted footpath and whilst accepting that it would be considered permitted development when taken alone as operational development, it faces residential properties at Nos 10 Bramble Square, and 36 and 38, Violet Lane on the other side of the footpath. I agree with the LPA that prior to the unauthorised use, the open land would have been part of a wider greenspace strategy which achieved an appropriate balance of hard surfacing and soft landscaped 'amenity' green space areas through the development.

19. The land also provided a 14m buffer zone between the original residential plot of No 9 Bramble Square and neighbouring properties which front onto the appeal site. As indicated by the LPA the *'open amenity area also provided appropriate sight lines to assist in good natural surveillance for wider crime and safety reasons, as well as protecting the residential amenity of occupants residing on the adjacent properties from overbearing boundary treatments'*.

20. The combination of the fence and the outbuilding have resulted in a stark, alien and most unattractive development which has completely altered what must have been an attractive open amenity area. The unauthorised works detract markedly from the character and appearance of the locality. When seen in conjunction with the sub-station this corner of the Square is now perceived as an 'overcrowded' and 'cramped' corner of this generally attractive modern housing development.

21. The overall detrimental effect of the works carried out has been exacerbated by the fact that the timber outbuilding has been constructed at the side of No 9 and next to the substation. As indicated by the LPA, normally such outbuildings would be located in a rear garden location as to opposed to a prominent and obtrusive position which is noticeable within the streetscene.

22. Not only is this outbuilding positioned adjacent to the frontage of the dwelling, it is also next to the sub-station. I agree with the LPA that the cumulative visual impact of the overall frontage elevation has resulted in a conspicuous and visually harmful development which detracts from the character and appearance of the area as well as resulting in an unacceptable outlook for occupiers of other dwellings around the Square.

23. In conclusion on this first issue I consider that the loss of landscaped amenity green space and the erection of unsympathetic domestic paraphernalia such as fencing to create a new enclosed private garden area, outbuilding and hard standing has impacted harmfully on the visual amenity and the character of the wider development, contributing to loss of green space across the site. I find this contrary to Policies P10 and P12 of the CS; to the material matters of Policy N25 of the UDP and those of Policy HDG1 of the LHDG. It is also contrary to the Policies set out in section 12 of the NPF which seeks to achieve good design and beautiful places.

Effect on living conditions

24. I have already referred above to the detrimental effect of the unauthorised development on the visual amenity of those living close to No 9. It has resulted in the loss for those residents of the outlook onto an attractive open amenity space. Instead, just a few metres away from the windows of some habitable rooms, there is the bland and visually unacceptable view of a nearly 2m high timber fence.

25. The LPA also refers to their concerns regarding noise and light pollution from the extended garden area. Whilst acknowledging that the use of the land as a garden, as opposed to open amenity space, could result in additional noise and light pollution for neighbours, I am not convinced that this would be noticeably harmful. Such matters are common in tight residential situations such as this.

26. In conclusion on this second issue I agree with the LPA that, in terms of visual outlook, the boundary treatment has resulted in detrimental harm to the living conditions of the occupants of neighbouring properties which face the site. However, with regard to loss of privacy issues and noise nuisance associated with the use, I am not convinced that the unauthorised use has led to any significant harm.

Planning Balance and conclusion on the ground (a) appeal

27. Although I have found that there would not be any significant issues for neighbours with regards to loss of privacy, noise and disturbance and light pollution, I have concluded that the outlook (onto the fence and outbuilding) for those living close to the site is unacceptable. I have also found that the works as carried out are significantly harmful to the character and appearance of the area. These factors completely outweigh any of my other findings and I can only conclude that planning

permission should not be granted for the retention of the unauthorised works as set out in Section 3 of the EN. The appeal, therefore, fails on ground (a).

The appeal on ground (f)

28. In support of this ground of appeal it is stated that the primary reason for the Council issuing the EN is that the use of the land as domestic garden, results in the loss of amenity space. However, it is argued that the enclosure of the land in 2015, under permitted development rights reaches the same outcome and that it is not the use of the land as domestic garden that results in the 'loss of the amenity grassland', rather the enclosure of the land which cannot be controlled by the LPA.

29. It is further stated that the use of the land as domestic garden (once enclosed) is the logical and appropriate use of the land. It is therefore argued that steps required by the notice to cease the use of the land as domestic garden is excessive, particularly given that the land cannot be secured in perpetuity as 'amenity grassland'. It is also argued that the activity of removing the fencing detailed in the EN is not an enforceable action given the permitted development nature of fencing.

30. Under this ground it is contended that the actions required by the EN are not needed to remedy the breach of planning control, given that the fencing was erected under permitted development rights. It is argued that the appeal site is lawfully enclosed; that it cannot ever return to being 'amenity grassland' and that it is excessive to require the cessation of the appeal site as a domestic garden.

31. The Council stresses that the appellant has not put forward any reasons as to why the requirements of the EN are excessive.

32. Normally under this ground of appeal one would expect an appellant to demonstrate that one or even all of the requirements are excessive and that lesser steps would overcome the harm caused. In this case, as referred to above the appellant has set out the reasons why the unauthorised works should be allowed to remain in place. It is argued that it is excessive to require that the unauthorised garden use should cease.

33. If this was to be the case it would not just be a lesser step but would in effect result in the unauthorised COU continuing. I have already concluded, in the ground (a) appeal, that the combined garden use of the land, the fence and the shed are harmful and contrary to both local and national planning policies. I do not consider that there are any lesser steps which would overcome the harm caused. It follows that the appeal must also fail on ground (f).

The appeal on ground (g)

34. On behalf of the appellant it is argued that 4 months falls short of what should reasonably be allowed for compliance with the requirements of the EN. The LPA, on the other hand, stresses that the unauthorised use and the outbuilding have been on-going and used for a period in excess of 3 years.

35. Having seen the timber outbuilding I note that it is of basic construction and can seemingly be easily dismantled and, if required, re-erected in a lawful location within the curtilage of the dwelling house at No 9. Similarly, the fence can easily be re-located. The fact that the land may have to be re-grassed should not affect the four month timescale. The amenity area on which the outbuilding stands could be re-seeded as soon as the outbuilding has been removed. I consider that four months is a reasonable compliance period. The appeal on ground (g), therefore, also fails.

Other Matters

36. I have noted all of the matters raised on behalf of the appellant with regard to the ownership, upkeep and maintenance of the appeal land. I also acknowledge that the appellant has a basic right to look after the land in a manner of his choice. However, ownership in itself does not allow a COU to residential garden. There is no basic right to carry out unauthorised works or a COU of the amenity land.

37. In reaching my conclusions on all of the grounds of appeal I have taken into account all of the matters raised by the main parties and an interested person. These include the full planning history; the appellant's initial submissions; the detailed statement; the final comments and the photographic evidence.

38. However, none of these alters my conclusions on the main issues and nor is any other factor of such significance so as to change my decision that the appeal should be dismissed.

Formal Decision

39. The appeal is dismissed and the enforcement notice is upheld. The application deemed to have been made under section 177(5) of the Act is refused.

Anthony J Wharton

Inspector