



Appeal Decision

Site visit made on 22 January 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2024

Appeal Ref: APP/N1730/C/23/3318341

Land adjacent to 36 Oldfield View, Hartley Wintney, Hook RG27 8JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Emily Sanders against an enforcement notice issued by Hart District Council.
- The notice was issued on 8 February 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land from amenity land to residential land by the enclosure of the Land and the erection of a 1.8 metre high fence. (The fence is shown, for indicative purposes only, marked X to Y to Z on the attached Plan B¹).
- The requirements of the notice are:
 1. Take down the fence erected between the points marked X to Y to Z on the attached Plan B.
 2. Remove any hardstanding or structures which may have been placed on the Land.
 3. Fully re-seed the Land with grass seed at a rate of 35-50 grammes per square metre.
- The periods for compliance with the requirements are:
 - (i) For point 1 – 2 months from the date the notice takes effect.
 - (ii) For point 2 – 2 months from the date the notice takes effect.
 - (iii) For point 3 – to be carried out between the dates 31st August 2023 and 30th October 2023.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) 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 dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Ms Emily Sanders against Hart District Council. That application is the subject of a separate Decision.

Preliminary Matters

2. Since the enforcement notice (the Notice) was served and the appeal lodged the National Planning Policy Framework (the Framework) has been updated. There have been no changes of substance relevant to this appeal and so no injustice would arise if I were to determine the appeal with regard to the updated Framework, which I have done.

¹ Reference to the attached plan is reference to a plan attached to the enforcement notice.

The Notice

3. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the Notice in order. My powers 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 correction or variation would cause any injustice to the appellant or the local planning authority.
4. Within her case for the ground (b) appeal, the appellant suggests that 'residential land' and 'amenity land', as described in the allegation, are not uses of land. Indeed, these terms appear to be descriptions of the land, rather than descriptions of its use. This could go to the issue of whether the matters alleged in the Notice have occurred, and considered on ground (b). However, it could also mean that the Notice does not actually allege a breach of planning control. It is, therefore, important that I deal with this before considering the grounds of appeal.
5. Notwithstanding the wording of the allegation, the intention of the Notice is clear. It seeks to remedy an alleged breach of planning control that has occurred through the enclosure of the land targeted by the Notice (the Land). The reasons for issuing the Notice describe how the so-called amenity land has been prevented from being enjoyed by the residents of the estate as part of the landscape setting of the development due to a change of use of that land.
6. The appellant has made submissions about case law concerning planning units and the way that the Land can be and has been used, including a comparison to other parts of land she owns. Thus, she has clearly understood that the allegation is that there has been a material change of use in the way that the land is used from some sort of use providing landscaping for the development and general 'amenity' to the area, to a use for purposes incidental to the enjoyment of the dwelling.
7. In the interests of clarity, I will correct the uncertainty in the allegation by substituting 'amenity land' for 'an amenity use' and 'residential land' for 'a residential use'. The substance of the appellant's submissions about whether these were, or are, the former and existing uses, whether there has been a material change of use between them, and whether planning permission is required for any new use are unaffected by that change. For this reason, and because I am satisfied that the appellant has understood what the allegation means, no injustice would arise from this correction.

Background and context

8. The site is within a wider housing estate of Oldfield View and Church View, originally granted planning permission in 1987 (the 1987 Permission). This housing estate has a suburban character, derived from aspects such as the style of housing, and the configuration of highways, parking, dwellings and their gardens in a fairly loose urban form. Most of the dwellings face the roads and footpaths behind open, landscaped front gardens or parking spaces, but in some locations the roads and footpaths adjoin residential side boundaries.

9. With the notable exception of No 1 Oldfield View, where a close boarded fence abuts the back edge of the footway, side or garden boundaries are set back beyond verges or planting. The verge is particularly narrow on a boundary alongside Nos 41 and 43 Oldfield View, but is nevertheless still present. These features soften the built form and give the housing estate an open, spacious character and appearance.
10. No 36 faces the road behind a small front garden area. It also abuts a pedestrian footpath linking Oldfield View and Church View. On one side of this footpath is a wide grass verge with trees. Plans associated with the 1987 Permission show that this path, verge and trees were to be publicly adopted and maintained. I understand that the privately owned residential plots begin beyond the verge and trees.
11. On the side of No 36, however, the appellant's ownership runs right up to the footpath edge. Until the allegedly unauthorised development took place, I understand that the side of the rear garden was enclosed by a fence that stood back from the footpath edge beyond a verge or planted strip akin to those that I have described elsewhere within the development. That fence has been removed and so the Land, which is between its previous line and the footpath, is no longer separated from the previously fenced rear garden. A new fence has been erected, almost on the footpath edge, to enclose what is now an enlarged private garden area, of which the Land is part.

Ground (b)

12. Ground (b) is that the matters alleged in the Notice have not occurred. As corrected, this is a material change of use from an amenity use to a residential use.
13. When deciding whether a material change of use has occurred, it is necessary to consider that in relation to the planning unit as a whole. The planning unit will usually be the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.
14. Of the landscaped areas around the housing estate, the front gardens are clearly associated with the individual dwellings and generally sit alongside or around parking spaces. Occupiers of the dwellings need to pass through these front gardens to move between the road and front doors. They are, thus, clearly associated with, and are part of, the residential use of those individual dwellings. The privately enclosed rear gardens are, similarly, clearly associated with the residential use of the dwellings themselves. Therefore, these areas can reasonably be described as being in a residential use for each plot, and No 36 is no exception.
15. By contrast, the spaces along the side boundaries provide no clear function for the dwellings. While they may be owned by the individual plot owners without a specific duty to maintain them in any particular way, that does not mean that their use was associated with the dwellings. Rather, their function appears to collectively provide greening and spaciousness for the wider housing estate. Even though they may be maintained by the individual plot owners, there is no substantive evidence that these landscaped areas, including the Land, provide any particular benefit or function to the occupiers of the dwellings themselves,

- or No 36 specifically. They cannot, therefore, be described as being in residential use, or incidental to the enjoyment of the dwellinghouses.
16. The small landscaped areas are distinct from the larger areas of public open space within the housing estate and, as far as I have been made aware, there is no particular accepted description or definition for land in this type of use. Therefore, while 'amenity' could be used in a planning context to refer to a wide number of things, in the absence of any other definition for the use, I am satisfied that a description as an 'amenity use' is an accurate and reasonable one.
 17. No 36, including the front and rear gardens, and the appeal site, are all within the ownership of the appellant. However, until the alleged breach of planning control occurred, the rear garden was clearly separated from the Land by a fence. There is no substantive evidence that the Land was ever used for any purpose associated with the dwelling. Therefore, it was functionally and physically separate from it. Moreover, it provided a different function as a visual amenity for the wider development.
 18. On the basis of the above, I find that, on the balance of probabilities, the appellant's unit of occupation contains two separate planning units. One contains the house and its front and rear gardens, together with the space for vehicle parking. The other contains the Land.
 19. The Land was previously in an amenity use as described above. It is now unseparated from the appellant's previous rear garden and so is in a residential use. The matters alleged in the Notice have occurred. On this basis, the appeal on ground (b) should fail.
 20. The appellant's other submissions in respect of ground (b), concerning such matters as the materiality of the change of use and whether that has resulted in a breach of planning control are more appropriately considered on ground (c).

Ground (c)

21. Ground (c) is that the matters alleged in the Notice, if they have occurred, do not constitute a breach of planning control. The Town and Country Planning Act 1990 (as amended) (the 1990 Act) defines development as including the making of any material change in the use of land.
22. I have already found that the Land was previously in an amenity use. It may be that there is no ongoing requirement to maintain planting on the Land and permitted development rights may enable fences and the like to be erected on it. However, regardless of that, the works that have been done mean that the land is now part of the private garden, actively usable for recreation purposes associated with the dwelling, and intimately related to its other private spaces. This has given it a use with a character that is materially different to its previous use.
23. Even if I were to accept that 'amenity use' was an undefinable or vague concept, the clearly residential use that the Land is in now is still materially different to its previous use that had a close relationship to the public spaces and pockets of landscaping around the housing estate. Where there were previously two planning units, there is now a single planning unit containing the dwelling and all of the other land in the appellant's ownership. The smaller

planning unit has been taken into the larger one, and what has happened is a material change of use of that Land, which is development as defined within the 1990 Act.

24. It is then necessary to consider whether planning permission is needed for that development. In this regard, the appellant suggests that it already benefits from permission for residential use by virtue of the 1987 Permission.
25. The 1987 Permission was for 'residential development comprising 70 houses and flats with roads and ancillary drainage works'. While that might have resulted in a material change of use from whatever the land was before, it has not been shown that it should follow that all land covered by that permission was then put to subsequent residential use. For example, there were also roads and drainage works detailed on the permission and the plans which have been provided to me also show large areas of open space.
26. If I were to accept that the 1987 Permission gave the Land a residential use, I would also have to accept that the roads and open spaces were given that use too. I have no reason to conclude that such an interpretation would be correct. As I have found that most of the land owned by the appellant is in residential use but the Land is not, I have no basis on which to find that the Land benefits from planning permission for residential use.
27. The appellant further claims that the fence that has been erected around the Land is permitted development. While that might be the case, the matters alleged in the Notice do not allege unauthorised operational development. This is clear for two reasons. Firstly, in its headings, the Notice is described as 'Enforcement Notice – Change of Use'. Secondly, the allegation is 'the material change of use of the Land...by the enclosure of the Land and the erection of a ... fence' (my emphasis). There is no other means by which the land has been enclosed, so the latter part must be read as referring to the means of enclosure. The allegation, for a material change of use of land, does not, therefore, include matters that do not comprise a breach of planning control.
28. For the above reasons, I find that the matters alleged are a breach of planning control and the appeal on ground (c) should fail accordingly.

Ground (a)

29. Ground (a) is that planning permission should be granted for the matters alleged in the Notice. The main issue on this ground is the effect on the character and appearance of the area. As previously described, the site is within a suburban residential area with an open and spacious character and appearance.
30. There are some fences alongside the road in Oldfield View, the most notable examples being at No 1 and between Nos 41 and 43. The fence at No 1 is alongside the footway edge and, as such, is fairly imposing. However, it is very much an exception to the remainder of the area. It is also at the entrance to the housing estate and, once beyond it, the more open, landscaped character of the remainder of the area can be appreciated. Therefore, the fencing at No 1 does not inform the overall character and appearance of the area, especially around the appeal site, which is more centrally located. The fence between Nos 41 and 43 is long and close to the highway edge, however, there is still a small verge and some planting that softens its appearance.

31. The fence that has been erected alongside the footpath to the side of No 36 follows the line of a high hedge between the boundary of the dwelling to the rear and the footpath edge. Thus, in contrast to the more open verge with trees on the opposite side, the footpath on the side of the appeal site is already more enclosed along much of its length. The fence would not, therefore, cause a significant visual narrowing or tunnelling effect on the footpath.
32. Nevertheless, unlike the hedge alongside the dwelling to the rear, the fence is a stark, visually imposing, solid boundary, even though trees can still be seen behind it. While only enclosing a small area it is in a prominent location alongside the footpath linking Oldfield View and Church View. It undermines the general soft-landscaped qualities that contribute to the spacious, suburban character and appearance of the housing area. While it may be that a fence could be erected on the Land without planning permission, in this case there is no obvious reason that the fence would be in place if it were not for the material change of use of the land behind it. As such, I find that, the fence has been erected to facilitate the breach of planning control and it is appropriate to consider the effects arising from it.
33. Therefore, I conclude that the material change of use has harmed the character and appearance of the area. Such is contrary to those aims of Policy GEN1 of the Hart District Local Plan (Replacement) 1996-2006 and Policy NBE9 of the Hart Local Plan (Strategy and Sites) 2023, as well as guidance in the Framework, that seek to ensure development is in keeping with local character and contributes to the overall appearance of the local area. Accordingly, planning permission should be refused for the application deemed to have been made and the appeal on ground (a) should not succeed.

Ground (f)

34. Ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach of planning control. I have already found that the fence on the Land has been erected to facilitate the breach of planning control. As there appears to be no reason why the fence would otherwise be on the land, I find it to be part and parcel of the breach of planning control and its removal does not go beyond that necessary to remedy the breach.
35. The third step, however, includes prescriptive requirements to re-seed the Land in a particular way. It is sufficient for the Notice to require a return to its previous condition. In requiring that, the second step can also be removed as the removal of any hardstandings or structures would be implicit in a requirement to restore it to its previous condition, irrespective of the fact that there are not currently any such structures on the land.
36. I, will, therefore vary the terms of the Notice, retaining the requirement to remove the fence, but otherwise simply requiring restoration to its previous condition. The appeal on ground (f) succeeds in part, to this extent.

Ground (g)

37. Ground (g) is that the period specified in the Notice falls short of what should reasonably be allowed. For the removal of the fence, 2 months has been specified and I am aware of no reason that such would be insufficient.
38. The Notice sets out a different, prescriptive, time period for re-seeding the area which has already passed during the appeal process. Therefore, some

amendment to that is necessary. However, as I am varying the requirements, some consequential amendment to the time periods will be necessary for clarity and consistency.

39. The Council's suggested time for complying with the former seeding requirement suggests that such activity might best be carried out after the summer. Therefore, I will vary time for completion of the remedial works to account for this, giving 9 months from the new effective date following my decision.
40. Save for the time to remove the fence, which will be unaltered, the appeal on ground, (g) succeeds.

Conclusion

41. There is partial success on grounds (f) and (g). However, For the reasons given above, in all other regards, I conclude that the appeal should be dismissed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision

42. It is directed that the enforcement notice is corrected and varied by:
- In Section 3 'The breach of planning control':

Delete the words "amenity land" and replace with the words "an amenity use".

Delete the words "residential land" and replace with the words "a residential use".
 - In Section 5 'What you are required to do':

Delete paragraphs 5.2 and 5.3 in their entirety and replace with "5.2 Restore the land to its condition prior to the breach of planning control."
 - In section 6 'Time for Compliance':

Delete paragraphs (ii) and (iii) in their entirety and replace with "(ii) For point 5.2 above – 9 months from the date this notice takes effect".
43. Subject to the corrections and variations, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

M Bale

INSPECTOR