



Appeal Decisions

Site visit made on 8 January 2024

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 5th FEBRUARY 2024

Appeal A Ref: APP/J1915/C/22/3303233

Appeal B Ref: APP/J1915/C/22/3303234

3 Lloyd Place , (Formerly known as plot 6 Alpha Cottage, 4 Francis Road, Ware SG12 9HB), Ware SG12 9FS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr David Blyth (Appeal A) and Ms Megan Townsend (Appeal B) against an enforcement notice issued by East Hertfordshire District Council.
- The notice was issued on 17 June 2022.
- The breach of planning control as alleged in the notice is Without the benefit of planning permission unauthorised engineering operations resulting in an increase in land levels and the erection of boundary fencing.
- The requirements of the notice are: 1. Reduce land levels in the rear garden by no less than 0.5m; 2. Remove all unauthorised boundary fencing shown hatched blue on the attached plan; 3. Remove all resultant materials following compliance with 1 and 2.
- The period for compliance with the requirements is: 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (Appeal A only) and (f) (Appeals A and B) 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.

Appeal A Summary Decision: Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: No further action is taken in respect of Appeal B.

Appeal C Ref: APP/J1915/C/22/3303338

4 Lloyd Place , (Formerly known as plot 5 Alpha Cottage, 4 Francis Road, Ware, SG12 9HB), Ware SG12 9FS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Rhys Bryan against an enforcement notice issued by East Hertfordshire District Council.
- The notice was issued on 17 June 2022.
- The breach of planning control as alleged in the notice is Without the benefit of planning permission unauthorised engineering operations resulting in an increase in land levels and the erection of boundary fencing.
- The requirements of the notice are: 1. Reduce land levels in the rear garden by no less than 0.5m; 2. Remove all unauthorised boundary fencing shown hatched blue on the attached plan; 3. Remove all resultant materials following compliance with 1 and 2.
- The period for compliance with the requirements is: 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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.

Appeal C Summary Decision: Appeal C is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. As set out above, I am dealing with the appeals related to 3 and 4 Lloyd Place ('No 3' and 'No 4' respectively) within one decision document to avoid duplication related to the site context, background information and development plan policy. I shall consider though the appeals for these two sites separately in my decision below unless otherwise indicated.
2. The appellant introduced new evidence within final comments and the Council was therefore given an opportunity to make representations on this. No additional representations were made.
3. The sites at No 3 and No 4 are located within the Ware Conservation Area. Neither party has indicated that the increase in land levels and fencing at No 3 and No 4 would have a harmful effect on the Conservation Area and I have no reason to take a different view on the evidence before me.

Appeals A, B and C – The Notice

4. The requirements of the Appeal A and B and Appeal C enforcement notices both refer to the fencing attacked by the notices as being shown 'hatched blue' on the plans attached to the respective notices whereas this is in fact shown by a blue line. I will therefore correct this and will also make a correction to the allegation so that this also cross-references the notice plans and corresponds to the requirements. I am satisfied that neither of these corrections, which are made in the interests of clarity, would result in any injustice. I will also correct a typographical error in the addresses stated so that these refer to Nos 3 and 4 as 'formerly' being known as Plots 6 and 5.

Appeal A and Appeal C - The appeal on ground (a) and the deemed planning application (DPA)

Main Issue

5. The main issue as regards both Appeal A and Appeal C is the effect on the living conditions of neighbouring residents.

Reasons

Appeals A and C - Background

6. The appeal sites at No 3 and No 4 previously formed part of the garden of an existing detached cottage which has been developed pursuant to a 2020 planning permission¹ for the erection of six dwellings. The parties make reference in written representations to the previous land level measurements. However, there is no ground (b) appeal submitted as regards the enforcement notices for No 3 or No 4. As such, there is no suggestion that the raising of land levels as alleged has not occurred. Consequently, this information is only relevant to the extent that it relates to the ground (a) and ground (f) appeals.

Appeal A - effect of development at No 3

7. Ground levels in No 3's rear garden have been raised so that these are essentially level from the rear glazed doors of the house. Boundary fencing has also been erected which runs parallel to the west elevation of 7a Deerfield

¹ Ref: 3/20/0505/VAR ('2020 Permission')

Close. At ground floor level, the affected west elevation of No 7a has a partially glazed kitchen door, along with a window primarily serving a dining area within an open plan living and dining room.

8. The appellant outlines that, from the level of the main grassed area in No 3², the fence attacked by the notice measures around 1.7m to 1.8m high with an additional trellis sat on top of this adding some 0.3m in height³. As a consequence of the raised ground levels at No 3, from the ground level of the adjacent side pathway to No 7a, the fence measures notably taller at some 2.6m by the calculations of the neighbouring residents at No 7a.
9. The Council's reasons for issuing the No 3 enforcement notice refer in fairly general terms to the impact on the 'amenity of occupiers of neighbouring properties' and reference is made in the Council's statement to the reduction in light received by the window and partially glazed door in question, with 'before and after' photos submitted to illustrate this. Neighbouring residents refer to a 'loss of light and amenity' and submit that a reduction in the height of the fence would not suffice to resolve the matter since the higher land levels at No 3 would then result in a loss of privacy.
10. The position of No 7a's west elevation window and partially glazed door close to the boundary with No 3 and faced towards No 3's main rear garden area means that a relatively high boundary treatment would be necessary to ensure adequate privacy as between these two properties even with ground levels reduced. Some reduction in natural light reaching these window openings is therefore necessary to ensure adequate privacy.
11. As to whether or not the raised ground levels and fencing which are the subject of the No 3 notice have caused harm to the living conditions of the occupants of No 7a, I acknowledge the close proximity from these openings to No 3's fence and that the ground levels at No 3 mean that the fence is significantly taller from the adjacent ground level at No 7a as compared to from No 3's garden ground level.
12. However, the west elevation openings are not the only windows to the affected rooms. The dining area benefits from fully glazed south facing double doors and from light from fully glazed double doors in the adjoining living area. The kitchen which is served by the partially glazed door also benefits from sky light windows, along with a fairly large east facing window on the other side of the room. I acknowledge that much of the trellis was missing at the time of my visit but I was able to observe the effect of this as regards the west facing window and, in my view, even if covered with greenery, this would not alter my assessment above.
13. I have taken into consideration the proximity and height of the fence from No 7a's side as a result of the raised ground levels, but for the reasons stated I find that the appeal development does not have an unpleasantly enclosing and overbearing effect on either of the habitable rooms in question. The relatively wide garden and elevated patio area to the rear of No 7a also mean that the raised ground levels and fencing do not result in a harmful loss of light or outlook to No 7a's rear garden.

² The flower bed nearest the fence sits at a slightly lower level

³ Only a fairly small section of trellis was in place at the time of my site visit, with the remainder having apparently been damaged by high winds

Appeal C - effect of development at No 4

14. Neither the Council nor any other party offers any substantive explanation or evidence as to any harm resulting to the living conditions of neighbouring occupants as a direct consequence of the raised ground levels and boundary fencing at No 4. No such harm was apparent from my site inspection. It is possible that the Council raised concerns in this regard on the basis that the houses constructed at No 3 and No 4 were part of the same development. I have though found that fencing and raised ground levels at No 3 as attacked by the No 3 notice have not resulted in any material harm to neighbouring occupants. No further consideration is therefore warranted as regards the development at No 4.
15. Thus, I conclude on the main issue as regards both Appeals A and C that the appeal developments do not result in any material harm as regards the living conditions of neighbouring occupants. There is no conflict with Policy DES4 of the East Herts District Plan (2018) which indicates that all development is expected to avoid significant detrimental impacts on the amenity of occupiers of neighbouring properties and to ensure that their environments are not harmed by inadequate daylight, privacy or overshadowing.

Other Matters

16. Interested parties have referred to various additional issues which have not been raised as concerns by the Council. The wall at the end of No 3 and No 4's garden has apparently been identified as a non-designated heritage asset and a concern is raised that the raising of ground levels has damaged this wall. I have though no substantive evidence such as to indicate any material likelihood of harm. The Council has powers to deal with any issues concerning trees in the conservation area or which represent a breach of a 2020 Permission condition.
17. I have considered concerns as regards drainage and surface water flooding; I note the topography of Deerfield Close, that Deerfield Close properties at the bottom of the hill are at high risk of surface water flooding, and that the direction of travel of surface water from Lloyd Place is towards a number of Deerfield Close properties. However, I have no substantive evidence that the raising of ground levels at No 3 and No 4 would increase the risk of flooding elsewhere. I note also that the 2020 Permission drainage condition discharge application is pending consideration.
18. With respect to concerns as to whether or not proper provision has been made to retain the soil of the raised ground, any damage related to this would be a civil matter. There is no detailed evidence to indicate the raised ground levels would prevent any future rebuilding of Deerfield Close properties. Any new structures constructed pursuant to permitted development rights on the raised ground levels at No 3 and No 4 would not be likely to result in any material loss of privacy bearing in mind the height of the boundary fencing.

Appeal A and Appeal C - Conclusion on ground (a) and the DPA

19. The development attacked by the No 3 and No 4 notices does not result in any material harm as regards the living conditions of neighbouring residents and would comply with the development plan, read as a whole. There are no material considerations advanced of sufficient weight as to indicate a decision

other than in accordance with the development plan. Consequently, Appeal A and Appeal C succeed on ground (a).

Appeals A and B Overall Conclusion

20. For the reasons given above, I conclude that the Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected. The Appeal A and Appeal B appeals on ground (f) do not therefore need to be considered and I will take no further action in respect of Appeal B.

Appeal C Overall Conclusion

21. For the reasons given above, I conclude that Appeal C succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected. The appeal on ground (f) does not therefore fall to be considered.

Appeal A Formal Decision

22. It is directed that the enforcement notice is corrected by:

- In paragraph 3 after the word 'fencing' insertion of the wording '(the approximate position of the fencing is indicated by a blue line on the attached plan)'; and
- In paragraph 5 deletion of the wording 'shown hatched blue on the attached plan' and insertion of the wording '(the approximate position of which is indicated by a blue line on the attached plan)'

23. Subject to the correction, Appeal A 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 engineering operations resulting in an increase in land levels and the erection of boundary fencing (as shown on the plan attached to the notice) at 3 Lloyd Place, (Formerly known as plot 6 Alpha Cottage, 4 Francis Road, Ware SG12 9HB), Ware SG12 9FS.

Appeal B Formal Decision

24. No further action is taken in respect of this appeal.

Appeal C Formal Decision

25. It is directed that the enforcement notice is corrected by:

- In paragraph 3 after the word 'fencing' insertion of the wording '(the approximate position of the fencing is indicated by a blue line on the attached plan)'; and
- In paragraph 5 deletion of the wording 'shown hatched blue on the attached plan' and insertion of the wording '(the approximate position of which is indicated by a blue line on the attached plan)'

26. Subject to the correction, Appeal C 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 engineering operations resulting

in an increase in land levels and the erection of boundary fencing (as shown on the plan attached to the notice) at 4 Lloyd Place , (Formerly known as plot 5 Alpha Cottage, 4 Francis Road, Ware, SG12 9HB), Ware SG12 9FS.

V Bond

INSPECTOR