



Appeal Decisions

Site visit made on 15 December 2023

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27/03/2024

Appeal A: APP/N4720/C/23/3325439

Land at 17 Rudgate Park, Thorp Arch, Wetherby LS23 7EJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Nick Evans against an enforcement notice issued by Leeds City Council.
 - The notice was issued on 7 June 2023.
 - The breach of planning control as alleged in the notice is the making of a material change of use of green/open space to residential driveway and garden involving landscaping works including new hardstanding, fencing and creation of new vehicular accesses without planning permission.
 - The requirements of the notice are:
 - Step 1. Cease the use of the open space for private garden/amenity space and parking.
 - Step 2. Remove all domestic paraphernalia including block paving and the fence as shown highlighted in green on the plan.
 - Step 3. Reinstate open grassed areas to the front of the property to the condition prior to the unauthorised development taking place.
 - Step 4. Grass seed the area until coverage has established.
 - The periods for compliance with the requirements are:
 - Steps 1 – 3 within 6 months
 - Step 4 within the first planting season until coverage has established.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), and (c) 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.
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Appeal B: APP/N4720/W/23/3325431

17 Rudgate Park, Thorp Arch, Wetherby LS23 7EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Nick Evans against the decision of Leeds City Council.
 - The application Ref 23/01896/FU, dated 23 March 2023, was refused by notice dated 12 June 2023.
 - The development proposed is retrospective change of use of green/open space to residential driveway and garden involving landscaping works including new hardstanding, fencing and creation of new vehicular accesses.
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Decisions

Appeal A

1. The enforcement notice is quashed.

Appeal B

2. The appeal is allowed.

Procedural Matter

3. The National Planning Policy Framework was revised in December 2023 (the Framework). The revisions make no substantive changes to the Framework relevant to the appeals before me. There has, therefore, been no need to seek the appellant or Council's comments on this matter.

Appeal A:

The Enforcement Notice

4. In cases where there is a dispute as to whether a material change of use has occurred, it is first necessary to ascertain the correct planning unit, and the primary (as opposed to incidental or ancillary) uses of that unit. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change, to ensure consistency in applying the formula of a material change of use. While not strictly determinative in respect of the content of an enforcement notice, the extent of the planning unit has particular relevance in this case.
5. The enforcement notice (Notice) relates to land described as '**Land at** [my emphasis] 17 Rudgate Park, Thorp Arch, Wetherby, LS23 7EJ'. Yet the land edged red on the plan attached to the Notice (the EN Plan) incorporates part of a footway, part of a parking bay and part of the access road, as well as 17 Rudgate Park (No17), which is a single dwellinghouse. While it is unclear whether the part of the footway falls within the planning unit containing No17, the part of the parking bay and part of the access road clearly fall outside of No17's planning unit and they are not therefore 'Land at 17 Rudgate Park'. This disparity between the description of the land and the EN Plan creates ambiguity.
6. The phrase 'green/open space' suggests an absence of development, rather than describing the use to which the land was put. Reason 1 states that the unauthorised development 'has led to the loss of green/open space to the detriment of users from the wider housing estate and members of the public through loss of access to those spaces'. The reasons also refer to 'the loss of previously open and accessible green/open spaces for car parking purposes'. These statements infer the land was used in some public open space capacity. This is not however specifically stated in the Notice, causing further ambiguity. There is however no need for the pre-existing use to be specified, so the 'from use' could be deleted.
7. The unauthorised use is described as 'residential driveway and garden'. These are incidental uses to the use of No17 as a single dwellinghouse, not primary uses. The alleged use is therefore imprecise, adding to the ambiguity already identified. Furthermore, if the land to which the Notice applies remains as shown on the EN Plan, not all the primary uses taking place have been identified.
8. It could be deduced from the reasons contained in the Notice that the pre-existing use and unauthorised uses do not apply to all the land at No17 or all the land shown edged red on the EN Plan. The disparity between the allegation and the land to which the Notice relates adds further ambiguity.
9. The requirements set out in section 5 of the Notice do not reflect the wording of the allegation and would need to be varied accordingly. Furthermore, step 4

is a replication of step 3 and is unnecessary. With the deletion of step 4, the compliance period for that step becomes superfluous and would need to be deleted.

10. In addition to the land edged red, the EN Plan identifies a green line which is the location of the fence required to be removed. The EN Plan does not however identify the location of the block paving, presumably the residential driveway, which is required to be removed. Nor is the location of the private garden/amenity space or the former green/open space identified on the EN Plan. The steps required to be taken therefore lack clarity and are imprecise.
11. Some of the matters raised above could be corrected without causing injustice. However, the quantum of change that would be required is such that the content of the Notice would significantly change, and I am not satisfied that injustice would not be caused.

Conclusion of Appeal A

12. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance, or the land where the breach of planning control is alleged to have taken place.
13. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
14. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (b) and (c) of the 1990 Act (as amended) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered. Furthermore, my decision to quash the notice does not preclude the Council of the option of issuing a further corrected notice, under the provisions of s171B (4) of the Act, should it wish to do so.

Appeal B:

Preliminary Matters

15. The host property, 17 Rudgate Park (No17), has been extended to provide additional residential accommodation, including a domestic single garage¹. The garage door lines up with one of the areas of hardstanding that I saw has been created. This planning permission was granted retrospectively, and the only condition imposed requires the development to be carried out in accordance with the approved plans dated 14 March 2022 and identified as:
 - Site Location Plan/Red Line/OS Plan; and
 - Proposed Elevations and Floor Plans reference 1683/1A.
16. The Site Location Plan/Red Line/OS Plan shows the position of the extension annotated and hatched black, and also two areas annotated 'parking'. Plan reference 1683/1A provides floor plans and elevation details of the extension

¹ Planning permission reference 22/01548/FU

for which retrospective planning permission was sought. This shows the extension to have a garage door to the front.

17. It would be unusual for planning permission to be granted for a garage without a means of access by a vehicle also being included. While I see that the delegated officer report says that the two parking areas were excluded from their consideration of this development proposal, there is nothing in the decision notice to confirm that. Compliance with the condition imposed on planning permission reference 22/01548/FU therefore requires the two areas annotated 'parking' to be provided. Had this not been the Council's intention, then further conditions should have been imposed to require the removal of the two parking areas and the relaying of grass within a specified time period.
18. Regardless of whether what has occurred amounts to development or whether it benefits from planning permission, it is incumbent upon me to determine the s78 appeal as an application for planning permission has been made. I shall proceed on that basis.

Main Issues

19. The main issues are the effect of the development on the character and appearance of the area, highway safety and accessibility.

Reasons

20. This residential estate has an unusual layout. The main spine road, Northfields, only has dwellings fronting one side. The land opposite is undeveloped but has no facilities to suggest it serves any public open space function, such as seating, play areas, formal pathways or planting. At the end of Northfields, the road turns right on to Rudgate Park, a no through road. A block of garages occupies a position at the end of the road. Three pairs of semi-detached houses, including the appeal property, occupy the land to the right-hand side of the road. To the left-hand side is a further block of garages and the rear gardens of the new dwellings located on the Windsor Lane development.

Character and appearance

21. Land ownership does not necessarily correlate with the use of land. However, where land ownership relates to a self-contained dwelling, it would not be unusual for the land owned to be used for incidental or ancillary residential purposes. I note that owned land in this case includes part of the access road and part of an adjacent parking bay, the use of which is not ancillary or incidental to the occupation of No17. These areas would therefore fall outside No17's planning unit.
22. The provision of an open plan frontage to the property does not however mean that the formerly grassed areas formed public open space or that they fell outside No17's planning unit. While the aerial and other images represent a snapshot in time, they show that the grassed areas to the front of No17 were not maintained in conjunction with the undeveloped land to the north. The Council do not dispute the appellant's ownership of the land and confirm that they have no evidence of footfall or usage of this land by the public. On the balance of probability, I find it more likely that the two grassed areas in front of No17 were, and are, maintained for purposes incidental or ancillary to the residential occupation of No17. Therefore, in my judgement, they form part of a single planning unit with No17. Policy G6: Protection and Redevelopment of

Existing Green Space of the Leeds Core Strategy (November 2014) does not therefore apply.

23. The Council has granted planning permission for No17 to have an extension which incorporates a garage for vehicles. The Council has also given separate permission for a dropped kerb to be provided to give vehicular access from the parking bay to the land. There would be nothing to stop vehicles being driven over grass to access the garage, the land would however quickly become unsightly if this were to occur. The provision of a hard surfaced driveway prevents the land becoming degraded.
24. Block paving is a high-quality material, which provides a relief from the expanse of tarmac found within the locality. The two parking areas are not dissimilar in appearance to off-street parking facilities found at other properties on Northfields and Rudgate Mews. They are therefore in keeping with the character of the immediate locality.
25. Adjacent to No17 is a large area of undeveloped land, an access road and parking bays. The loss of these two small, grassed areas to paving, taken in this wider context, has no significant visual impact on the appearance of the locality or the street scene.
26. The properties on Northfields have defined front boundary treatments, as do the properties on Rudgate Mews. The properties on the Windsor Lane development have high fences defining their rear garden boundaries, which back on to the Rudgate Park carriageway. While the appeal property and its immediate neighbours may have been constructed with open plan frontages, this is not a defining characteristic of the immediate area. The predominant character of the locality is now one of two storey dwellings with well-defined front and rear garden boundaries.
27. I saw that the fence erected along the side of the driveway is of a similar scale and appearance as those erected around the adjacent properties served off Windsor Lane. The fence is also a visual continuation of No17's rear boundary fencing, when viewed from Northfields across the undeveloped land. While it may be more usual for fencing around a front garden to have a lesser height, the fence at its current height causes no significant visual harm to the character or appearance of the host dwelling or its immediate locality.
28. The aerial images provided show that historically there was a greater visual connectivity between the green/open spaces before the Windsor Lane development occurred. The fence at No 17 causes a limited degree of obstruction to views from the undeveloped land along the footway that runs across the frontage of No17 and its immediate neighbours. However, this space contributes little in the way of visual continuity of the green/open spaces in the wider locality. The fence therefore has no significant effect on the visual amenity of the locality.
29. For the above reasons, the proposal does not conflict with policies P10 and P12 of the Leeds Core Strategy (November 2014) (the CS), saved policies GP5, LD1 and N25 of the Leeds Unitary Development Plan (Review 2006) Volume 1 (the UDP), and policy BE2 of the Thorp Arch Village Neighbourhood Plan 2017-2028, which seek to protect the character and quality of local townscapes and landscapes, as well as protecting visual, residential and general amenity.

30. The proposal also accords with guidance set out in the Framework and policy HDG1 of the Householder Design Guide (April 2012) (the HDG), which require developments to be high-quality, with particular attention to be paid to boundary treatments and materials to respect the character and appearance of the main dwelling and locality.

Highway safety and accessibility

31. A footway runs from the parking bay adjacent to No17 towards its front door, where it turns left and runs along past the adjacent properties. Beyond these properties it joins up with a separate part of the estate. This footway does not cross the undeveloped area to the north, nor does it join up with the footway on Northfields. While the footway provides pedestrian access from the parking bays and adjacent garages to these six houses on Rudgate Park, any wider usage would require pedestrians to walk on the road to join up with other footways in the wider vicinity. The proposal does not change this established arrangement.
32. The footway remains clear of obstruction and available to the public to use. The provision of the dropped kerb potentially improves accessibility for people with restricted mobility or with pushchairs. There is nothing to denote that the public can no longer use the footway. Furthermore, the fact that the footway remains tarmacked provides a visual distinction between its intended use and that of the private parking areas located to either side. The paved areas would not therefore deter pedestrian usage.
33. There is no evidence to suggest that pedestrians used the grassed areas rather than using the footway. Such a suggestion would seem unlikely, but in any event, there are no physical barriers that would prevent people walking over the paved areas. The proposal does not therefore preclude access to adjacent residential properties or between the network of green/open spaces throughout the wider residential area.
34. For the reasons given above the proposal causes no significant harm to highway safety or accessibility. The proposal accords with Policies T2 of the CS and guidance within the Framework and the Transport Supplementary Planning Document (February 2023), which seek to promote highway safety and deliver accessible developments.

Other Matters

35. Flood risk has not been raised as a reason for refusal. While rainwater would run off the paving quicker than it would run off grass, there is no evidence before me to suggest that the paving is not porous or that the run-off would cause flooding elsewhere. I therefore find no conflict with policy EN5: Managing Flood Risk of the CS.
36. While policy G9 of the CS requires developments to demonstrate biodiversity improvements, these should be commensurate with the scale of the development. The proposal amounts to the continued use of land for incidental and ancillary residential purposes. Any commensurate biodiversity improvement would be negligible and requiring such provision by condition, would not meet the test of necessity.
37. The alterations and extension of the dwelling have previously been granted planning permission and are not therefore before me for consideration. Policy

BD6 of the UDP relates to the alteration and extension of buildings. It is not therefore applicable to this proposal.

38. The provision of the driveway in front of the garage has in effect reduced the number of public parking spaces within the parking bay from which it is accessed. The provision of off-street parking for the host dwelling removes their need to utilise the parking bay and therefore the proposal has no negative affect on existing provision.
39. The reasons for refusal raise no issue with the proposal's effect on the living conditions of neighbouring occupiers. As such policy HDG2 of the HDG is not relevant.

Conditions

40. The Council has provided a list of 3 suggested conditions. The first requires the development to be carried out in accordance with 'the approved plans listed in the Plans and Specifications above'. The proposal has been carried out in its entirety and this condition is unnecessary.
41. The second condition requires the footway to be maintained and remain open and available for public use. The footway is however excluded from the red lined application site. It is not blue lined to denote being land in the appellant's ownership either. Such a condition would not therefore be enforceable.
42. For the reasons set out in paragraph 33 above, the third suggested condition is unnecessary.

Conclusion on Appeal B

43. For the reasons given above, the proposal does not conflict with the development plan as a whole and the appeal should be allowed.

M Madge

INSPECTOR