



Appeal Decision

Site visit made on 23 April 2024

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th May 2024

Appeal Ref: APP/H0520/W/23/3327184

16 Cock Close Road, Yaxley, Peterborough PE7 3HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Razvan Ilie against the decision of Huntingdonshire District Council.
 - The application Ref is 23/00141/FUL.
 - The development proposed is described as change of use of land to part residential/part landscape buffer, with replacement garden fence.
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Decision

1. The appeal is dismissed.

Application for costs

2. The appellant has made an application for an award of costs. This is the subject of a separate decision.

Preliminary Matters

3. A revised plan (JLG906/01 Rev A) has been submitted to correct the position of an existing fence. The Procedural Guide for Planning Appeals makes clear that the appeal process should not be used to evolve a scheme and it is important that what is considered is essentially what was considered by the Council, and on which interested people's views were sought. This change would be minor in nature and does not amend the proposed development the subject of the appeal. Accordingly, under the principles established by the Courts in *Holborn Studios Ltd*¹ the amendment does not involve a substantive difference or a fundamental change. Furthermore, having regard to the procedural tests, I do not consider that any other party would be prejudiced by my acceptance of it. I have therefore determined the appeal based on the revised plan.
4. The site has been subject to a dismissed appeal² (*the previous appeal*). The previous appeal differs from the scheme before me. Nevertheless, it is a material consideration in the determination of this appeal.
5. At my visit I observed that a temporary fence has been erected on site, although the fence is not of the height, position or materials proposed.
6. Since the submission of the appeal a revised National Planning Policy Framework (the Framework) was published in December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWCH 2823 (Admin)

² APP/H0520/W/22/3291679 dated 17 October 2022

result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Main Issues

7. The main issues are:

- i) the effect on the availability of open space;
- ii) the effect on the character and appearance of the surrounding area; and
- iii) the effect on biodiversity.

Reasons

Community Land

8. The land is not formally designated, however, having regard to the Framework *"all open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity"*, the landscaped buffer forms part of the visual amenity value of the green open space. I note the appellant states that not all of the land would be used specifically for domestic purposes, with part of the land to be planted as a landscape buffer. Nevertheless, the incorporation of the appeal site into private residential use results in the loss and fragmentation of an area of open space, contrary to Policy LP32 of the Huntingdonshire Local Plan adopted 2019 (LP).
9. I concur with my Inspector colleague that whilst individually the trees are of little merit, collectively they form a group which adds greenery and value to the open space. Similarly, I recognise that the trees could potentially be felled by the owners of the open space, however, I have no substantive evidence that this is likely to occur. Whilst a condition could be imposed to secure the retention of the trees and proposed planting, the change of use from publicly accessible land to private garden would undermine the overall function and value of the green corridor.
10. In the absence of any justification, and with no evidence that the land is surplus to requirements, the proposal would be contrary to Policy LP32 of the LP which, amongst others, resists the whole or partial loss of an area of open space of public value. Furthermore, the area of land is not replaced by an equivalent or better provision and there are no benefits which outweigh the loss.
11. I have also considered that the proposal would set a precedent for similar proposals within the locality. Whilst each proposal must be treated on its individual merits, allowing this appeal could make it more difficult to resist similar proposals in the future. In this regard, any cumulative impact would exacerbate the harm I have described above.
12. For the reasons set out above the proposal would have a harmful effect on the availability of open space. Accordingly, the proposal would be contrary to Policy LP32 of the LP which seeks to avoid the loss of open spaces and require any loss to be mitigated by a net gain to the community.

Character and appearance

13. The open space is characterised by mature trees and hedgerows around the boundaries and grassland in the middle with a linear paved walkway connecting local estate roads.
14. Although landscaping is proposed to the north of the new fence line and wraps around the proposed garden at the eastern extent, the overall change of use and associated domestication would result in the erosion of the landscape buffer which provides an amenity function. This would harm the character and appearance of the surrounding area due to the incongruous encroachment of residential use into the landscaped open space.
15. If permission were given for the change of use, it would be reasonable to expect that a more intensive residential use would ensue with further ornamental plantings and domestic paraphernalia. This would add further to the incongruity of the use against the appearance of the open space.
16. The appellant states that the current landowner could remove trees and that they would be agreeable to a condition to manage the planting in the future. Whilst a condition could secure the retention of the trees, nevertheless, the character of trees within a domestic setting is intrinsically different and would not have the same public amenity value in terms of character and appearance.
17. The reduced height of the proposed fence and its design would be reflective of other boundary treatments in the vicinity of the site. The precise finish of the fence could be secured by an appropriately worded condition. Furthermore, planting to the north side of the fencing would help assimilate the fence into its surroundings. Consequently, the design of the proposed fence would not cause significant harm to the character and appearance of the locality. However, this would not overcome my concerns with regards to the overall change in character.
18. For the reasons stated above, the proposal would have a harmful effect on the character and appearance of the surrounding area. Accordingly, the proposal would be contrary to Policies LP31 and LP32 of the LP. Collectively, these policies seek to conserve and enhance any existing tree woodland, hedge or hedgerow of value and only supports the whole or partial loss of an area of open space of public value where there would be no significant adverse impact on the character of the surrounding area. The proposal conflicts with the provisions of the Huntingdonshire Design Guide Supplementary Planning Document (2017) and the Framework with regards to achieving well-designed places.

Biodiversity

19. The existing landscaping has no designated ecological significance. Nevertheless, it is part of a landscape buffer within the residential estate and makes a positive contribution to biodiversity and ecology in the locality.
20. I observed similar shrubs to those proposed within the gardens of nearby properties. However, the proposed planting is a non-native UK species and the ecological and biodiversity benefits associated with planting would be limited. If I were minded to allow the appeal a suitably worded condition could secure an alternative species.

21. Subject to the imposition of a condition for the species of planting the proposal would accord with Policy LP30 of the LP and the Framework which seek to preserve and enhance the natural environment, recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services.

Other Matters

22. I acknowledge the appellants desire for a secure boundary and safe and workable off-street parking. It is noted that the proposal would not impact upon the footpaths. However, these matters do not change my conclusion on the main issues.
23. It is understood that the owners of the land do not object to the proposals. Nevertheless, this is not a matter for me to consider as part of this appeal.
24. I note reference to developments in the locality, including Telford Drive, however, limited details have been provided. In any event, I must consider the appeal scheme on its own merits.
25. The Council did not raise concerns regarding the impact of the proposal on the living conditions of the occupiers of neighbouring properties and I have no reason to reach a different view.
26. I have considered all other matters raised by interested people. However, as I have found the proposal to be unacceptable for the reasons given, it is not necessary for me to reach a conclusion on these matters.
27. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. In this case, as I find conflict with the up-to-date policies of the development plan the proposed development would not benefit from the presumption in favour of sustainable development.

Conclusion

28. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

R. Gee

INSPECTOR