



Appeal Decisions

Site visit made on 21 May 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st MAY 2024

Appeal A Ref: APP/R1010/C/24/3338466

Appeal B Ref: APP/R1010/C/24/3338467

Land at 67 Chatsworth Road, Creswell, Worksop S80 4LH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mrs Lucy Anne Eastwood and Appeal B is made by Mr Mark Eastwood against an enforcement notice issued by Bolsover District Council.
- The enforcement notice was issued on 31 January 2024.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use of land from open space land to private domestic garden and the erection of an enclosing fence on land to the rear of the site known as 67 Chatsworth Road, Creswell, Worksop, S80 4LH.
- The requirements of the notice are: 1 cease the use of the land in the approximate location cross hatched in black as domestic curtilage, 2. demolish and remove from the land the fencing surrounding the communal land along the lines shaded yellow and marked A, B and C on the attached plan, 3. erect a close boarded timber fence of no more than 2 metres in height along the line shaded in yellow and marked D on the attached plan, and 4. plant a replacement hedgerow to the following specification along the full length of the line shaded in yellow and marked B on the attached plan: a) a double staggered row 400mm apart, b) shrubs to be planted 6 per metre (i.e., 3 per metre along each of the staggered rows), c) all shrubs shall be a minimum of 500mm in height at the time of planting, d) the hedgerow will be made up of the following planting to the percentages set out below:

Species

All planting stock will be of UK provenance

Hawthorn - *Crataegus monogyna* (75%)

Blackthorn- *Prunus spinosa*

Hazel - *Corylus avellana*

Holly - *Ilex aquifolium*

Field Maple - *Acer campestre*

Ash - *Fraxinus excelsior*

Wych Elm - *Ulmus glabra*

Dogwood - *Cornus sanguineus*

Wild Privet - *Ligustrum vulgare*

Pedunculate Oak- *Quercus robur*

(above at 25% mix)

and e), if any plant is removed, uprooted, destroyed or dies replace it with another plant of the same species and size in the same place.

- The period for compliance with requirements 1, 2 and 3 is 12 weeks from the date when the notice takes effect and requirement 4 is before the end of the first planting season following the date when the notice takes effect.
- Appeal A 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 (the Act) as amended and Appeal B is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Act 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 Ref: APP/R1010/W/24/3338461
67 Chatsworth Road, Creswell, Worksop S80 4LH

- 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 Mrs Lucy Eastwood against the decision of Bolsover District Council.
 - The application Ref 23/00119/FUL, dated 15 May 2023, was refused by notice dated 21 September 2023.
 - The development proposed is described as 'Greenland to garden fence'.
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Decisions

Appeal A Ref: APP/R1010/C/24/3338466

1. It is directed that the enforcement notice be corrected by 1) deleting all the words in section 3 and replacing them with '*without planning permission the unauthorised material change of use of the land from open space land to private domestic garden and the erection of an enclosing fence on land to the rear at the site known as 67 Chatsworth Road, Creswell, Worksop, S80 4LH*' and 2) the substitution of the plan annexed to this decision letter for the plan attached to the enforcement notice, and 3) varied by deleting all words in section 5(1) and replacing them with '*cease the use of the land in the approximate location cross hatched in black as a domestic garden*'. Subject to these corrections and the variation the appeal is dismissed and 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 as amended.

Appeal B Ref: APP/R1010/C/24/3338467

2. It is directed that the enforcement notice be corrected by 1) deleting all the words in section 3 and replacing them with '*without planning permission the unauthorised material change of use of the land from open space land to private domestic garden and the erection of an enclosing fence on land to the rear at the site known as 67 Chatsworth Road, Creswell, Worksop, S80 4LH*' and 2) the substitution of the plan annexed to this decision letter for the plan attached to the enforcement notice, and 3) varied by deleting all words in section 5(1) and replacing them with '*cease the use of the land in the approximate location cross hatched in black as a domestic garden*'. Subject to these corrections and the variation the appeal is dismissed and the enforcement notice is upheld.

Appeal C Ref: APP/R1010/W/24/3338461

3. The appeal is dismissed.

Procedural Matter

4. In respect of Appeal C, I have considered the description of development in the Council's refusal notice rather than in the planning application form as it is

more precise. The Council's refusal notice states '*change of use of communal land to garden and erection of fence*'.

The Notice

5. The plan appended to the notice shows the breach of planning control as extending up to the edge of the path within the 'Green Space' to the rear of 67 Chatsworth Road. The appellants state that this is not reflective of the situation when the notice was issued, i.e., a garden extension further away from the path. The Local Planning Authority (LPA) does not disagree that the plan appended to the notice is incorrect. It has submitted a corrected amended plan as part of the appeal. However, it is clear from the evidence (including photographs) that the appellants are certain what the notice is attacking and what the breach of planning control relates to. I am satisfied that I can substitute the plan appended to the notice with the LPA's corrected plan without injustice being caused to the main parties. The notice is accordingly corrected.
6. The breach of planning control refers to the '*change of use of land from open space land to private domestic garden*'. Section 55(1) of the Act defines the meaning of development, and this includes '*the making of any material change in the use of any buildings or other land*'. I shall correct the breach of planning control without any injustice being caused to the main parties by including the wording '*material*' before '*change of use*'.
7. Requirement 5(1) of the notice does not correspond with the breach of planning control in so far that it states, '*cease the use of the land in the approximate location cross hatched in black as a domestic curtilage*'. Curtilage is not a use of land and, furthermore, the breach of planning control refers to the '*unauthorised material change of use of the land from open space land to private domestic garden*'. I shall vary requirement 5(1) of the notice, without injustice being caused to the main parties, by deleting all the words and replacing them with '*cease the use of the land in the approximate location cross hatched in black as a private domestic garden*'.

Reasons

Ground (b) appeals

8. An appeal made on ground (b) is that the matters comprising the alleged breach of planning control have not occurred.
9. The appellants state that works relating to the breach of planning control started in summer 2020. The appellants go on to state that '*we decided to issue a notice letter to Avant Homes on 13 February 2023 instructing them that we were going to be erecting a fence and taking land through adverse possession following the 18 years of maintenance and continued maintenance going forward.... We didn't hear anything back so continued to erect the fence*'.
10. The evidence is that the breach of planning control has occurred. The onus is on the appellants to make their case on legal grounds. The appellants have not suitably substantiated their claim that the breach of planning control did not occur. Therefore, the ground (b) appeals fail.

Ground (c) appeals

11. An appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The onus is on the appellants to make their case on legal grounds. The appellants do not in fact set out why they consider that the matters alleged do not constitute a breach of planning control.
12. It is not disputed that use of the 'Green Space' land as an extended garden constitutes a material change of use of the land. In other words, the material change of use of the land constitutes development for which planning permission is required.
13. While in height terms, the fence that has been erected around the unauthorised garden would be permitted development in respect of Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) (Order) 2015 (as amended) (GPDO), in this case such permitted development rights do not exist as section 3(5) of the GPDO states that '*the permission granted by Schedule 2 does not apply if—(b) in the case of permission granted in connection with an existing use, that use is unlawful*'. The evidence indicates that the fence was erected as part and parcel of the unauthorised material change of use of the land, i.e., it was erected to facilitate an unlawful use of the land.
14. For the above reasons, I conclude that the appeal development constitutes a breach of planning control. Therefore, the ground (c) appeals fail.

Ground (a) appeal and the deemed planning application and the s.78 appeal

Main issues

15. The reasons for issuing the enforcement notice and the reasons for refusing planning permission are the same. Therefore, in respect of Appeals A and C, the main issues are the effect of the development on (i) the designated Green Space, (ii) the character and appearance of the area, and (iii) biodiversity.

Green Space

16. The evidence is that the breach of planning control falls within designated Green Space and hence is protected under policy ITCR6 of the adopted Local Plan for Bolsover District 2020 (LP). The development does not accord with policy ITCR6 of the LP in so far that it has resulted in the loss of part of an existing Green Space and no replacement facility has been provided.
17. In reaching the above conclusion, I am cognisant of the fact that the land is also part of a multi-user trail network as protected under policy ITCR2 of the LP. While the multi-user trail can still be used, it is nonetheless clear that prior to the breach of planning control taking place, the appeal site had a greener and more undeveloped appearance as part of the linear Green Space. Indeed, it provided a visually attractive connection into the countryside for leisure purposes. In my judgement, the evidence is that prior to the unauthorised development taking place, the land provided a pleasing undeveloped green buffer between the footpath and the residential development beyond.

Furthermore, there was a distinctive consistency to the width of the Green Space in this location.

18. I acknowledge the appellants' comments about anti-social behaviour and fly tipping in the area and the view expressed that enclosing the land has reduced these adverse activities. I deal with this matter further below, but there is no doubt that prior to the breach of planning control taking place, the appeal site had distinctive public benefits as outlined above. In this case, I do not therefore find that the breach of planning control is of '*greater overall benefit to the local community*' than use of the land as Green Space. I therefore conclude that the development does not accord with policy ITCR6 of the LP.

Character and appearance

19. The evidence is that prior to the breach of planning control taking place, the land was part of designated Green Space and was experienced as being integral to the undeveloped and landscaped strip alongside the footpath. The use of the land as an extended domestic garden, facilitated by way of the erection of a wooden fence, unacceptably departs from the green and undeveloped nature of the Green Space and, in particular, is seen as an ad-hoc and incongruous addition which fails to maintain the otherwise mainly straight and verdant edge that prevails to the rear boundaries of the properties on Chatsworth Road.
20. I find that the development has had the effect of urbanising what was otherwise a green lung between housing areas and hence significant harm has been caused to the distinctive character and appearance of the locality. In reaching this conclusion, I am aware that the appellant has put in place some new planting to the side and rear of the fence. However, such planting is not mature and does not fully screen the imposing fencing. Therefore, I conclude that the development does not accord with the design, character, and appearance requirements of policies SC2 and SC3 of the LP and chapter 12 of the National Planning Policy Framework 2023 (the Framework).

Biodiversity

21. There is no evidence that the development has caused harm to any protected species. Nonetheless, the evidence indicates that trees and scrub were removed to facilitate the unauthorised development. It is likely that this would have had some biodiversity value. The appellant has planted additional trees following the breach of planning control occurring. Indeed, I was able to see trees and vegetation as part of my site visit. However, the appellant has not provided baseline biodiversity information as part of the appeal and hence I cannot be certain whether the landscaping undertaken is sufficient to meet the requirements of policy SC9 of the LP which requires development proposals to conserve and enhance biodiversity. As part of this process, policy SC9 requires '*adequate and proportionate information to enable a proper assessment of the implications for biodiversity*'. The latter has not been provided as part of this appeal.
22. I have considered whether it would be possible to impose a planning condition to deal with biodiversity matters. However, without adequate and proportionate biodiversity information, I do not find that it would be acceptable to impose a planning condition. This is because I do not have enough certainty, should it be necessary, that the appellant would be able to provide suitable biodiversity

mitigation within land under their ownership and control to meet the requirements of policy SC9 of the LP. I therefore conclude that the development does not accord with the biodiversity requirements of policy SC9 of the LP.

Other Considerations

23. There is no dispute between the parties that the appeal site has been the subject of fly-tipping and anti-social behaviour in the past, including damage to fence panels. Furthermore, I accept that the rear of the properties on Chatsworth Road are close to the Green Space and hence there is vulnerability for residents in terms of anti-social or criminal activity. The appellant states that the land was not properly and regularly maintained in the past by Avant Homes, and that enclosing it as part of an enlarged garden has improved its appearance and minimised potential anti-social and criminal activities.
24. I afford the reduction in anti-social and criminal activities positive weight in the overall planning balance. However, this is tempered to some degree as the evidence indicates that CCTV has recently been installed by the appellant. In this context, it remains possible that the appellant may be able to mitigate possible anti-social activity by providing CCTV and/or by providing other deterrents such as security lights and/or additional or different landscaping within original garden land.
25. In other words, it need not necessarily be the case that enclosing the land with a fence and using it for private domestic garden purposes is the only way of dealing with anti-social or criminal activities.
26. On my site visit, I was able to see that a relatively long palisade fence had been erected alongside part of the path leading through the Green Space and towards Wood Avenue playing field. I have limited information relating to how and why this fence was erected, or whether any vegetation was removed to enable its construction. The fence has a very industrial appearance and is not factory coated. Owing to its untreated colour, I do not find that it is experienced as being sympathetic to the area. Nevertheless, unlike the appeal fencing, it follows a consistent line alongside the edge of the footpath. It is positioned in a different part of the Green Space and its existence does not justify the planning harm that has been caused by the breach of planning control.

Planning balance and conclusion

27. While the evidence does indicate that the development has to some extent mitigated the effects of some anti-social activities, this does not carry sufficient weight to outweigh the harm caused in terms of the conflict with policy ITCR6 of the LP, the significant harm caused to the character and appearance of the area, and the conflict with the biodiversity requirements of policy SC9 of the LP. I therefore conclude that the ground (a) appeal fails, and that the s.78 appeal should be dismissed.

Ground (f) appeals

28. An appeal made under ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.

29. The purpose of the notice is to remedy the breach of planning control by ceasing the use of the land as a domestic garden and the removal of the fence. The steps required in the notice to remedy the breach of planning control are not excessive and, in fact, the appellants do not suggest any lesser steps. I therefore conclude that the ground (f) appeals fail.

Ground (g) appeals

30. An appeal made on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
31. The appellants do not state why they consider the compliance time periods in the notice to be unreasonable. In the absence of any contrary time periods from the appellants, I conclude that the compliance time periods in the notice are reasonable and hence the ground (g) appeals fail.

Conclusions

Appeal A & Appeal B

32. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the deemed application.

Appeal C

33. The development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate that decisions should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

D Hartley

INSPECTOR



Substitute Plan

This is the plan referred to in my decision dated: **21 MAY 2024**

by **D Hartley BA (Hons) MTP MBA MRTPI**

Land at: 67 Chatsworth Road, Creswell, Worksop S80 4LH

**References: Appeal A: APP/R1010/C/24/3338466
& Appeal B: APP/R1010/C/24/3338467**

Scale: Do not scale

