



Appeal Decisions

Site visit made on 4 June 2024

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 6 June 2024

Appeal A Ref: APP/J0405/C/23/3328905

2 New Meadow, AYLESBURY, HP21 7AN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Munir Hussain against an enforcement notice issued by Buckinghamshire Council - North Area (Aylesbury).
 - The notice was issued on 4 September 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, 1) The material change of use of land to residential; and 2) Operational development consisting of the erection of a garage and the laying of gravel.
 - The requirements of the notice are: Step 1 Permanently cease the residential use of the Land shown hatched on the attached plan. Step 2 Permanently remove (demolish) the garage shown cross hatched on the attached plan from the Land and ensure all materials used in its construction are removed from the Land. Step 3 Permanently remove the gravel shown hatched on the attached plan from the Land. Step 4 Reinstate the Land shown hatched on the attached plan to its condition prior to the unauthorised development taking place which consisted of untreated open flat grassland. Step 5 Permanently remove any debris or materials from the Land that comes as a result of complying with Steps 1, 2, 3 and 4 of this Notice.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (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 Ref: APP/J0405/W/23/3328903

2 New Meadow, AYLESBURY, HP21 7AN

- 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 Munir Hussain against the decision of Buckinghamshire Council - North Area (Aylesbury).
 - The application Ref is 23/02271/APP.
 - The development proposed is construction of garage and extension of vehicular drop kerb.
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Decisions

Appeal A – 3328905

1. 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 as amended.

Appeal B - 3328903

2. The appeal is dismissed.

Preliminary Matters

3. No2 is the first house in New Meadow and stands around the corner from Queens Mead. The area between No2 and Queens Mead was originally open space, part of the designed soft landscaping of the estate when it was built. An appeal decision¹ was issued in April 2023 dealing with an enforcement notice, an LDC application and a planning application affecting No2. The enforcement allegation was the construction of a garage, laying of hardstanding and material change of use to residential. The Inspector noted the garage had not yet been built, only the rear wall which was constructed of concrete blocks. The appellant argued this had originally been intended to be a garage but he had changed his mind and it was now a garden wall. The garage element was removed from the allegation (as it had not been completed), but the Inspector found the hardstanding to be harmful and should be removed. He allowed the LDC insofar as it related to the parking of cars on the land. He refused the material change of use of the land to residential because of the harm to the character and appearance of the area.
4. The appellant has now completed the garage and extended the hardstanding (in the form of gravel) further to the north towards the junction with Queens Mead. This gravel area appears to provide a path to a gate to the back garden. The garage and the gravel hardstanding are the subject of this notice. The starting point for consideration of the appeals before me is that the hardstanding in front of the garage is unlawful and is required to be removed and the previous Inspector, found, very recently, the encroachment onto the grassed area by the hardstanding was harmful to the streetscene, regardless of the fact the appellant can lawfully park cars on what was grass.
5. There is also a misunderstanding on the appellant's part. He says as a result of the previous appeal decision he was allowed to retain the block wall (that is now part of the garage). This is not the case. The allegation of a garage was removed from the notice for technical reasons. The Inspector noted the Council could issue a new notice against the partially built structure if they wished. In the event they did not need to as the appellant finished the garage and the current notice thus relates to the entire garage structure.
6. There is also a comment that the hardstanding is lawful, again this is not the case. The enforcement notice was upheld for the hardstanding which needs to be removed. At present the only lawful activity to the north of the dwelling (No2) is the parking of vehicles on grass next to the house.

The Appeals on Grounds (b) and (c)

7. These grounds are often confused, and this appeal is no different. Ground (b) is that the matters alleged haven't happened. There clearly is a garage and hardstanding on the land and the land is being used residentially. The appeal on ground (b) cannot succeed.
8. Ground (c) is that the matters alleged have happened but they do not require planning permission. The appellant argues that it is his land, within the curtilage of his dwelling, and so no planning permission is required. Owning land and land being within your curtilage are two different things. Curtilage is a technical concept that is not precisely defined anywhere but has been the

¹ APP/T0355/X/21/3271220 & 3290102 & 3284824

subject of numerous court cases over the years. However, I do not need to go into those details as No2 was built with a clearly defined curtilage which ended at the open space to its north. Simply occupying that space and incorporating it into your garden does not make it your curtilage, regardless of ownership. Consequently, permitted development rights are not available for the garage or the hardstanding. The residential use is clearly a material change of use from open space and that also requires planning permission. The appeal on ground (c) fails.

The Appeal on Ground (a) and Appeal B

9. Ground (a) is that planning permission should be granted for the matters alleged. Appeal B is an application for planning permission for the garage and the dropped kerb. As noted above, the fallback is not that there is a large block wall (the rear wall of the garage), as that is not lawful. Also, the hardstanding in front of the garage remains unlawful and the existing enforcement notice requires it to be removed. The previous Inspector found the encroachment of the hardstanding into the open space had resulted in the loss of a parcel of land that made a positive contribution to the character of the area. It was therefore contrary to Policy BE2 (Design of New Development) of Vale of Aylesbury Local Plan 2013 – 2033 adopted September 2021. This was because the development fails to respect and complement the physical characteristics of its surroundings and the local distinctiveness of the locality.
10. I have looked around the estate and come to the same conclusion as the previous Inspector. The use of open spaces is an important part of the character of the area. In particular, the open space next to No2, was originally balanced by a similar sized plot opposite. This is no longer the case as the garage and gravel hardstanding extend some way into the open space, unbalancing the entrance to New Meadow. In this case the encroachment is not just a hardstanding, but an entire double garage. The harm to the area is thus considerably more significant.
11. The simple fact is it should have been obvious from the previous appeal decision that building on the open space was not acceptable, but instead of following the requirements of the enforcement notice the appellant has doubled down by building a garage and extending the hardstanding. This is clearly harmful to the character and appearance of the area and the appeal on ground (a) is refused. It follows the planning appeal for the garage is also refused.
12. The appellant can lawfully park cars on the grass area (once that is re-established), but it does not follow that should be encouraged. This is a planning appeal, where the merits of the proposed development need to be taken into account, rather than just the limited question of whether the development is lawful or not. Parking on the grass would clearly be harmful for the same reasons as described above. The cars would intrude into the open space, the grass would be worn away and the streetscene would be harmed. The dropped kerb serves no other purpose other than to facilitate the parking. Consequently I shall refuse that part of appeal B as well.

Conclusion

13. I shall dismiss the appeals and uphold the notice. The effect of this is that the garage and gravel hardstanding should be removed. The solid hardstanding in

front of the garage should also be removed (as per the existing enforcement notice) and the whole area returned to grass.

Simon Hand

INSPECTOR