

Appeal Decision

Site visit made on 24 June 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2024

Appeal Ref: APP/Z4718/C/23/3332014

Land to the rear of the former Rising Sun Inn, Scholes Lane, Scholes, Cleckheaton BD19 6NR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Joshua Dean against an enforcement notice issued by Kirklees Metropolitan Council.
- The notice was issued on 20 September 2023.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the material change of use from part of sports ground to domestic garden for residential use.
- The requirements of the notice are to:
 - a) Cease the use of the land for residential purposes,
 - b) Remove the fence, hardstanding and all residential paraphernalia,
 - c) Return the land to its condition prior to the development taking place.
- The period for compliance with the requirements is:
90 days
- The appeal is proceeding on the grounds set out in section 174(2)(a), (e), (f) and (g) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice is varied by:

At section '6. *Time for Compliance*' the deletion of the words:

"1) To complete steps 5(a) to (c) above – 90 days after the notice takes effect.

Total time for compliance – 90 days after this Notice takes effect."

and their substitution with the words:

"1) To complete steps 5(a) to (c) above – 12 months after the notice takes effect.

Total time for compliance – 12 months after the Notice takes effect".

2. Subject to the variation, 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.

Preliminary Matters

3. An appeal under ground (a) seeks planning permission for the matters stated in the notice as the breach of planning control. However, the powers available to me under an appeal made on ground (a) allow me to consider under section 177(1) of the Act, granting planning permission in relation to the whole or any part of those matters specified in the notice.
4. The appellant has indicated in his grounds of appeal that the boundary of the garden area could be amended as a way of seeking to respond to concerns, expressed by Sport England in response to an earlier (and subsequently withdrawn) retrospective planning application¹, regarding the effect of the appeal scheme on the adjacent football pitch and the land around it. In order to give proper consideration to this alternative scheme, I will deal with this within the ground (a) appeal.

The appeal on ground (e)

5. An appeal on ground (e) may be made if it is felt that copies of the enforcement notice have not been served as required by section 172 of the Town and Country Planning Act 1990 (as amended (the Act)). Section 172(2) requires that a copy of an enforcement notice be served on (a) the owner and on the occupiers of the land to which it relates; and (b) on any other person having an interest in the land which, in the opinion of the local planning authority, is materially affected by the notice.
6. The appellant does not seek to argue fault in terms of the service of the notice on himself. Rather, that the notice was not served upon 'the Halifax' as the provider of a mortgage to the appellant in relation to the land in question. The Council explain however that on three separate occasions land registry searches were carried out which showed the area of land in question as having been neither registered nor pending registration. In this respect, I agree with the Council's conclusion that the notice could only be served based on the evidence and information before it at that time.
7. The appellant has not provided any documentary evidence to demonstrate that the mortgage lender has any interest in the area of land in question, let alone that there has been any disadvantage. That the Council conducted a further land registry search during the course of the appeal which reiterated the land as being unregistered adds weight to my conclusions on this matter and demonstrates that the Council made best endeavours to identify those with an interest in the land.
8. However, even if I were to conclude that the notice had not been correctly served on all those having an interest in the land which is materially affected by the notice section 176(5) of the Act provides that failure to serve may be disregarded if an appellant has not been substantially prejudiced by the failure to correctly serve. I am satisfied that as the appellant has been able to submit an appeal against the notice, within the statutory time period and to argue the case in the course of this appeal, this has not been the case. It cannot, therefore, be said that the appellant has suffered prejudice as a

¹ LPA Ref No: 2018/93472

result of any failure to comply with the rules concerning service and the appeal on ground (e) therefore fails.

The appeal on ground (a)

Main Issue

9. The main issue is the effect of the development on the provision of designated urban green space.

Reasons

10. The area of land to which the notice relates is designated in the Kirklees Local Plan (2019) (KLP) as being Urban Green Space (UGS). The property to which the land in question is currently associated with is a former public house converted to a residential dwelling. It lies at the northeastern corner of a sports field comprised of a cricket pitch and football pitch, but now separated from it by a timber fence.
11. The supporting text to KLP Policy LP61 states that green spaces of 'identifiable value' in the borough's towns and villages will be defined as urban green space². The types of land and sites included are many and varied, but include playing fields, outdoor sports facilities and amenity green space. Policy LP61 itself sets out the circumstances in which development that would result in the loss of urban green space will be permitted.
12. At the time of my visit to the site the cricket pitch, whilst not currently hosting a game at that time, nevertheless had the appearance of being an active cricket ground. Although out of season, I have no reason to believe that the adjacent football pitch is also not similarly used and no other evidence has been put forward to demonstrate otherwise. The land around the cricket pitch is well maintained, but that around the football pitch less so. Nevertheless, the margins of the football pitch and the wider areas of the overgrown grass land within the designated UGS contribute to a generally pleasant, open and attractive area of land.
13. There has been no suggestion that the area of land the subject of this notice comprised part of the active playing surfaces of either the cricket pitch or the football pitch. References from the parties' submissions suggest that, prior to the building's conversion from public house to dwelling, the land in question was used in part as an 'informal' beer garden associated with the former use of the building and, in part, was overgrown.
14. However, the timber fence erected to enclose the area of land in question is close to the football pitch's goal line. It does not run exactly parallel to the field however and the gap between it and the fence narrows along their respective lengths. Whilst there has been no suggestion from either party that the appeal scheme directly prevents sporting activities from occurring at either the football pitch or cricket pitch, the fence falls within what the Council describe as the pitch's buffer zone, citing Sport England's 'Playing Fields Policy' and its liaison with the Football Association (via the Football

² Paragraph 19.42

Foundation) during a previous (withdrawn) application for planning permission³.

15. Whilst Sport England's 'Playing Fields Policy' is not part of the development plan, it appears that the football pitch's dimensions, and particularly its length, is only just acceptable as a full-sized 11x11 pitch. A run-off zone of 3 metres around the playing surface is also advised by the Playing Field Policy to act as a safety buffer. The physical presence of the fence, in part within this buffer area, is significant and the reduction to the depth of the buffer zone in places is also considerable. This would affect the usability of the pitch and could, in certain circumstances, compromise the safety of players using it. This adds further weight to my conclusions in respect of the harmful effect of the loss of UGS that has resulted from the breach of planning control attacked by the notice.
16. Noting the description given to the previous condition of the area of land in question, this does not necessarily indicate that it was 'clearly no longer required'. Indeed, the role of some of it as part of the football pitch's run-off suggests that it was part and parcel of the use of the football pitch. Nevertheless, as part of the wider UGS, the area of land, whether overgrown or not, would have contributed to the qualities of the UGS in a manner that an enclosed area of domestic garden laid to patio and lawn, with outdoor seating and kitchen areas, and enclosed by a timber fence, does not.
17. No case has been made that the appellant has enclosed land that is not within the designated UGS. Thus, it is clear that the enclosure of the area of land and its use as domestic garden has resulted in the loss of designated UGS and compromises the usability of the football pitch. KLP LP61 is clear as to the circumstances in which development proposals that would result in the loss of UGS would be considered to be acceptable. I have no evidence before me to demonstrate that the open space is no longer required to meet local needs for open space, sport or recreational facilities, or that it does not make an important contribution in terms of visual amenity, landscape or biodiversity value. Replacement open space, sporting or recreational facilities have not been provided, nor has the enclosure of this area of land and use as domestic garden provided an alternative form of open space, sport or recreation use that is needed to address deficiencies. The appeal scheme is therefore clearly contrary to KLP policy LP61.

Alternative scheme

18. Section 177(1) of the Act provides that planning permission may be granted 'in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates'. The notice refers to the matter enforced against as being the material change of use from part of sports ground to domestic garden for residential use.
19. The appellant has referred to being denied the opportunity of exploring an amended scheme with the Council during the course of a previous (withdrawn) retrospective application for planning permission³. However, other than a passing reference to amending the alignment of the timber fence and the extent of the enclosed garden area I have little in the way of

³ LPA Ref No: 2018/93472

detail of the form that this would take, or the extent of presently-enclosed UGS that would be revealed. Whilst this could be capable of resolving the matter of the effect on the sports pitch, and in particular those concerns regarding the extent of the run-off area around the football pitch, it would not address the effect on the wider UGS. Unless the realignment of the fence was such that it was moved back in line with the rear face of the former public house building itself it seems to me that, based upon the Council's extract of the UGS designation, an area of UGS would still be lost.

20. Thus, I am not persuaded that the alternative scheme, such as it exists from the vague descriptions afforded to it within the appellant's submissions, would sufficiently address the reason for issuing the notice, or the matters identified herein. It has not therefore been adequately demonstrated that the alternative scheme would overcome the harm identified above, or would otherwise ensure a scheme that was in accord with the provisions of KLP Policy LP61.

Other Matters

21. The appellant has also had erected ball-stop netting of considerable height around part of the perimeter of the land in question as a means to reduce or prevent instances of cricket balls being hit into the appeal site. The netting is mounted between metal poles and is of a broadly uniform height around the corner of the appeal site closest to the cricket pitch. The netting continues behind the closest of the football pitch goals and so doubles as 'ball-stop' netting for football, as well as for cricket.
22. The netting is described as being of an 'appropriate height' to mitigate concerns regarding ball-strike. Although no indication of actual height is given, or indeed the context within which it should be considered to be an 'appropriate height', this corner of the appeal site appears to be at one of the shorter points of the cricket field boundary and is just 'off-straight'. It may be that some form of netting here may appropriately mitigate concerns regarding ball-strike into the residential garden area, but it has not been adequately demonstrated that what has been erected fulfils that brief.
23. However, the netting does not fully enclose the area of land used for domestic residential garden purposes – that is more fully achieved by the timber fence – and is not part and parcel of the alleged material change of use. Nor does the notice directly address the presence of the netting and poles or require their removal. This is not therefore a matter that weighs in favour of, or against, the matters before me.

The appeal on ground (f)

24. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. Thus, an appeal under ground (f) may be brought if it is felt that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control (S173(4)(a)) which may be constituted by those matters or, as the case may be, to remedy any injury to amenity (s173(4)(b)) which has been caused by any such breach.

25. In this case, the notice requires the cessation of the use of the land for residential purposes, the removal of the fence, hardstanding and domestic paraphernalia and to return the land to its prior condition. These requirements are consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a), the breach being the material change of use of part of sports ground to domestic garden for residential use. The notice's requirements are entirely consistent with the breach of planning control it seeks to remedy and do not therefore exceed what is necessary to remedy the breach of planning control. The appeal on ground (f) must therefore fail.

The appeal on ground (g)

26. The notice requires that the steps set out therein are carried out within 90 days whilst the appellant, under ground (g) seeks a longer period of 12 months. Whilst I do not share the appellant's view that returning the land to its prior condition necessarily means recreation of a previously untidy state, or that it should be left deliberately untidy, a period of 90 days strikes me as being a relatively short period of time within which to carry out the required work. Not least because of the extent of hardstanding created within this area, and the creation of outside seating, dining and kitchen facilities.
27. The Council however continues to argue the suitability of a 90 day period, explaining that the matters relating to the land in question are longstanding and date back to 2018. However, having submitted the appeal it is not unreasonable for the appellant to assume success on any ground, and thus the length of time the matter has been 'live' does not amount to justification to resist an appeal on ground (g). Moreover, given the extent of hardstanding that now exists within the land in question, a period longer than 90 days would allow a more reasonable time period, including for any planting and growing time, to allow the assimilation of the land to its former state. A longer period of 12 months would sufficiently allow for such matters to be duly dealt with and I conclude that the appeal should succeed on this ground.

Conclusion

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

G Robbie

INSPECTOR