



Appeal Decisions

Hearing held on 14 January 2025

Site visit made on 14 January 2025

by **Diane Lewis BA(Hons) MCD MA LLM MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 05 March 2025

Appeal 1 Ref: APP/V2635/W/23/3320188

16 Rowan Close, Watlington, King's Lynn PE33 0UG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Simon Wadsley against the decision of King's Lynn and West Norfolk Borough Council.
- The application Ref 23/00030/F, dated 9 January 2023, was refused by notice dated 16 March 2023.
- The application sought planning permission for the substitution of house types for plots 7 and 8 including change of materials and positioning (ref 06/00145/FM) without complying with conditions attached to planning permission Ref 20/01165/F, dated 23 December 2020.
- The conditions in dispute are:
 - Condition 2 which states: The development hereby permitted shall be carried out in accordance with the following approved plans: 09.2487.23 B, 09.2487.24 A, 09.2487.25 A, 09.2487.26 C, 09.2487.27 C, 09/8487.
 - Condition 5 which states: Prior to the first occupation of the dwellings hereby approved, the 1.8m high timber close boarded fencing and 1.8m high brick wall shown on dwg No. 09.2487.23 B shall be constructed in accordance with the approved details. The boundary treatments shall be retained in that position thereafter.
 - Condition 8 which states: Prior to the occupation of the dwellings hereby approved, a scheme for the future maintenance of the footpath shown between Plots 7 and 8 shall be submitted to, and agreed in writing by, the Local Planning Authority. The public footpath between Plots 7 and 8 shall be constructed in accordance with the details shown on the approved plan and made available prior to the occupation of the houses constructed on these plots. The footpath shall be retained and maintained in accordance with the approved details thereafter.
- The reasons given for the conditions are:
 - Condition 2: For the avoidance of doubt and in the interests of proper planning;
 - Condition 5: To ensure that the development is compatible with the amenities of the locality in accordance with the NPPF;
 - Condition 8: To ensure the construction and future maintenance of the public footpath.
- This decision supersedes that issued on 8 December 2023. That decision on the appeal was quashed by order of the High Court.

Summary of Decision: The appeal is dismissed.

Appeal 2 Ref: APP/V2635/C/23/3332892

Land at Rowan Close, Watlington, King's Lynn, PE33 0UG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Simon Wadsley against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
- The notice was issued on 13 October 2023.
- The breach of planning control as alleged in the notice is:

On 23 December 2020 planning permission was granted under reference 20/01165/F for Substitution of house types for plots 7 & 8 including change of materials and positioning (ref: 06/00145/FM) (the

First Permission), subject to conditions and it appears to the Council that conditions 2, 5 and 8 have not been complied with in full. These read:

Condition 2

The development hereby permitted shall be carried out in accordance with the following approved plans: *09.2487.23 B, *09.2487.24 A, *09.2487.25 A, *09.2487.26 C, *09.2487.27 C, *09/8487.

The reason for imposing the condition was: For the avoidance of doubt and in the interests of proper planning.

Condition 5

Prior to the first occupation of the dwellings hereby approved, the 1.8m high timber close boarded fencing and 1.8m high brick wall shown on dwg No. 09.2487.23 B shall be constructed in accordance with the approved details. The boundary treatments shall be retained in that position thereafter.

The reason for imposing the condition was: To ensure that the development is compatible with the amenities of the locality in accordance with the NPPF.

Condition 8

Prior to the occupation of the dwellings hereby approved, a scheme for the future maintenance of the footpath shown between Plots 7 and 8 shall be submitted to, and agreed in writing by, the Local Planning Authority. The public footpath between Plots 7 and 8 shall be constructed in accordance with the details shown on the approved plan and made available prior to the occupation of the houses constructed on these plots. The footpath shall be retained and maintained in accordance with the approved details thereafter.

The reason for imposing the condition was: To ensure the construction and future maintenance of the public footpath.

On 31 March 2022 a further planning permission was granted for, variation of conditions 2 and 5 of planning permission 20/01165/F: For alterations to plot 7 including the addition of a free standing garage at 7 & 8 Rowan Close, Fen Lane, Watlington, Norfolk, reference 21/01951/F (the Second Permission), subject to conditions and it appears to the Council that conditions 1, 4 and 7 have not been complied with in full.

Condition 1

The development hereby permitted shall be carried out in accordance with the following approved plans: 09.2487.26 C, 09.2487.27 C, 09.2487.28 A, 09.2487.29 B, 09.2487.30 B, 09.2487.31 B, 09/8487.

The reason for imposing the condition was: For the avoidance of doubt and in the interests of proper planning.

Condition 4

Prior to the first occupation of the dwellings hereby approved, the 1.8m high timber close boarded fencing and 1.8m high brick wall shown on dwg No. 09.2487.28 A shall be constructed in accordance with the approved details. The boundary treatments shall be retained in the position thereafter.

The reason for imposing the condition was: To ensure that the development is compatible with the amenities of the locality in accordance with the NPPF.

Condition 7

Prior to the occupation of the dwellings hereby approved, a scheme for the future maintenance of the footpath shown between Plots 7 and 8 shall be submitted to, and agreed in writing by, the Local Planning Authority. The public footpath between Plots 7 and 8 shall be constructed in accordance with the details shown on the approved plan and made available prior to the occupation of the houses constructed on these plots. The footpath shall be retained and maintained in accordance with the approved details thereafter.

The reason for imposing the condition was: To ensure the construction and future maintenance of the public footpath.

- The requirements of the notice are to: Fully comply with the requirements of conditions 2, 5 and 8 of the First Permission reference 20/01165/F dated 23 December 2020 and conditions 1, 4 and 7 of the Second Permission reference 21/01951/F dated 31 March 2022, including demolishing the unauthorised wall along the eastern side of the footpath, and removing the fencing at either end of the approved footpath once the footpath is provided.
- The period for compliance with the requirements is: 28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

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

Appeal 3 Ref: APP/V2635/C/23/3332897

Land at 16 Rowan Close, Watlington, King's Lynn, PE33 0UG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) by Mr Simon Wadsley against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
- The notice was issued on 13 October 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised construction of a steel framed building including concrete base and footings, and the material change of use of part of the Land to garden.
- The requirements of the notice are:
 - i. Demolish and remove the steel framed building including concrete base and footings.
 - ii. Permanently cease the unauthorised use of that part of the Land shown edged red excluding the area cross hatched red on the plan as garden land.
- The period for compliance with the requirements is 28 days.
- The appeal 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 (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 of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variation in the terms set out below in the Formal Decision.

BACKGROUND TO THE APPEALS

Planning History and Main Issue

1. The well documented planning history for development at Rowan Close dates back to the 1990's with proposals for a medical centre and housing. Planning permission was granted in 2001 for 15 dwellings and the permission was renewed in 2006. In 2020 and 2022 further permissions were granted in respect of Plots 7 and 8, the key details being set out in the bullet points for Appeal 2 above. Applications were made to remove certain planning conditions, with decisions by the Council contested at appeal.
2. The medical centre has been built and most of the residential plots have been developed. Plots 7 and 8 (now Numbers 16 and 18 Rowan Close) are situated at the northern end of the cul-de-sac, accessed by means of a shared driveway. The two detached houses are built and occupied. The side boundary walls between the two plots enclose a narrow way, which was blocked off with boarding at both ends at the time of the site visit. The appellant owns and lives at Plot 8. Plot 7, acquired by the appellant with Plot 8 in 2018, is now in separate ownership after the sale of the land in early 2021. Warren Close play area, a public open space and children's play park (the POS), lies immediately north of Rowan Close, adjacent to the back gardens of Plots 7 and 8.
3. The outcome of all three appeals now under consideration will be dictated largely by the meaning of the planning condition in dispute that states: "Prior to the occupation of the dwellings hereby approved, a scheme for the future maintenance of the footpath shown between Plots 7 and 8 shall be submitted to, and agreed in writing by, the Local Planning Authority. The public footpath between Plots 7 and 8 shall be constructed in accordance with the details shown on the approved plan and made available prior to the occupation of the houses constructed on these plots. The footpath shall be retained and maintained in accordance with the approved details thereafter."

4. A condition in similar terms was imposed on the 2001 and 2006 permissions¹. The planning history shows the layout of the development scheme consistently incorporated a pedestrian way between Rowan Close and the POS.
5. Referring to Appeal 1, the 2023 appeal decision was challenged by the appellant under section 288 of the 1990 Act. When granting permission to proceed to a full hearing the judge observed “If there are public rights of way, there is one problem; and if there are no public rights of way, there is another. What rights, absent adoption or dedication have been conferred at all by conditions? But there needs to be compelling reason for the planning system to aid the interference with what was required when the houses were built, and is still of value.”
6. The appeal decision was quashed and I am re-determining the appeal afresh. The matter which the Court specifically identified to be examined is the appellant’s argument that the footpath was private and cannot be accessed by the public without express consent of the landowners. Accordingly at the hearing a main issue discussed was the ability to use the path and whether it would serve a useful purpose. The appellant and the Council submitted helpful skeleton arguments to assist presentation of their respective cases.
7. The evidence available does not show an existing public right of way over the route in question. I have no powers to determine through these appeals whether or not there is a public right of way. At the hearing the Council accepted that the creation of a public right to pass along the footpath would be necessary whether by agreement or compulsorily if a historic public right of passage could not be established.
8. The main parties recognised the important distinction between the creation of a highway through the creation of public rights of passage by dedication/ acceptance and the adoption of a highway, involving a transfer of liability for its maintenance to the highway authority at public expense.

Planning conditions

9. Under section 70 of the 1990 Act a local planning authority, in determining a planning application, may grant planning permission, either unconditionally or subject to such conditions as they think fit. Section 72(1)(a) further states conditions may be imposed “for regulating the development or use of any land under the control of the applicant...or requiring the carrying out of works on any such land, so far as appears...to be expedient for the purposes of or in connection with the development authorised by the permission.” In practice the broad power to impose conditions is subject to meeting policy and legal tests.
10. The longstanding six policy tests currently are set out in the National Planning Policy Framework (the Framework). Conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
11. The three legal tests derived through case law require:

¹ “The public footpath between Plots 7 and 8 on the approved plan shall be constructed and made available prior to the occupation of the houses constructed on these plots. A scheme for future maintenance of this public footpath shall be submitted to and agreed in writing by the Borough Planning Authority prior to the commencement of development.” The reason was, “To ensure the construction and future maintenance of the public footpath”.

- a condition to be imposed for a planning purpose and no other purpose, however desirable;
 - to fairly and reasonably relate to the development permitted; and
 - not to be so unreasonable that no reasonable planning authority could have imposed them, ('Wednesbury' unreasonable).
12. In view of the legal grounds of appeal in Appeal 2, both the policy and legal tests require consideration.
13. Case law has established a general rule that in construing a permission which is clear and unambiguous and valid on its face, regard may only be had to the planning permission itself, including the conditions (if any) on it and the express reasons for those conditions. Where there is ambiguity in the wording of the permission it may be permissible to look at intrinsic material to resolve the ambiguity. Also, as a general approach, an understanding of a condition is informed by the natural and ordinary meaning of the words used, viewed in their particular context and with common sense.

Development plan policy

14. The Watlington Neighbourhood Plan was made in 2023. Policy 2 requires all new development to demonstrate high quality design and promote a good sense of place. Policy 11 requires new built development to provide suitable new or improved links to the core footway network. Rowan Close is part of the core network and the POS is designated as a Local Green Space.
15. In the King's Lynn and West Norfolk Core Strategy (the Core Strategy) Policy CS08 promotes sustainable development, requiring high quality design that enhances community well-being by promoting healthy lifestyles and accessibility. Policy CS11 promotes sustainable forms of transport appropriate to the use, users and location of development, with highest preference to walking. Under Policy CS13 the form, design, location and layout of development should enhance community well-being by, for example, being accessible, inclusive and within walking distance of open space. Promoting healthy and active lifestyles is a policy priority.
16. Policy DM15 of the Site Allocations and Development Management Policies Plan directs developments of poor design should be refused when assessed against a number of factors related to the environment and amenity.

APPEAL 1

Reasons

Requirements and effect of condition 8

17. Appeal 1 is directed at conditions 2, 5 and 8 attached to planning permission Ref 20/01165/F dated 23 December 2020. The approved layout on plan 09.2487.23B, listed in condition 2, incorporates a footpath linking Rowan Close to the POS. The path would run between the side boundaries of Plots 7 and 8 and utilise the shared driveway to the plots at the southern end. The plan shows a strip of grass planted with trees each side of the footpath and 1.8 metre (m) high brick boundary walls enclosing the route. The route is open at each end. The annotations to the plan

state ‘public footpath to playing field’ which is ‘to be adopted by Local Authority - specification including width and construction to be agreed with adoptive authority prior to commencement.’ A reasonable understanding from the plan is there would be a footpath to enable people to walk to and from the POS and Rowan Close without having to go a more circuitous route along the surrounding streets.

18. Condition 5 requires, before the first occupation of the dwellings, the 1.8m high brick wall shown on the layout plan to be constructed in accordance with the approved details and to be retained in that position thereafter. The reason for the condition is to ensure the development is compatible with the amenities of the locality, consistent with national planning policy. When read in conjunction with the plan, the brick walls would define and enclose the footpath along the approved route and provide privacy for neighbouring residents.
19. The reason for condition 8 is to ‘ensure the construction and future maintenance of the public footpath.’ The first requirement of the condition is to secure, before occupation of the dwellings, an approved scheme for the future maintenance of the footpath. As a matter of fact, the appellant made an application for approval of a footpath maintenance plan on 15 November 2021. The plan provides for a weekly check and removal of any obstructions such as debris, plus a monthly mowing of grass. Quarterly provision is made for weeding and tidying of planted areas and remedial works to the condition of hard landscaping as required. The Council in the decision notice dated 12 April 2022 did not discharge condition 8 because the footpath had not been built in accordance with the approved plans.
20. The second requirement is specific to the construction of the footpath, which should be carried out in accordance with the details shown on the approved plan. As described above, the approved details are of the route and layout of the footpath and the tree planting in the grassed areas. Details of the construction and surface treatment of the footpath are not specified. The condition also states the time scale for construction and being ‘made available’. ‘Made available’ means ready to be used. The wording does not state ‘available for public use’ or otherwise require public access before occupation of the houses on Plots 7 and 8.
21. The final requirement is to ‘retain and maintain the footpath in accordance with the approved details thereafter’, which is self-explanatory and again relates back to the approved details shown on plan and the maintenance plan.
22. The condition, when read in the terms stated and in conjunction with the approved plan, does not require dedication of the footpath for public use or create any public rights to use the footpath. The condition is directed at the physical provision of the footpath route and its retention/maintenance in the approved physical form.
23. The appellant submitted that the planning condition, whilst not requiring dedication, has the effect of requiring the developer to allow the public a right of passage over their land without the payment of compensation. Where a condition in substance has the effect of requiring the applicant to deliver a highway the condition is unreasonable and outside the powers of the Act. Reliance is placed on the *Hall* judgement², which the Supreme Court confirmed established a principle of general application³.

² *Hall & Co Ltd v Shoreham-By-Sea Urban District Council and Another* [1964] 1 W L R 240.

³ *DB Symmetry Ltd and another v Swindon Borough Council* [2022] UKSC 33

24. The wording of the condition at issue in the *Hall* case stated “The applicants shall construct an ancillary road over the entire frontage of the site at their own expense, as and when required by the local planning authority, and shall give right of passage over it to and from such ancillary roads as may be constructed on the adjoining land”. Critically, the wording of the condition specifically required a right of passage over the constructed road to users of adjoining roads.
25. A similar obligation regarding a right of passage over the footpath is not stated in the Rowan Close condition. Consequently, the condition does not have the effect of requiring the developer to allow the public a right of passage over their land without the payment of compensation. The condition does not offend the principle established in *Hall*.
26. I have considered whether an obvious and natural interpretation of the condition is to require the provision of a footpath for public use and also for the footpath to be available for use by the community before the occupation of the dwellings. The planning history, the need for and the probable existence and use of an informal, well-trodden way may well have led to a general expectation that a public footpath link would be incorporated within the development. Within that context the condition may have been read as achieving such a pedestrian link. However, when read carefully the condition was not expressed in a way to give effect to any such expectation. As worded the condition could not be enforced to deliver a publicly accessible footpath before occupation of the dwellings. Timing of delivery would be dependent on the creation of public rights of passage by other means.
27. Equally I am aware that the Courts have said a planning permission needs to be interpreted with common sense, which points to consideration of the planning purpose of the condition or permission. As a starting point, the reason for the condition is “To ensure the construction and future maintenance of the public footpath.” That single sentence describes the route as a public footpath, and a reader may understand it to mean a way provided for and able to be used by the general public once the development is completed. The planning permission does not cite any policies from the development plan or national planning policy to support the imposition of that specific condition. There is limited reference to the Framework in the decision notice but the references give little assistance on the purpose of condition 8. The Council submitted that reference to a public footpath is of no significance, because it simply anticipates and does not compel a future user where dedication is absent.
28. The decision notice is a public document and specifically states, “the permission is granted for the development in accordance with the application and the plans submitted subject to compliance with the following conditions.” The application form⁴ describes the proposed development as substitution of house types for Plots 7 and 8 including change of materials and positioning (ref: 06/00145/F). This description highlights permission is being sought for different house types on the two plots to those granted permission under ref: 06/00145/F, including a change in their siting and use of external materials. Interestingly at section 8 of the form Pedestrian and Vehicle Access, Roads and Rights of Way, the answer Yes is given to the questions, “Are there any new public rights of way to be provided within or adjacent to the site?” and “Do the proposals require any diversions/extinguishments and/or creation of rights of way?” This information

⁴ Pages 81-88 of the appellant's bundle

clearly signals the applicant was fully aware the physical provision of a footpath suitable for use by the public was expected within the proposal, at the least. The form referred to details on plan 09.2487.23, where the plan annotation says the public footpath is to be adopted by the Local Authority. One interpretation is that the actual use of the footpath by the public would be dependent on adoption of the 'public footpath' by a Local Authority.

29. There was recognition by all parties that the position of the highway authority has remained consistent throughout the planning history of proposals for development at Rowan Close. Their comments on the most recent proposals reaffirmed the authority will not adopt the footpath between the two plots because the path shares the same space as the private access and there is no proposal to adopt Rowan Close. Only when adopted would a highway become maintainable at the public expense and, under s.263 of the Highway Act 1980, the surface vests in the highway authority.

Conclusions

30. A planning purpose was to ensure good accessibility for all by making provision for a public footpath within the revised layout for the two plots. The appellant knew of this purpose, originally associated with the residential development of Rowan Close. This purpose is reflected by the layout plan and the planning conditions 2, 5 and 8 specific to development of plots 7 and 8.
31. The permission is silent on the timing of delivery of a publicly accessible footpath. We know that the highway authority was not going to adopt the footpath because access passed over shared driveways, hence the inclusion for a maintenance scheme in condition 8.
32. I do not accept the appellant's case that the condition is unlawful because it requires the creation of a highway or quasi highway without compensation. On a common sense reading, the condition nowhere states or requires dedication of the footpath. The use of the word 'public' alone is insufficient to convey or secure the creation of public rights over the path. No mechanism was identified or agreement made to secure public rights of passage over the path. Nowhere in the permission is there a requirement for the footpath to be available and open for use by the public immediately, before the dwellings are occupied or in accordance with an alternative timescale.
33. The appeal did not seek to make a case that the condition failed the legal and policy tests for other reasons. My conclusion is condition 8 meets the three legal tests and the six policy tests.

Consequences of the proposed variation

34. Having concluded condition 8 is reasonable and does not require the appellant to cede his private property rights I now return to other aspects of the proposal.
35. The application requested all reference to the footpath should be removed from conditions 2 and 5 and condition 8 should be deleted. No amended plans were submitted with the planning application or with the appeal. At the hearing the consequences of the proposal were explored and the appellant put forward revised wording for conditions 2 and 5.

- Condition 2: The development hereby permitted shall be carried out in accordance with the following approved plans, save for the delivery of the public footpath shown on plan 09.2487.23 B. The private footpath and boundary treatment on site shall be retained as constructed.” *[list plans currently in condition]*
 - Condition 5: Prior to the first occupation of the dwellings hereby approved the 1.8m high timber close boarded fencing shown on drawing 09.2487.23 B shall be constructed in accordance with the approved details. The 1.8m brick walls bounding the private footpath constructed on site shall be retained in their current position.
36. An important factor confirmed at the hearing is the appellant wishes to retain the brick boundary walls in the position as built. As set out in the Land Registry documents, a path is required for the private use of the residents of plots 6 and 7, in addition to plot 8, to go along this way. Therefore, not all the land shown on the layout plan as the footpath would be incorporated into the appellant’s own garden if condition 8 was deleted.
37. The fact is no details have been submitted of the revised layout and construction of the plot boundaries and private footpath. The wording of the proposed replacement conditions 2 and 5 leaves uncertainty over these matters and as such they are not precise.
38. Even if the way between Plots 7 and 8 was to be solely for private use, the design details should be of high quality and appropriate for its function.

Reason and purpose of condition 8

39. Assessment of whether the footpath would serve a useful purpose must take into account the potential limitation to private use if public access could not be achieved.
40. The Framework anticipates layouts that allow for easy pedestrian connections within neighbourhoods to promote social interaction, assist community cohesion and enable and support healthy lives. This aim is reflected in development plan policy and is very relevant here. The medical centre and POS are facilities with a strong community purpose, where ease of access for all should be promoted. The POS is regarded as a small play area of recreational and health value for children and the health of residents where the mature greenery contributes to tranquillity on the housing estate⁵. The desire and practicality of a direct pedestrian route is fully supported by the Parish Council and was demonstrated by the informal path. Having walked around the area I have no doubt that a path linking Rowan Close and the POS would greatly help accessibility by foot and be likely to discourage use of the car for short journeys. The appellant identified alternative footpaths but one is no longer available following the development at Rowan Close and the second involves a very circuitous, much less convenient route round the block.
41. The Council explained that future public use of the link is contemplated and is realistic. If it is necessary to acquire the right, this may be achieved by agreement or compulsorily. The conditions secure the physical provision, safeguard the potential and allow for rights to be acquired, or confirmed, in future. I agree there

⁵ Watlington Neighbourhood Plan Local Green Space Assessment March 2023 page 23.

is strong justification for keeping this option open in view of the history of development, the local importance of the connection, the planning benefits that would be achieved and the support from the development plan and the Framework.

42. The footpath shown on the approved plan would have an overall width of around 5.6m, including the grass margins, be enclosed by 1.8m high brick boundary walls and follow a direct route with a slight change in alignment at the northern end. The development carried out has reduced the width to around 2.2m. The design quality of the footpath, as proposed and as built, was considered in an appeal decision dated 18 November 2022⁶. The Inspector concluded the approved footpath link would be a wide attractive footway, with good visibility, reflecting the open verdant character of the area and the quality of the estate's overall design. By contrast the constructed footpath had removed all design quality, did not protect or enhance the character of the area and did not encourage people to use it. The built path was described using phrases such as a narrow corridor, a sterile passage, an oppressive environment, overbearing and tight enclosure and lacking any visual connectivity. The experience of walking along it was described as quite hostile and unpleasant.
43. The conclusions of the Inspector were strongly worded. No evidence was presented in the current appeals to lead me to come to different conclusions on the relative merits of the footpaths, certainly for a footpath link intended for use by the public.
44. A footpath restricted to private use would serve a relatively small number of residents. Even so, the design quality still should encourage its use now and into the longer term, by providing a pleasant, safe route, accessible to all residents of the three dwellings whatever their age or level of mobility. I have concerns about the significant reduction in width, especially in conjunction with the high boundary walls. The new dwellings are family-sized homes and the footpath could be expected to be used to get to the POS easily and to access other parts of the village conveniently. Furthermore, the relationship and the separation space between dwellings should respect area character. The creation of a narrow, tightly enclosed passageway between the two plots would not be in keeping with the scale of nearby buildings and the layout of surrounding development and spaces. The level of harm associated with a footpath catering only for private rights of use would not be so significant as with a path open to use by the general public. Nevertheless, departure from the approved layout and boundary details is not one that can be supported.
45. The proposal conflicts with Policy 2 and Policy 11 of the Watlington Neighbourhood Plan in that it does not demonstrate high quality design and provide for a suitable link to the core footway network. At a very local level the proposal would not enhance accessibility, community wellbeing and active lifestyles and so is contrary to Policies CS08, CS11 and CS13 of the Core Strategy.

Conclusions

46. Condition 8 does not require the appellant in substance to deliver a public footpath in circumstances where no public right of way over that footpath exists.

⁶ Appeal ref APP/V2635/W/22/3298033 dated 18 November 2022

Consequently, I disagree with appellant's case that condition 8 is unlawful. The condition is not unreasonable and is not outside the powers of the Act.

47. Condition 8, by securing the physical provision of a footpath and its future maintenance, serves a useful purpose even if a public right of access does not exist at the current time. A public route would be of great value to the community and the ability to achieve this objective should not be lost now.
48. The proposed replacement conditions 2 and 5 are not precise and therefore do not satisfy all six policy tests.
49. The proposal is not in accordance with the development plan when read as a whole. Other considerations also indicate conditions 2, 5 and 8 are necessary and reasonable and should continue to apply to the residential development on Plots 7 and 8.
50. For all these reasons the appeal should be dismissed. This conclusion informs the outcome on Appeal 2 and Appeal 3.

APPEAL 2

51. At the hearing the appellant confirmed they did not wish to pursue the preliminary matter raised in their statement of case that the enforcement action was not compliant with the European Convention on Human Rights. The grounds of appeal also were clarified and principally relate to the appellant's case on the validity of the notice.

Validity of the enforcement notice

52. The enforcement notice alleges non-compliance with conditions 2, 5 and 8 attached to permission ref. 20/01165/F and non-compliance with conditions 1, 4 and 7 imposed on permission ref. 21/01951/F. The three conditions in the First Permission and the reasons for them have the same wording as the three conditions and reasons in the Second Permission, except for the plan numbers. The Second Permission provides for the erection of a free-standing garage on plot 7. The Council and the appellant confirmed at the hearing that this is the only difference to the development approved under the First Permission. There was no need to impose the standard time commencement condition in the Second Permission, hence the difference in condition numbers.
53. The appellant, as a recipient, was very familiar with the planning history of the site, as indicated by the planning applications, appeals, the breach of condition notice and the high court challenge made on the appellant's behalf. The main point of the appellant's case is that the notice is hopelessly unclear and ambiguous and is a nullity, primarily because two permissions are cited. There was no claim the notice fails to comply with the statutory requirements or is missing some vital element.
54. A well established test on validity is does the notice tell the person on whom it is served fairly what they have done wrong and what they must do to remedy it? The notice must be fundamentally defective to be a nullity.
55. The enforcement notice should be read as a whole. The Reasons clearly explain that the notice is directed at the failure to construct the footpath in accordance with the approved details. The identified harms result primarily from the restricted width of the footpath, resulting in adverse effects on the appearance of the development

and the area, the safety and use of the footpath. It follows that the purpose of the notice is to remedy the breach by ensuring the development complies with the approved details referred to in the stated conditions.

56. My initial conclusion is the notice is not a nullity. However, even if the notice is not hopelessly ambiguous and uncertain there are issues about the drafting of the notice and whether potential corrections for consideration may be made without causing injustice.
57. The notice cites the relevant conditions from the First Permission and the Second Permission. The issue is whether it is correct to do so. The appellant submitted firstly that the inclusion of the two permissions made the notice unclear and secondly that the First Permission was superseded by the implementation of the Second Permission.
58. At the hearing we discussed whether the Second Permission on the same area of land was compatible with the continued effect of the earlier permission. In terms of the chronology of development, the dwelling on Plot 8 was built first, under the First Permission. The Council explained with photographic evidence that when a site inspection was carried out on 9 November 2021 the footpath under construction was not the required width and the boundary wall to Plot 8 had been erected further to the west. The visit and works described were on the appellant's land and pre-dated the Second Permission (31 March 2022) and probably the application (registered on 5 November 2021).
59. The later application, made under section 73 of the Act to vary conditions 2 and 5, resulted in a new permission. When issuing a fresh planning permission under section 73 accepted good practice is to restate all the conditions to which the new planning permission will be subject in order to avoid a process of cross-referencing. This approach was followed for Plots 7 and 8. All conditions from the First Permission were incorporated with the relevant variations, save for the then unnecessary time commencement of development condition.
60. The developer could choose whether or not to implement the Second Permission in building the dwelling on Plot 7. The garage was built and so the Second Permission was carried out. The later permission is compatible with the earlier permission except for the garage. Following implementation of the First Permission the conditions would remain valid and binding unless and until discharged by performance or other grant. There was nothing in the Second Permission to affect their continued operation.
61. The appellant and the Council did not address in any detail the question as to what permission governs the development now. Significantly, the appellant made the application and continues to pursue the proposal to vary and remove conditions 2, 5 and 8 attached to the First Permission (Appeal 1), an indication they consider that permission remains valid and binding on the development. In December 2021 the appellant also made an application to vary conditions 2 and 5 with an amended drawing of the existing footpath and wall, a proposal that was eventually dismissed on appeal in November 2022⁷. These actions are inconsistent with the appellant's case advanced in this enforcement appeal that the First Permission was superseded by the implementation of the Second Permission and that the Second Permission was outside the appellant's control.

⁷ Appeal Ref APP/V2635/W/22/3298033 dated 18 November 2022

62. This inconsistency in argument and practice supports the Council's decision to include reference to both Permissions in the alleged breach of planning control. The requirements of each permission are equally applicable to the matter in question. The width of the footpath as constructed is significantly less than the approved width, whichever of the two permissions is considered. The disputed footpath construction and boundary wall are on the appellant's land and therefore within his control.
63. At the hearing the Council put forward two options – to delete one set of conditions or, the preferred option, to express the alleged breach in the alternative. I consider the preferred option is the most appropriate to the circumstances. This may be achieved by adding a sentence at the end of section 3 "It appears to the Council that conditions 2, 5 and 8 imposed on the First Permission or in the alternative Conditions 1, 4 and 7 of the Second Permission have not been complied with because the footpath between plots 7 and 8 and the boundary wall on the eastern side of the footpath have not been implemented in accordance with the approved details." This sentence is based on the reasons for issuing the notice and requirement (a) and its addition would not cause injustice to either the appellant or the Council.
64. The related issues on the enforcement notice will be considered under the revised grounds of appeal.

Appeal on ground (c)

65. In the event the notice is not accepted to be a nullity, the appellant's revised case is a breach of planning control has not occurred in respect of the First Permission because that planning permission no longer exists. I have addressed this matter above in considering the description of the breach and concluded the First permission remains relevant.
66. On the original matters raised, I have concluded condition 8 and condition 7 are not unlawful and therefore the notice is not seeking to secure compliance with an unlawful condition. The submissions on permitted development rights were withdrawn.
67. In conclusion, the appeal on ground (c) fails.

Appeal on ground (f)

68. The issue is whether the requirements are excessive to remedy the identified breach of planning control.
69. The appellant considered there was an impossible lack of clarity because the requirement referred to conditions 2, 5 and 8 of the First Permission and conditions 1, 4 and 7 of the Second Permission, independent permissions with different sets of approved plans. The appellant was unsure whether he was expected to carry out work on his neighbour's land, land which is out of his control.
70. Section 173(3) of the Act states that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the purposes set out in section 173(4). Of specific relevance to this appeal, section 174(4)(a) provides for remedying the breach by making any development comply with the terms

(including conditions and limitations) of any planning permission which has been granted in respect of the land.

71. The use of the term 'specify' indicates the need for particularity and precision. The current wording of the requirement does not sufficiently relate back to the breach and identified non-compliance with the specified conditions. The layout of the development between Plots 7 and 8 should reflect the layout that shows a footpath bordered by two grassed areas and enclosed by brick walls on each garden boundary. The same footpath and boundary treatment is shown on both sets of plans. The requirement can be amended to be specific to the footpath and associated boundary treatment along the footpath, similar to the appellant's proposed wording in the grounds of appeal. Reference to the boundary fencing will not be included in the requirement because this element is not identified in the breach.
72. The amended wording of the requirement would be: "The 1.8m high brick wall along the eastern boundary of the footpath shall be demolished. In accordance with the details which are shown on Plan 09.2487.23B listed in Condition 2 of the First Permission and/or Plan 09.2487.28A listed in Condition 1 of the Second Permission
- i. the footpath between Plots 7 and 8 shall be constructed and made available in the position and to the width approved, and
 - ii. the 1.8m high brick boundary wall along the eastern boundary of the footpath shall be erected in the approved position."
73. In conclusion, the requirements, when read in the context of the notice as a whole, are not so uncertain as to cause the notice to be a nullity. I am satisfied that the proposed amendments would not cause injustice to the appellant and the Council. The appeal succeeds on ground (f) to this limited extent.

Appeal on ground (g)

74. The issue is whether the compliance period of 28 days is reasonable. The appellant has requested a period of 4 months to allow for the appointment of a contractor, lead-in time and a reasonable period to complete the works.
75. Time should be allowed for the necessary arrangements to be made as well as for the carrying out of the physical works. There is reasonable justification for extending the compliance period to 4 months. The Council did not object to this variation. The appeal on ground (g) succeeds.

Conclusions

76. For the reasons given above the enforcement notice is not hopelessly ambiguous and uncertain and the notice is not a nullity. The defects are able to be corrected without injustice to the appellant or the local planning authority. The appeal does not succeed and I shall uphold the enforcement notice with corrections and a variation to the compliance period.

APPEAL 3

Legal grounds of appeal

77. As presented at the hearing the appellant's primary case is that the notice is a nullity, focusing particularly on the matters said to constitute the material change of use and the description of the land where the change of use has occurred. The human rights matter was withdrawn, along with the appeals on grounds (b) and (c). Even so, points were made in the discussion related to the material change of use and the steel-framed building in the event their argument on nullity failed. The Council accepted the wording of the notice could be improved and a revised notice was submitted to address points raised by the appellant and in discussion at the hearing.

Nullity

78. The two enforcement notices were issued on the same date and it is reasonable to expect the notices would be read alongside one another. The evidence shows the appellant was fully aware of the planning history of the site and that the footpath and area between Plots 7 and 8 had not been laid out in accordance with the approved plans. On the ground, the boundary wall has been erected further to the west than shown on the approved layout plans. This repositioning of the wall has allowed the garden to be extended to include land that was proposed as a footpath outside the domestic curtilage. The wall, strip of garden and the steel-framed building, are all on land within the appellant's ownership. All these factors inform the context for reading and understanding the notice.
79. When read as a whole, including the reasons for issuing the notice, the document is understandable. The strip of land where the alleged material change of use has taken place and the position of the steel-framed building are identified, both in the text and on plan. The appellant may not have agreed with the reasoning but the matters of dispute were challenged through the grounds of appeal provided by statute. The content of the notice covers all statutory requirements and there is no missing element. I conclude the notice is not a nullity. However, that is not to say there are no defects or that clarity could not be improved.

Proposed corrections

80. The plan attached to the notice adequately identifies the position of the building and the area of land that has been incorporated into the garden of Plot 8. The revised plan serves the same function but defines the unauthorised development in a neater way which is carried through into the amended description within the submitted revised notice. As a result the description of the Land in section 2 of the revised notice should be corrected to ensure consistency.
81. In substance the two requirements remain the same. The corrected wording is limited to ensuring consistency and precision in identifying the building and garden land.

Grounds (b) and (c)

82. The site visit confirmed the building is partially constructed – the brick plinths have been erected together with the basic framework for the walls and roof structure. The land alongside the boundary wall is within the garden of Plot 8. Therefore the alleged breach has occurred as a matter of fact. At the hearing there was

agreement the building does not benefit from permitted development rights because of its height and the positioning close to the site boundary.

Conclusion

83. The appeal does not succeed on grounds (b) and (c). The proposed corrections to the enforcement notice will not cause injustice to the appellant or the local planning authority

Appeal on ground (a), deemed planning application

84. The main issue is the effect of the developments on accessibility by foot in the village.
85. To recap, I have concluded through the linked appeals that condition 8 should not be removed and there is a realistic possibility of securing a public footpath. The long held aim to improve pedestrian accessibility remains important in accordance with local and national policy in view of the location of Rowan Close in relation to community facilities. Within this context the siting of the building and the extension of the garden are not compatible with securing a footpath between Plots 7 and 8 for use by the public in the future. Planning conditions could not overcome the harm. The developments conflict with Policy 11 of the Watlington Neighbourhood Plan by not demonstrating high quality design and not providing for a suitable link to the core footway network. The ability to facilitate accessibility, community wellbeing and active lifestyles would not be delivered adequately, resulting in conflict with Policies CS08, CS11 and CS13 of the Core Strategy.
86. Under a ground (a) appeal planning permission may be granted for all or part of the development and all or part of the land. The appellant through the ground (f) appeal has suggested part of the building could be retained or the building could be relocated. No details have been provided of the alternatives.
87. The building is only partially constructed. The size and footprint of the structure and the degree of encroachment onto the proposed footpath result in uncertainty over the final design if part of the building was retained in its current position. The building is in a prominent position adjacent to the open space and an acceptable design should be demonstrated before any permission is granted. A re-sited building would not form part of the development constructed and therefore could not gain planning permission through the deemed planning application. The use of planning conditions would not be an appropriate mechanism to address these issues.
88. In conclusion the developments are not in accordance with the development plan and there are no other considerations to change the planning balance in favour of a grant of planning permission. The appeal on ground (a) fails.

Appeal on ground (f)

89. The purpose of the notice is to remedy the identified breaches of planning control. The demolition of the building and the cessation of the use as garden land do no more than remedy the breach and therefore the requirements are not excessive. The proposed alternative lesser step is more appropriately considered under the ground (a) appeal, which I have done.
90. The appeal on ground (f) fails.

Appeal on ground (g)

91. Similar considerations to those in Appeal 2 apply as to whether the compliance period of 28 days should be extended to 4 months as requested by the appellant.
92. Organising, preparing for and carrying out the works could reasonably be expected to take longer than a month. The proposed period of 4 months strikes the right balance and the notice will be varied accordingly. The appeal on ground (g) succeeds.

Conclusion

93. For the reasons given above the appeal should not succeed. The enforcement notice will be upheld with corrections and a variation and I shall refuse to grant planning permission on the deemed planning application.

DECISIONS

Appeal 1 Ref: APP/V2635/W/23/3320188

94. The appeal is dismissed.

Appeal 2 Ref: APP/V2635/C/23/3332892

95. It is directed that the enforcement notice is corrected by:
 - The addition of a new paragraph at the end of section 3 “It appears to the Council that conditions 2, 5 and 8 imposed on the First Permission or in the alternative Conditions 1, 4 and 7 of the Second Permission have not been complied with because the footpath between plots 7 and 8 and the boundary wall on the eastern side of the footpath have not been implemented in accordance with the approved details.”
 - In section 5 the deletion of the wording of requirement a) and the substitution of the wording: The 1.8m high brick wall along the eastern boundary of the footpath shall be demolished. In accordance with the details which are shown on Plan 09.2487.23B listed in Condition 2 of the First Permission and/or Plan 09.2487.28A listed in Condition 1 of the Second Permission (i) the footpath between Plots 7 and 8 shall be constructed and made available in the position and to the width approved, and (ii) the 1.8m high brick boundary along the eastern boundary of the footpath shall be erected in the approved position.
96. It is directed that the enforcement notice is varied in section 6 by the substitution of four months as the time for compliance.
97. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal 3 Ref: APP/V2635/C/23/3332897

98. It is directed that the enforcement notice is corrected by:
 - In section 2 the deletion of the words “cross hatched red” and the substitution of the word “blue”.

- In section 3 the deletion of the wording of the alleged breach of planning control and the substitution of:

“Without planning permission:

A) The unauthorised operational development comprising of the construction of a steel framed building identified edged in Blue and marked A on the plan attached to this notice; and

B) The material change of use of land to garden land associated with Plot 8 Rowan Close (Number 16), the said land being that which is identified in Red, marked B on the plan attached to this notice.”

- In section 5 the deletion of requirements (i) and (ii) and the substitution of:
 - A) Demolish and remove from the Land the steel framed building identified edged in Blue and marked A on the plan attached to this notice; and
 - B) Cease the use of the Land edged in Red and marked B as garden land associated with the dwelling at Plot 8 Rowan Close (Number 16).
- The substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

99. It is directed the enforcement notice is varied in section 6 by the substitution of four months as the time for compliance.

100. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Diane Lewis

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Harley Ronan, barrister
Neil Langley, NKF Planning Consultancy Limited

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader, barrister
Lucy Smith, Senior Planner
Mathew Cleary, Planning Enforcement Team Leader

INTERESTED PARTIES:

Councillor Jean Golding, Chair of Watlington Parish Council

DOCUMENTS submitted at the hearing

Local Planning Authority's Skeleton Argument
Appellant's Skeleton Argument
Amended Enforcement Notice ref 21/00510/BOC



Planning Inspectorate

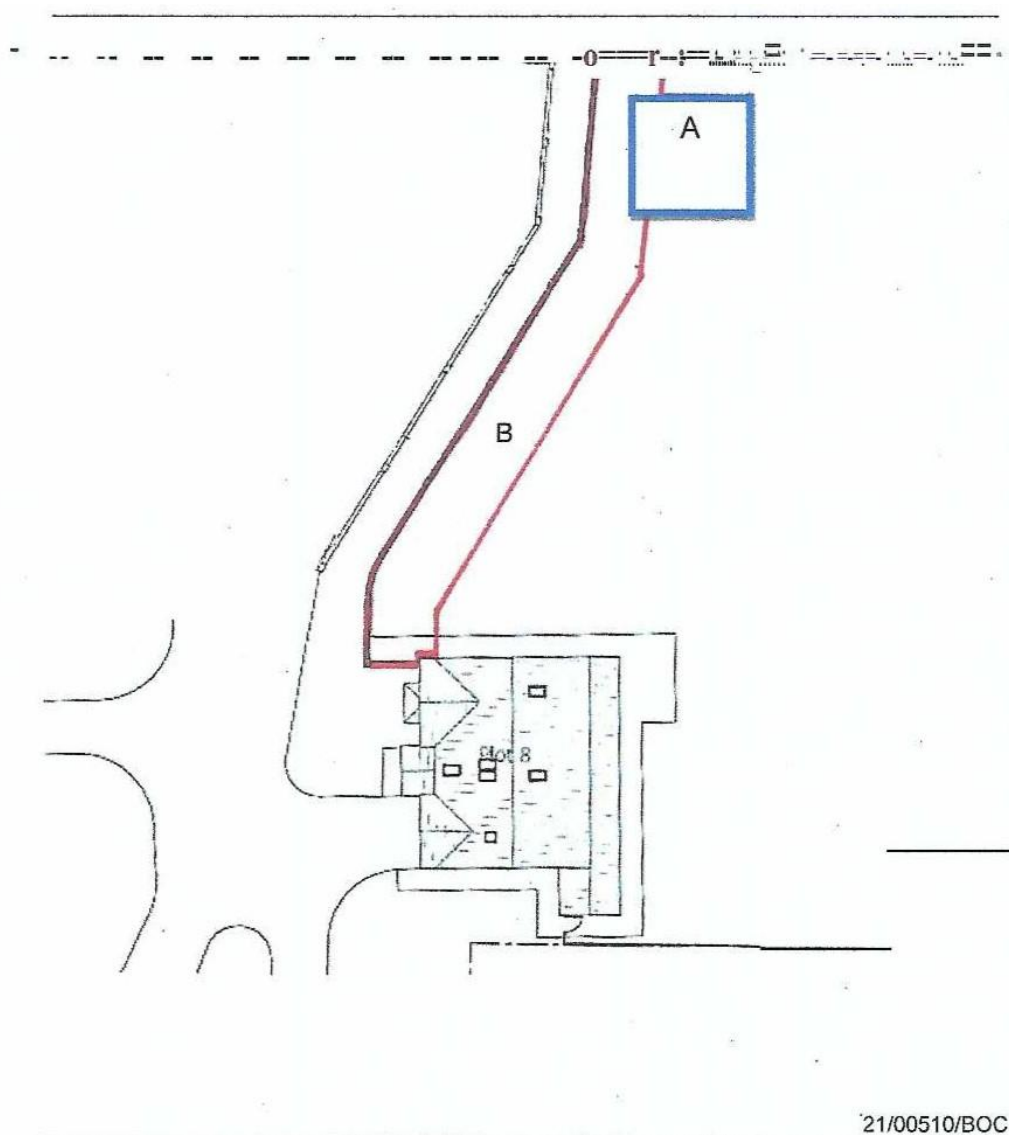
Plan

This is the plan referred to in my decision dated: 05 March 2025

by Diane Lewis BA(Hons) MCD MA LL.M MRTPI

Land at: Plot 8, 16 Rowan Close, Watlington, King's Lynn PE33 0UG

Reference: APP/V2635/C/23/3332897



21/00510/BOC