
Appeal Decision

Site visit made on 4 March 2025

by J Heppell BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2025

Appeal Ref: APP/H1705/W/24/3356336

3 Woodville Close, Chineham, Hampshire, RG24 8GS

- 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 William James Banks against the decision of Basingstoke and Deane Borough Council.
 - The application Ref is 24/01635/RET.
 - The development proposed is the retrospective change of use of land to the side of dwelling to garden land and erection of a garden fence.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. The local planning authority included a garden shed in the description of development, and the appellant's design and access statement confirms that a garden shed is part of the proposed development, and I have therefore included this in my assessment of the proposals.
3. The proposed development has already taken place, however I have deleted 'retrospective' from the description of development as this is not an act of development. I have therefore used the following description, 'change of use of land to the side of the dwelling to garden land and erection of a shed and garden fence', which more accurately describes the development that has occurred.

Main Issues

4. The main issues are:
 - The effect of the development on the character and appearance of the area;
 - The effect of the development on the green infrastructure network; and
 - The effect of the development on surface water drainage.

Reasons

Character and appearance

5. The appeal site is situated in a residential area of Chineham which is characterised by detached, semi-detached and terraced properties. The appellant's property is an end terrace unit, with footpaths at the side and rear. At the side of the appellant's

property, a previously unfenced area of land next to the footpath has been enclosed with a close boarded fence and a shed has been erected, leaving a strip of land beside the footpath.

6. A feature of the area is a network of footpaths which are integrated into the housing layout and which provide dedicated routes for pedestrians. The footpath beside the appellant's property links Reading Road with Mattock Way, with spurs off the footpath joining to other roads in the estate, including a short section of footpath behind the appellant's property which links to Woodville Rise. I observed upon inspection that the footpaths would appear to be well used by local residents.
7. The character of the footpaths vary, with some sections enclosed on both sides by close boarded fences, and other sections benefitting from small open areas which contribute to their settings. One such open area lies to the rear of the appellant's property, where there is a small cluster of trees, whilst to the side of the appellant's property a formerly open area – the focus of my considerations in this appeal – has been enclosed.
8. The photographs supplied by the appellant show that the area of land which has been enclosed was formerly overgrown, which interested parties attest to and which the local planning authority acknowledges, and I have sympathy with the appellant's complaint that the land was not adequately maintained. The photographs nevertheless show that the land formed a green backdrop to the footpath and contributed to its sense of openness. By enclosing this area, the open and green aspect of the footpath has been diminished, reducing its contribution to the 'greening' up the footpath in accordance with Principle 7 of the Landscape, Biodiversity and Trees Supplementary Planning Document. I consider that the character and appearance of this section of the footpath, and the resultant enjoyment of the footpath by pedestrians, has been harmed.
9. I saw that the fence which has been constructed is of a similar height and appearance to other sections of fence beside the footpath, and is set back a similar distance to, and in some cases more than, other sections of fence beside the footpath. I note Hampshire County Council Countryside Team's confirmation that the fence is set back sufficiently from the bound surface of the footpath. However, whilst the positioning of the fence maintains some degree of openness next to the footpath, including near its junction with the spur to Woodville Rise, it remains that a distinct loss of openness and greening has resulted from the development.
10. I have had regard to the appellant's offer to plant shrubs along the outside of the fence, but as this land lies outside the appellant's ownership, it is unclear whether the appellant has the ability to plant and maintain shrubs here. Even if this were feasible, such an approach would not overcome my concerns noted above due, in part, to the space constraints that avail.
11. I therefore conclude that the development is harmful to the character and appearance of the area, contrary to Policies EM1 and EM10 of the Basingstoke and Deane Local Plan (2011 to 2029) (BDLP), which together require development proposals to deliver high quality development by, amongst other things, respecting and enhancing the local character of buildings and settlements, including important open areas.

Green infrastructure network

12. The accompanying text to Policy EM5 of the BDLP defines green infrastructure as a network of green spaces and other environmental features which provides a multi-functional green space resource. A number of examples of multi-functional green space provision are listed, amongst which are incidental areas of green space such as grass verges. As the land at the appeal site that has recently been enclosed comprised an incidental area of green space, it is consequently covered by the definition of green infrastructure. The fact that the appellant owns this lane does not exclude it from the definition of green infrastructure, because Policy EM5 explicitly encompasses both public and private open spaces.
13. I note the original intention of the planning permission covering the estate was for a play area to be provided on the land, but this was never constructed. The land in question has not therefore fulfilled a wider function to the surrounding community, as it was originally intended to do, and consequently its enclosure has not in my view caused a significant fragmentation of the existing green infrastructure network. Nonetheless, the area of land that has been enclosed fulfilled a localised function as part of a visual backdrop to the footpath that has since been considerably eroded. As such, in synergy with my character and appearance findings above, I identify conflicts with Policy EM5 of the BDLP in so far as it seeks to protect the quality and extent of public open space and public rights of way, unless, for example, replacement areas are provided – which is not the case here.

Surface water drainage

14. The local planning authority has identified that the appeal site lies upstream of a critical drainage area and is designated as such via its Strategic Flood Risk Assessment. Policy EM7 of the BDLP requires the submission of a flood risk assessment for sites upstream of critical drainage areas, which are areas where the capacity of the existing drainage system could be overloaded, and the appellant has not supplied such an assessment. Moreover, whilst maps depicting fluvial and surface water flood risk have been submitted, it has not been demonstrated that the requirement to produce a flood risk assessment does not apply.
15. I therefore conclude that in the absence of a flood risk assessment, the development is contrary to Policy EM7 of the BDLP in so far as it directs that development within areas of flood risk from any source of flooding will only be acceptable if it is clearly demonstrated that it is appropriate in that location. Thus, in the absence of clear evidence to the contrary, I identify harm on the basis of an adverse effect upon surface water drainage.

Other Matters

16. The local highway authority indicates that the appeal site forms part of the public highway, and as such the site could contain statutory undertaker's equipment which could require diversion. It has suggested that highway rights may need to be extinguished, which requires separate consent from the local highway authority. Such matters lie outside the scope of this appeal, and since I am dismissing the appeal, I do not need to consider these matters further.
17. The appellant has, at application stage, referred to other successful applications locally for the change of use of open land to enclosed garden land. Two of the decisions referred to were Certificates of Lawfulness, which would not therefore

have been tested against the BDLP. No details have been provided with respect to the other three decisions, such that it is unclear whether they relate to open land next to footpaths in the interests of potentially enabling parallels to be drawn with the appeal scheme. For these reasons, these other decisions are of limited weight.

18. The appellant has referred to communication difficulties with the local planning authority prior to the submission of the planning application, but these have played no part in my determination of the appeal, which I have assessed on its planning merits.
19. The works which have taken place have resulted in a loss of planting. The appellant's plans show proposed replacement shrub planting at regular intervals with a flower bed inside their fence. Whilst a detailed planting schedule has not been submitted, this could be suitably secured via condition in the event the appeal be successful. Any possible resultant gain in biodiversity would necessarily be minor and attractive of limited weight.
20. I note the appellant's desire for an enlarged private garden to enhance the amenity of current and future occupiers, but I am mindful that the property already possessed private amenity space, and so this aspiration does not weigh significantly in favour of the scheme. I likewise recognise the limited economic benefits to local contractors from the works which have been carried out. Whilst reference has been made to clearer/safer access along the footpath now being available, it has not been demonstrated that access or line of sight was meaningfully obstructed prior to the development taking place – as such any benefits drawn in this sense are minor.
21. I also recognise the support of local residents and a local councillor, which highlight, amongst other things, the cost savings to the Council in not having to maintain the land. This is a benefit that attracts limited weight in view of the modest extent of the land in question.
22. In my judgement, the scheme's limited benefits, even when considered in cumulative terms, do not outweigh the harms and associated policy conflicts I have identified. Moreover, the development conflicts with the development plan, and material considerations do not lead me to a decision otherwise.

Conclusion

23. For the reasons given above the appeal should be dismissed.

J Heppell

INSPECTOR