



Appeal Decisions

Site visit made on 18 March 2025

by **Peter White BA(Hons) MA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 March 2025

Appeal A Ref: APP/W1905/C/23/3324566

Land Adjacent to 2 Robsons Close, Cheshunt, Hertfordshire EN8 9QT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Mark Smithson against an enforcement notice issued by Broxbourne Borough Council.
 - The notice was issued on 14 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of amenity land to residential garden and erection of a fence over 1m in height.
 - The requirements of the notice are:
 - (i) In relation to the fence and gate:
 - a. Permanently remove the fence and gate, as indicated between points A and B and points B and C, from the land OR
 - b. Reduce the height of the fence and gate, as indicated between points A and B and points B and C, to no more than 1 metre above natural ground level
 - (ii) Reduce the height of existing boundary treatments to no more than 2 metres above natural ground level by removing trellis and other additions
 - (iii) Permanently cease the use of the land as residential garden
 - (iv) Remove any resultant debris from the land
 - The periods for compliance with the requirements are:
 - Steps (i) and (ii) – 4 weeks
 - Steps (iii) and (iv) – 8 weeks
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended) (“the Act”). 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/W1905/W/23/3324565

2 Robsons Close, Cheshunt, Hertfordshire EN8 9QT

- 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 Mark Smithson against the decision of Broxbourne Borough Council.
 - The application Ref is 07/23/0285/F.
 - The development proposed is change of use (amenity land to residential garden) and erection of fencing.
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Summary of decisions: The appeals are allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. Appeals A and B concern the same development, and the issues are the same for both appeals. I have therefore considered them together but conclude in relation to each appeal independently.
2. In relation to Appeal A, I am required to ensure the Notice is in order, considering Section 173 of the Act.

3. The first element of the breach of planning control alleged in Section 3 of the Notice relates to the “change of use” of the land. Only a material change of use of land is development for the purposes of Section 55 of the Act. A change from (public) amenity land to residential use of land is a material one and I shall therefore correct Section 3 of the Notice by inserting the word “material”. No injustice arises to the appellant or the Council in doing so.
4. The second element relates to “erection of fence over 1 metre in height”. Section 5(i) of the Notice requires the removal of the fence and gate between points A, B and C on the plan, or its reduction to no more than 1m in height. However, section 5(ii) requires the reduction “in height of existing boundary treatments to no more than 2m above ground level by removing trellis and other additions”.
5. The enforcement notice plan identifies the Land subject to the Notice as the entire land registry parcel, but the allegation in Section 3 relates to ‘fence’ in the singular and ‘over 1m in height’ not 2m. The reasons for issuing the Notice also make reference to the enclosure of the land with a close boarded fence with concrete posts of approximately 1.8m in height; they also refer to the refusal of planning permission for a 1.8m high fence.
6. The pre-existing wall with timber height extension running along the original rear garden boundary, as shown on the photographs in evidence, had clearly been erected some time previously. Pre-existing boundary treatments are not specified in the alleged breach of planning control and the appellant has not had the opportunity to make his case in relation to them through the appeal process, or to appeal on other grounds. I am therefore not able to correct the Notice to include them without injustice to the appellant. I will therefore correct the notice by deleting requirement 5(ii).

Main Issues

7. The main issues are:
 - whether there has been a loss of amenity space; and
 - the effect of the development on the character and appearance of the area.

Amenity space

8. Robsons Close is a short cul-de-sac and part of a residential housing estate of terraced and semi-detached dwellings. 2 Robsons Close is an end terraced dwelling facing Robson Close, with its side boundary along Prospect Road.
9. Prior to the development occurring, the land adjacent to Prospect Road was divided between that enclosed by a brick wall as the private garden, and an open area of grass adjacent to the footway containing two trees.
10. The Council consider the Land to be ‘amenity land’ associated with the estate, and cite conflict with The Broxbourne Local Plan 2018-2033 (2020) (“TBLP”) Policy ORC3, which states there will be a presumption against the loss of amenity spaces except in particular circumstances. The appellant considers it to be private land, and part of the dwelling.

11. In *Burdle* it was held that the planning unit is usually the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.
12. The appellant has provided land registry plans showing the Land as a single parcel of land for the purposes of ownership. The principal plan is marked 'Crown Copyright 1966', and the accompanying plan is an architectural drawing of the estate dated 1966 and showing the entire parcel of land. The land therefore appears to have been a single parcel since 1966. The appellant also provides a screenshot plan which purports to show areas of land owned by the Council, and that plan shows other areas of land within and adjacent to the highway, but excludes the Land subject to the appeals. The evidence therefore suggests this is not a case of recent acquisition of public amenity land. The unit of occupation is the area subject to the Notice and the planning application.
13. The estate drawing is annotated with the words, "Generally: Open grass forecourt treatment inc planting. No front boundary walls or gates". The open landscaped area at the side of the plot was therefore consistent with residential land associated with the dwelling and enclosure of the rear garden by a wall of greater height. Notwithstanding the absence of boundary treatments adjacent to the public footway, and the presence of trees, it has not been evidenced that the land is public amenity space for the estate, or otherwise physically and functionally separate from the dwelling.
14. On balance, the Land is not an amenity space associated with the estate, and there is therefore no conflict with TBLP Policy ORC3.

Character and appearance

15. I noted above that the original estate plan envisaged open frontages without boundary walls or gates. Neither party have provided details of the original planning permission or have advised of any condition limiting frontage boundary treatments.
16. In the vicinity of the Land, most frontages remain open, or have very low boundary walls. But I noted other dwellings, including one opposite the Land on Prospect Road, which had rear gardens enclosed by brick walls or fences exceeding 1m in height which run along the footway edge. There are also accesses to garage blocks at the rear of the Land and elsewhere bounded by walls or fences exceeding 1m in height. And there is a similar fence at 1 Cambridge Close, located behind a grass area owned or maintained by the Council.
17. The area of grass and trees adjacent to the footway and once ivy-clad brick wall on the Land previously helped soften the largely developed estate. But one of the two trees has been removed, the Council advise the remaining tree is dead, and the ivy has been removed. I have been advised of no requirement for the appellant to retain a green environment in that location, and the parties agree that a 1m wall or fence could be erected on the boundary at the footway edge.
18. Therefore, even if I were to uphold the Notice, it is unlikely that green space would be recreated on the Land as it had been previously. Although the land is located in a prominent location on Prospect Road and Robsons Close, other fences and walls exceeding 1m in height are found on the estate. The passage of time has softened the appearance of the fence, and the enclosure of the rear garden by the

1.8m high fence, and a lower 1m high fence around parts of the frontage, does not harm the character and appearance of the area.

19. The development therefore accords with the relevant parts of TBLP Policies DSC1, DSC2 and EQ1, which seek to ensure high standards of design which enhance local character and distinctiveness.

Conditions

20. Having found no harm to the character and appearance of the area, planning conditions restricting further development or requiring soft landscaping are not necessary.

Conclusion on Appeal A

21. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected. The enforcement notice will be corrected and quashed.

Conclusion on Appeal B

22. For the reasons given above the appeal should be allowed.

Formal Decisions

23. It is directed that the enforcement notice is corrected by:
- In Section 3, the insertion of the word “material” before the words ‘change of use’; and
 - In Section 5, the deletion of the words “(ii) Reduce the height of existing boundary treatments to no more than 2 metres above natural ground level by removing trellis and other additions”.
24. Subject to the corrections, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the material change of use of amenity land to residential garden and erection of fence over 1 metre in height at land adjacent to 2 Robsons Close, Cheshunt, Hertfordshire EN8 9QT as shown on the plan attached to the notice.
25. Appeal B is allowed, and planning permission is granted for change of use (amenity land to residential garden) and erection of fencing at 2 Robsons Close, Cheshunt, Hertfordshire EN8 9QT in accordance with the terms of the application 07/23/0285/F, and the plans submitted with it.

Peter White

INSPECTOR