



Appeal Decisions

Site visit made on 8 July 2025

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2025

Appeal A Ref: APP/X2410/C/24/3341122

Appeal B Ref: APP/X2410/C/24/3341123

Land adjoining 64C Brick Kiln Lane, Shepshed, Leicestershire, LE12 9EL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mrs Jacquelyn Thorneycroft (Appeal A) and Mr David Bagley (Appeal B) against an enforcement notice issued by Charnwood Borough Council.
- The notice was issued on 10 February 2024.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of land to residential curtilage to form domestic garden land and facilitating operational development including fencing within the last 10 years.
- The requirements of the notice are to:
 - 1) Cease using the Land as domestic garden land.
 - 2) Remove from the Land all fencing to the eastern, southern, and western boundaries of the Land.
 - 3) Remove from the Land all domestic paraphernalia.
 - 4) Remove from the Land the laid grass turf.
 - 5) Remove from the Land all imported material from under the laid turf.
 - 6) Reinstate/maintain the boundary fences between the Land and 64b and 64c Brick Kiln Lane.
 - 7) Reinstate the Land to its levels prior to undertaking steps 4 and 5 above.
 - 8) Reinstate the trees removed from the Land to the south of 64c Brick Kiln Lane.
 - 9) Reinstate the Land in accordance with the Ecology Enhancements and Management Plan dated September 2020, as required by condition 14 attached to decision number P/13/2467/2 and approved under decision number P/20/0277/2. A copy of the Ecology Enhancements and Management Plan is attached to this Enforcement Notice.
 - 10) Manage the Land in accordance with the Ecology Enhancements and Management Plan as required by condition 14 attached to decision number P/13/2467/2 and approved under decision number P/20/0277/2.
 - 11) Remove from the Land all plant, machinery, tools, debris, and materials arising from undertaking steps 1 through 10 above.
- The periods for compliance with the requirements are described as follows:

Within 3 months of the enforcement notice taking effect complete the steps 1 through 7. Steps 8 and 9 are to be completed in accordance with the planting seasons, as stated in the Ecology Enhancements and Management Plan, immediately following the date on which the enforcement notice takes effect. Step 10 is an ongoing requirement of the Ecology Enhancements and Management Plan and as such is set in perpetuity. Step 11 is to be completed on completion of each step 1 through 9 and is an ongoing step following the completion of step 10.
- Appeal A is made on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990. 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 1990 Act.
- Appeal B is made on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decisions.

Preliminary Matters

1. Appeals A and B relate to the same site and the same enforcement notice. I shall therefore deal with them together.
2. I have also dealt with two appeals on the adjacent site, 64B Brick Kiln Lane¹. These appeals are made in respect of enforcement notices making similar allegations, but they are the subject of separate Decisions.
3. Although the appellants did not plead ground (b) on the appeal form, their contention that the land has not been used as a domestic garden amounts to a hidden ground (b) as set out below. Both parties have been given the opportunity to comment on this matter and I shall consider this ground accordingly.
4. No Council representative was present at the appointed date and time of my site visit. I decided to undertake the visit on an unaccompanied basis, with the appellants there to provide access only, and I was able to see all I needed to from the unaccompanied visit. Neither party has been prejudiced by this approach.

The Site and its Surroundings

5. Outline planning permission (ref: P/13/2467/2) was granted on 28 March 2014 for the erection of 3 dwellings with associated access, parking and landscaping. Following discharge of the “reserved matters” and other conditions imposed on the “2014 permission”, the approved dwellings were built next to another to create 64A-D Brick Kiln Lane. These four houses, all detached, are laid out in a cul-de-sac which leads from and is to the south of a shared access road, which itself leads from Brick Kiln Lane to the east.
6. 64C Brick Kiln Lane lies in the southeastern corner of the cul-de-sac. The house and its rear garden are perpendicular to an adjoining parcel of undeveloped land to the south. The appeal site, or the land subject to the notice, is a rectangular portion of the undeveloped land which follows the southern boundary of no. 64C. Similarly, the appeals pertaining to no. 64B concern part of the undeveloped land which adjoins both the boundary to that property – in the southwest corner of the cul-de-sac – as well as the instant appeals site.
7. Condition 14 imposed on the 2014 permission required that: “No dwelling on the site shall be occupied until a landscape management plan including but not limited to, long term design objectives, management responsibilities, maintenance schedules and a mechanism for regular review for all landscaped areas on the application site (excluding private gardens) **and the land outlined in blue** on the application site plan has been submitted to and agreed in writing by the local planning authority. The agreed landscape management plan shall then be fully implemented in perpetuity” [my emphasis].
8. As the notice suggests, condition 14 was discharged via application (ref: P/20/0277/2) whereby an Ecology Enhancements and Management Plan (the EEMP) was submitted to and approved by the Council. The EEMP was prepared on behalf of the developers who implemented the 2014 permission, and not the appellants in this case. The habitats plan on page 15 of the EEMP suggests that the land outlined in blue for the purposes of condition 14 equates to the undeveloped land and thereby includes the appeal site.

¹ Appeals ref: APP/X2410/C/24/3341102 and APP/X2410/C/24/3341103

9. I finally note here that the appellants previously made two planning applications (P/21/0430/2 and P/22/0356/2) for the change of use of the land to create an extended “residential curtilage”. I shall refer to these as the “2021 and 2023 applications” as they were refused by the Council on 19 November 2021 and 7 February 2023 respectively.

The Enforcement Notice

10. Under s176(1) of the Town and Country Planning Act 1990 (the 1990 Act), an Inspector may correct any error, defect or misdescription in an enforcement notice provided that will cause no injustice to the appellant or the Council. If injustice would be caused, the notice will be not correctable and invalid.
11. In this case, there are several defects with the enforcement notice, with the first being that it alleges that there has been a material change of use of the land to residential curtilage to form domestic garden land. The allegation should set out the “development” considered to be in breach of planning control and, while that term encompasses a material change of use, the word “curtilage” defines an area of land in relation to a building and not a use of land.
12. The allegation could also be expressed more precisely in respect of the operational development carried out although, as discussed below, land levels have not been altered via the importation of materials as the requirements of the notice suggest. A final note about the allegation is that, since it should only describe “development”, it is not appropriate to include here any reference to “within the last 10 years”.
13. I shall correct the notice to allege that there has been “a material change of use of land to use as a domestic garden, and the carrying out of associated operational development to install boundary fencing”. That correction will cause no injustice because the notice will be made more precise for the Council’s purposes but no more onerous from the perspective of the appellants.
14. I need not analyse the requirements of the notice at this stage, because they would be otiose if the appeal is allowed on grounds (b), (c) or (a), and because the notice is also appealed on ground (f). However, I must raise concerns here regarding the periods for compliance set out in the notice in respect of steps 8) to 11).
15. The notice requires that steps 8) and 9) are completed in accordance with the planting seasons set out in the EEMP. It is not necessary even to look at the EEMP to find that ambiguous as a period for compliance; planting seasons recur annually. By failing to specify, for example, that the works must take place in the next planting season after the notice comes into effect, the notice does not tell the appellants when steps 8) and 9) must be complied with.
16. The time for compliance with step 10) is described as “in perpetuity”. However, s173(9) of the 1990 Act requires that a notice shall specify the period at the end of which any steps are required to have been taken. A period cannot be forever more. The notice then requires compliance with step 11) not merely “on completion of each step 1 through 9” but then also as “an ongoing step following the completion of step 10”. Again, “ongoing” is not a period, and it is difficult to understand when “completion of step 10” might happen since its requirements apply “in perpetuity”.
17. The notice gives three months for compliance with steps 1) to 7) and that is a period for the purposes of s173(9). Accordingly, the notice is not so defective on its

face as to amount to a nullity. I shall consider when it comes to ground (f) whether the notice should be corrected or varied in respect of steps 8) to 11), and whether any such corrections or variations would cause injustice with regard to the implications for the periods for compliance.

Appeals A and B on Ground (b)

18. An appeal on ground (b) is that the matters comprising the alleged breach of planning control have not occurred. The relevant date is the date that the notice was issued, and the question is approached as a matter of fact. The onus lies with the appellants to make their case on the balance of probabilities.
19. In this case, the question is whether the appeal site had been used as a domestic garden as alleged by 10 February 2024, the date of the notice. The appellants state that they moved into no. 64C in October 2019 and bought the site on 18 February 2020. They were unaware that planning permission would be required for the use of the undeveloped land as a garden and were not consulted on the preparation of the EEMP. They erected fencing as a requirement of the land purchase agreement but say that they have not actually used the land as a garden.
20. However, the appellants included photographs with the 2023 application which show that the fencing includes a gate located specifically to enable direct access to the site from the existing rear garden at no. 64C. The site is also shown as covered in sheeting and being used for the storage of items such as bins and a wheelbarrow associated with the residential use of no. 64C. It appears undisputed that the appellants mowed grass on and removed vegetation overhanging the site.
21. The use of land as a domestic garden involves the use of land for purposes that are reasonably incidental to the residential use of the associated dwellinghouse. The appellants have not shown that the storage of items associated with the residential use of no. 64C did not amount to use of the site as a domestic garden. They also have not shown that the land was enclosed or maintained for any purpose other than use as a domestic garden.
22. The appellants have also suggested that the land was once used as an informal garden by others. While there is no substantive evidence to that effect, the claim adds a little weight to my conclusion that, on the balance of probabilities, the land had been used as a domestic garden by the date that the notice was issued. The matters alleged in the notice as corrected had occurred as a matter of fact. The appeals under ground (b) must therefore fail.

Appeals A and B on Ground (c)

23. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The appellants do not dispute that the alleged material change of use of the site to domestic garden use requires but does not have planning permission and is thus in breach of planning control. The appellants plead ground (c) only in respect of the alleged fencing which, they claim, is “permitted development” by virtue of Article 3(1) and Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
24. However, the permission granted under Part 2, Class A is specifically for the erection or construction of a gate, fence, wall or “other means of enclosure”. That

phrase is important because, to be permitted development, the fence or wall being constructed must have the quality of enclosure. A free-standing fence or wall, which does not enclose or play any part in enclosing anything, is not permitted by the GPDO. Yet the appeal fences only have the quality of enclosure in respect of an unlawful use.

25. Article 3(5) of the GPDO provides that any permission granted by Schedule 2 does not apply if (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful; (b) in the case of permission granted in connection with an existing use, that use is unlawful. The two limbs are not mutually exclusive. Given the appellants' photographs, and with no evidence to the contrary, the appeal fencing was probably erected for the purpose of facilitating an unlawful material change of use of land. It follows that the erection of the fencing cannot benefit from the permitted development rights set out under Part 2, Class A of Schedule 2.
26. Even if the fences were permitted development, the notice could still (in principle) require their removal. Any notice directed at a material change of use may require the removal of ancillary operational development, even if such works on their own might not be in breach of planning control. This is to ensure the land is restored to its condition prior to the unauthorised change of use.
27. In this case, however, the appellants have not demonstrated that the carrying out of associated operational development to install boundary fencing, as alleged by the notice as corrected, does not itself constitute a breach of planning control on the balance of probabilities. Any requirement by covenant for the appellants to erect cattle proof fencing does not alter the planning status of the site. I conclude that the appeals on ground (c) fail.

Appeal A on Ground (a) and the Deemed Planning Application

28. An appeal on ground (a) is that planning permission ought to be granted for what is alleged in the notice as corrected, with regard to the development plan and other material considerations.
29. The Emerging Charnwood Local Plan 2021-2037 (ELP) was submitted for examination in 2021 with hearings concluding in 2023 and it is now at an advanced stage. The policies most relevant to the appeal are ELP policies C1 and EV6. Paragraph 49 of the National Planning Policy Framework (the Framework) allows me to ascribe weight to emerging policies based on the state of preparation of the plan, the extent to which there are unresolved objections and the degree of consistency to the Framework. Based on the submitted evidence I consider these policies can be afforded significant weight in my consideration of the development.
30. I have also had regard to the December 2024 version of the Framework.

Main Issues

31. The main issues in this case are whether the appeal site is an appropriate location for domestic garden use, having regard to the development plan and the effect of the use on the character and appearance of the countryside; and the effect of the development on the ecological value of the undeveloped land.

Reasons

The Use and Location

32. The site is outside the defined limits to development and is therefore within the countryside for the purposes of the development plan. Saved Policy CT/1 of the Borough of Charnwood Local Plan (2004) (LP) seeks to strictly control new development lying outside the limits to development boundary, which would only be granted where it would meet one of four criteria. The unauthorised development does not meet any of the exceptions listed and is therefore contrary to this policy. It also conflicts with saved LP Policies CT/2 and ST/2 which restrict development outside the limits to development.
33. Turning to character and appearance, the undeveloped land is an area of grassland and woodland, which must be retained and enhanced as such under the EEMP and therefore condition 14 on the 2014 permission. I saw that the remainder of the undeveloped land, beyond the areas subject to both this notice and that pertaining to 64B Brick Kiln Lane, has a naturalised landscape and appearance which complement the character of the surrounding areas of open countryside and contributes positively to the setting of the appeal site and nearby houses.
34. Any land that has a lawful domestic garden use is liable to be laid out and maintained for recreational (including gardening) and other domestic purposes. The appeal site is a case in point, with the fencing, new planting and domestic paraphernalia giving it a manicured appearance at odds with the wilder character of the remainder of the undeveloped land. I appreciate that the development is relatively modest and well screened from public vantage points. However, the potential to hide development cannot on its own justify encroachment into the countryside and the site is in any event partially visible from adjoining land.
35. I consider that the use of this site as a domestic garden extension and the associated fencing encroach upon and detract from the appearance of the surrounding open countryside. The development fails to support or protect the character of the countryside as expected by Policy CS11 of the Charnwood Local Plan (2011-2028) Core Strategy 2015 (the CS). The harm is not outweighed or justified by the fact that outline planning permission has been granted for new housing on land to the east because that will not directly impact upon the undeveloped land.
36. For the above reasons, I conclude that the appeal site is not an appropriate location for domestic garden use because the site is outside of the development boundary and the use and associated operational development are harmful to the character and appearance of the countryside, in conflict with CS Policies CS1, CS2, CS11 and CS25, saved LP Policies ST/2, CT/1, CT/2 and EV/1 and ELP Policy C1. It is not sympathetic to local character, including landscape setting, as required by paragraph 187 135 of the Framework.

Ecology

37. The EEMP sets out that adverse effects of constructing three new dwellinghouses (approved via the 2014 permission) on biodiversity would be avoided and mitigated through measures to create and enhance habitats on the undeveloped land. The EEMP identified the part of the land which included the site as poor semi-improved grassland and proposed that this be reconditioned to achieve a species rich

wildflower meadow using grassland seed mixes of local provenance, together with new fruit tree planting. The EEMP has not been implemented but the requirement that it is, as set out in condition 14, remains enforceable so far as I am aware.

38. The appeals site represents a relatively small part of the area set aside for biodiversity offsetting. Even so, the use of the site as a domestic garden, and the associated severance of the site from the wider land and removal of vegetation, has denuded the ecological value of the site. A grant of planning permission for the development would increase the habitat lost as a result of the 2014 permission and reduce the compensatory provision. It would thus make the habitat creation measures set out in the EEMP more difficult to implement and less likely to succeed in the longer term. The appeal fencing may not prevent grass growing but it is only required to facilitate a use which causes ecological harm.
39. The appellants suggest that they would provide ecology enhancements on the site, but my allowing this appeal would authorise human activity on the land for domestic purposes. The use would inevitably involve ongoing habitat disturbance. It would therefore be unreasonable for me to impose a condition that requires the provision of ecological measures on the site, sufficient to compensate for the severance from the undeveloped land, because that would be liable to negate the benefit of the permission. I also note that the concept of biodiversity net gain does not apply where planning permission is sought, as here, via a deemed application or on a retrospective basis.
40. The appellants have offered to work with the Council to provide biodiversity improvements on the remainder of the undeveloped land, which is now within their ownership, and to remedy the failure of previous owners and developers to implement the ecological enhancements. However, as noted above, condition 14 remains in force anyway. The appellants willingness to assist is welcome but it would not justify a grant of permission for a use that would undermine the EEMP when its implementation can be expected to occur anyway.
41. I conclude that the development has resulted in an unacceptable loss of ecological value. It therefore conflicts with CS Policy CS13 of the CS, saved LP Policy CT/2 and ELP Policy EV6, where these require development to protect biodiversity. It is also contrary to paragraph 193 of the Framework which states that if significant harm resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Other matters

42. The development provides additional external amenity space for the benefit of the occupiers of the property. However, the appellants have not shown that there is any deficit of garden space within the lawful boundaries of no. 64C so as to cause unacceptable harm to their living conditions or private and family lives. I therefore attach limited weight to this consideration.
43. The fence to the eastern boundary was erected by the appellants in order to screen various items stored on adjacent land. However, those items have since been removed and, more importantly, I am only concerned with the fencing around the appeal site. Since there is no case for a grant of permission for use of the site as a domestic garden, I see no need for any fencing to protect the outlook from (or provide privacy) within the site.

44. Matters relating to the erection of a fence required by the land purchase agreement, and the Council's handling of the enforcement case and previous planning applications, are outside the remit of this appeal. Any breach of condition 14 by third parties would need to be dealt with separately to these appeals, which relate to a material change of use of the land, rather than a breach of condition.
45. I would not dismiss this appeal on the basis that a grant of permission could set a harmful precedent. Notwithstanding that similar notices have been issued and appealed in respect of no. 64B, each planning application must be decided on its merits and with regard to site-specific circumstances as well as planning policies.

Conclusion on Ground (a) and the Deemed Planning Application

46. The material change of use subject to this appeal is not appropriate in this location having regard to the requirements of the development plan and the harmful effect of both the use and associated fencing on the character and appearance of the area. The use also causes unacceptable harm in respect of ecology. The development does not accord with the development plan taken as a whole and there are no material considerations that indicate that the decisions should be made other than in accordance with the development plan. It is necessary and proportionate to deny planning permission.
47. I conclude that Appeal A should fail on ground (a) and the deemed planning application should be refused.

Appeals A and B on Ground (f)

48. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or any injury to amenity caused by the breach. Since the notice requires cessation of the alleged use and, in short, removal of works that facilitated the use plus reinstatement of the land, it can be deduced that the purpose of the notice is to remedy the breach.
49. I am satisfied that steps 1) to 3) are necessary and not excessive. The appellants consider that they should not be required to remove the new fencing, but I have found that it facilitated the unauthorised material change of use and does not have the benefit of planning permission granted by the GPDO. Its removal is therefore a necessary step in remedying the breach of planning control.
50. The evidence indicates that materials have not been imported, land levels have not been altered and new grass turf has not been laid. I shall vary the notice to delete requirements 4), 5) and 7). Requirement 6) is to reinstate the boundary fences between the land and Nos 64B and 64C, but no. 64B is not subject to this notice and those fences were not removed in any event. The Council acknowledges this requirement was an error and says it should read "Maintain the boundary fences between the Land and 64c Brick Kiln Lane". However, as set out above, the requirements of a notice cannot exceed what is necessary to remedy the breach and must also be drafted so that they can be complied with during a "period".
51. Requirements 8), 9) and 10) require that the land is reinstated and managed in accordance with the EEMP approved under condition 14. However, the notice does not allege a breach of condition 14. The notice cannot require implementation of the approved EEMP measures because that is not related to what is alleged. The requirements relating to the EEMP are excessive to remedy the breach; they would

represent improvements to the land which can only be secured through separate enforcement of condition 14. I shall delete steps 8) to 10) and the ambiguous periods given for compliance with them. I shall also correct the notice by deleting Appendix 1 which contains the EEMP.

52. Finally, the requirement set out at step 11), to remove all plant, machinery, tools, debris and materials arising from undertaking steps 1) to 3), is necessary and not excessive to remedy the breach. I shall correct the notice, however, so that it requires compliance with step 11) not “on completion” of steps 1) to 3) but within the same period of three months. This will cause no injustice because the period for compliance will be the same in substance.
53. To this extent, therefore, the appeals on ground (f) succeed.

Conclusion

54. For the reasons given above, I conclude that the appeals should succeed on ground (f) only. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed planning application.

Formal Decisions: Appeals A and B

55. It is directed that the enforcement notice be corrected and varied by:
- The deletion of the text of paragraph 3 in its entirety and the substitution of ‘Without planning permission, the making of a material change of use of land to use as a domestic garden, and the carrying out of associated operational development to install boundary fencing.’
 - The deletion of requirements 4) to 11) set out under paragraph 5 and the substitution of: ‘4) Remove from the Land all plant, machinery, tools, debris and materials arising from compliance with this notice.’
 - The deletion of the text of paragraph 6 in its entirety and the substitution of ‘Within 3 months of the enforcement notice taking effect’.
 - The deletion of ‘Appendix 1’.
56. Subject to these corrections and variations, the appeals are 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.

M Ollerenshaw

INSPECTOR