



Appeal Decisions

Site visit made on 24 August 2026

by **Robin Buchanan BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1st September 2026

Appeal A Ref: APP/H1705/C/24/3350252

Appeal B Ref: APP/H1705/C/24/3350253

16 Avon Road, Oakley, Basingstoke, Hampshire RG23 7DJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990, as amended (the Act).
 - Appeal A is made by Mrs Gina Lee-Buckland and Appeal B is made by Mr Wayne Lee-Buckland against an enforcement notice issued by Basingstoke and Deane Borough Council.
 - The notice was issued on 10 July 2024.
 - The breach of planning control as alleged in the notice is *'Without planning permission the material change of use of that part of the Land shown, for indicative purposes only, hatched black on the attached Plan B from public open space use to residential garden use together with the erection of a close boarded fence (said fence shown for indicative purposes only and marked between points A to B to C on the attached plan B) and the laying of hardstanding (shown for indicative purposes only hatched black on the attached plan B)'*.
 - The requirements of the notice are to:
 - (i) Permanently cease the residential use of the Land shown hatched black on the attached plan B;
 - (ii) Remove from the Land the close boarded fence shown marked between points B and C on the attached plan B;
 - (iii) Reinstall a fence on the Land shown marked between points D and E on the attached plan B (such fence not exceeding 2 metres in height);
 - (iv) Remove from the Land the close boarded fence shown marked between points A and B on the attached plan B;
 - (v) Permanently remove the hardstanding from that part of the Land (shown for indicative purposes only hatched black on the attached plan B);
 - (vi) Remove from that part of the Land shown hatched black on the attached plan B all building materials and rubble arising from compliance with requirements (ii) and (iii) and (iv) and (v) above; and
 - (vii) Restore the Land shown hatched black on the attached plan B to its condition before the breaches of planning control took place by levelling the ground and re-seeding with general purpose landscape amenity grass seed mix.
 - The period for compliance with the requirements is: 6 months.
 - The appeals proceed on the ground set out in section 174(2)(b) of the Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. Both appeals make the same case about the same enforcement notice so I have considered them together.
3. In response to the Council's reasons for issuing the enforcement notice, the appellants refer to the design of the fence pursued by it (the new fence), to boundary treatments at other residential properties in Avon Road or nearby and the character or appearance of the area, including claimed enhancement of the public open space (POS) that borders No.16 on one side. However, the appeal was not

made on ground (a) and there is no deemed application for planning permission before me for any of the matters stated in the alleged breach of planning control, as set out in the 4th bullet point in the banner heading above. This means that the planning merits of this development are not relevant to my decision on ground (b).

4. The Council's appeal statement includes why it considers the new fence and hardstanding is not permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. But the appeal was not made on ground (c). In any event, subject to ground (b), the appellants have not argued that the new fence is not a breach of planning control.

Ground (b)

5. For each ground (b) to succeed, the onus is firmly on the appellants to demonstrate, on the balance of probability, that the matters stated in the alleged breach of planning control had not occurred as a matter of fact by the date the notice was issued.
6. The Land is defined by the red line in notice Plan A. It is not contested that the (gravel) hardstanding pursued by the notice (hatched black in notice Plan B) had been laid by the date the notice was issued. Nor that while the upper section of part of the new fence, facing Avon Road, was lattice timber trellis, the main lower section was timber close boarded panels (*'blocked fencing'*) and the rest of the new fence was close boarded panels, also with concrete posts and gravel boards. The Council maintains that this operational development facilitated the alleged material change of use and I have no reason to find otherwise in this regard.
7. Accordingly, the nub of the matter in dispute is the alleged material change of use of a narrow, long strip of the Land (hatched black in notice Plan B) from POS to part of the garden of No.16 (the hatched land).
8. In essence, the appellants' appeal statement claims the garden of No.16 had not encroached upon the POS. In other words, that the new fence enclosed the garden of No.16 (including the hatched land) and did not incorporate some of the POS. In addition, that the position of the new fence was agreed with Oakley and Deane Parish Council (the PC) and is unchanged from a pre-existing concrete post and wire chain link fence the appellants removed (the old fence). It is common ground that a thick hedge (*'bushes'*) broadly followed the alignment of the old fence.
9. The appellants' contemporary photograph includes a concrete post in the new fence, roughly in-line with the end of the raised kerb and the start (higher end) of the first, bevelled, dropped kerb stone and the footway crossing. It is taken from Avon Road looking towards No.16, parallel to the road and perpendicular to this post, thus at an angle to the house and plot. Consequently, even if this post occupies the same position as the old fence, it does not mean, nor does this photograph show, that the new fence behind is on the same alignment.
10. The appellants' August 2019 photograph is taken from a different position and angle, from within the plot of No.16 looking towards Avon Road. Moreover, while it shows the hedgerow, the old fence is not apparent, nor is the dropped kerb. It is thus not a direct comparison with the contemporary photograph. I also saw that some boundaries partly overlap bevelled dropped kerb stones at residential properties elsewhere in Avon Road and nearby. A position or alignment of the old

fence at No.16, if at or more towards the lower end of the bevelled dropped kerb stone, would therefore not have been unusual and is of little consequence in itself.

11. The August 2019 photograph also includes part of a gas governor hut (*'green box'*) on the POS and shows the outer edge of part of the hedge close to the hut, albeit in part due to the angle it was taken. However, because this photograph does not appear to show the old fence, it does not substantiate the appellants' claim that the position of the new fence shown in an October 2019 photograph is unchanged in relation to the old fence and the gap to the hut. Given the hedge's thickness, the new fence could have been positioned within its former extent and significantly closer to the hut than the old fence.
12. Nor is the extent of new soil shown in the October 2019 photograph (and another of the appellants' photographs) necessarily indicative that the hedge was all on the outside face of the new fence, including because some soil may have spread across grass in the POS beyond what was the extent of the hedge. The appellants have not provided photographs of the situation on the ground said to have been taken in September 2019, between August 2019 and October 2019. The condition of the hatched land along the inside face of the new fence in that intervening period, and if it included soil where the hedge was before the hardstanding was laid, is therefore not clear to me.
13. Furthermore, in September 2019 the appellants contacted the PC seeking to *'take/buy/be given an extra 3.5 foot where the bushes used to be'*. This was said to be to provide *'additional space'* for car parking. As I saw, the hatched land also gives side/rear access to the house and back garden. At face value, the appellants accepted then that the hatched land was beyond what they understood to be their garden. While they considered useable POS would not be lost (just hedge), that is not the matter in hand. There is little evidence from the appellants that the hedge along the old fence, and on the POS side of it, was part of the garden or plot of No.16, rather than part of the POS. Nor that the appellants' owned the hatched land, especially given unchallenged evidence that the PC owned the POS.
14. While the PC agreed the appellants could put up a new fence to be maintained by the appellants, there is little objective evidence to show what *'line'* the PC and the appellants agreed it was to follow. Be that as it may, the PC rejected the appellant's request, as the PC put it, to *'increase the area by sale/lease or gift of the extra 3.5 feet'*. With little clear evidence to the contrary, it is more likely than not that the PC intended the new fence to follow the old fence line and not incorporate the extra (POS) land within the garden of No.16. There is otherwise no apparent reason why the PC would give up part of their land and POS for the appellants' private benefit, notwithstanding the appellants' claimed environmental enhancements nor why the new fence was the only means to achieve these public benefits.
15. The Land Registry plans before me are broadly consistent with 1985 and 2014 application plans (also before me) for previous proposed development at No.16. These plans essentially show this west boundary of the plot nearer to the house (by then with a garage/extension tight to part of this boundary) and tight to the driveway, including joining in straight lines with the back garden of No.16 and the adjoining property boundaries of Nos.15 and 16 Frome Close. This is also evident in a Council Officer photograph taken from the back garden of No.16 in December 2014. In contrast, this part of the new fence was stepped out in a distinct dog-leg towards the POS, as I saw it still is, and this narrow corridor continued parallel,

alongside the plot boundary of No.16 (as shown in the above plans), to Avon Road to enclose the hatched land.

16. While much of it was largely obscured from casual view by the hedge, the Council's March 2009 Google Streetview images show part of the old fence. It runs from the back of the pavement along the edge of the previous driveway at No.16, close to the outside edge of the hedgerow facing the garden side of the POS, also tight to the side of the garage/extension. While that driveway no longer exists (or has been covered by gravel in that part of the garden) there is little evidence to counter that the alignment of the old fence was consistent with the plot boundaries shown in the plans referred to above.
17. This is also borne out by a previous owner and occupant of No.16 (1991 to 2007) who, amongst other things, states that *'the original concrete post and chain link fence was always sited at the edge of the concrete driveway and along the wall of the garage/extension. It was never sited in the middle of the hedge and there was never room for access at the side of the driveway or extension'*. This is consistent with the plans referred to above and the Council's Google Streetview images, as well as an estate agent sales photograph said to be from 2015 (albeit undated).
18. The circumstances or sequence of events outlined above are also set out in some detail by the occupant of No.18 Avon Road (the other half of this semi-detached pair of houses) who has lived here since the 1980s.
19. There is little else to persuade me that the *'true'* or *'more accurate'* alignment of the old fence could not be established before the hedge was removed. But even if that was the case, there is then little evidence that the new fence coincides with the alignment of the old fence. This boundary, as shown in *'existing site layout'* and *'proposed ground floor layout'* plans is essentially the position of the new fence (application 23/00749/HSE by the appellants). These plans do not substantiate the annotation that this boundary reflects its position before the hedge was removed. Indeed, the 1:500 *'site layout'* plan is inconsistent with them, instead showing a plot boundary that accords with the Land Registry plans, earlier planning application plans and the Google Streetview images – namely the alignment of the old fence.

Conclusion

20. Associated operational development comprising the new fence and the hardstanding is not in dispute. In respect of the alleged material change of use, I acknowledge that the appellants' evidence does not need to be corroborated by independent evidence or a statutory declaration or affidavit to be accepted. But in this case, it is not sufficiently precise or unambiguous. It is furthermore countered by credible evidence from the Council and two particularly relevant interested parties. This indicates that there had likely been a material change of use of the area hatched black from public open space use to residential garden use.
21. Accordingly, for these reasons the appellants have not shown, on the balance of probability, that the matters stated in the notice had not occurred as a matter of fact by the date the notice was issued. Each ground (b) therefore fails.

Robin Buchanan

INSPECTOR