



Appeal Decisions

Site visit made on 18 December 2007

by **Nigel Burrows BA MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
17 January 2008

Appeal Refs: APP/C1950/C/07/2055254 & 2055256 17 Daisy Drive, Hatfield, Hertfordshire, AL10 9FR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr & Mrs MacNaughton against an enforcement notice issued by Welwyn Hatfield Borough Council.
- The Council's reference is DRS/DEV2/14/349.
- The notice was issued on 10 September 2007.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of land from open amenity land to private garden and the enclosing of that land by the erection of a close boarded fence.
- The requirements of the notice are:-
 1. Remove the close boarded fence shown marked with a blue line on the plan attached marked "B"
 2. Relocate the close boarded fence only along the line marked in red on the attached plan marked "C" to the boundary of the residential curtilage,
 3. Cease using the land as private garden AND
 4. Reinstate the approved landscaping into the strip alongside the residential curtilage.
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are dismissed and the enforcement notice upheld.

Appeal Ref: APP/C1950/A/07/2055768 17 Daisy Drive, Hatfield, Hertfordshire, AL10 9FR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs MacNaughton against the decision of Welwyn Hatfield Borough Council.
- The application Ref S6/2007/721/FP, dated 3 May 2007, was refused by notice dated 5 July 2007.
- The development proposed is described as 'fence re-alignment and extension of fence line within plot boundary'.

Summary of Decision: The appeal is dismissed.

The Section 174 ground (a) appeals and the Section 78 appeal

1. I consider the main issue in relation to these appeals is the effect of the development on the character and appearance of the area.
2. The development plan includes the Welwyn Hatfield District Plan (2005). Policy D2 requires development to respect and relate to the character and context of the area. As a minimum proposals should maintain, and where possible, enhance or improve the

character of the area. Policy D3 seeks to ensure development incorporates the principles of continuity and enclosure to distinguish between public and private spaces. The explanatory text indicates means of enclosure should provide privacy and security without becoming a dominant visual feature. The Council cites the Hatfield Aerodrome Supplementary Planning Guidance (SPG) adopted in 1999 after public consultation. This sets out the development principles for the former British Aerospace site, including the provision of landscaping and open spaces. The stated objectives of the SPG include the promotion and achievement of a consistently high standard of layout and design.

3. The appeals relate to an end of terrace house occupying a corner plot within Daisy Drive, which forms part of the redevelopment of the Aerodrome site. The development subject of the enforcement notice (and the S.78 appeal) involves the incorporation of a landscaping strip on the return frontage of the property into the appellants' garden, and the enclosure of this strip with a close boarded fence approximately 2.0m high.
4. I consider the development has resulted in an unacceptable reduction in the soft landscaping alongside the property, which was intended to contribute to the 'greening' of this housing estate. I saw the overall height and length of the close boarded fence erected adjacent to the public footway also appears overly dominating and intrusive within the street scene. The opportunities for alternative landscaping on the outside of the fence would be limited, with little scope to mitigate its dominating visual impact. As the Council points out, there are a limited number of landscaped strips within this part of the Aerodrome site redevelopment and it is crucial to maintain those which exist.
5. The appellants indicate a large grassed area remains in their rear garden, and they contend this provides a greater sense of openness than the smaller landscaping strip that has been removed. However, despite the modest size of the landscaping strip, it has an important role in softening the visual impact of the property and its boundary enclosures within the public realm; it also forms part of a landscaping framework within this housing development that is intended to enhance its overall environmental quality.
6. The appellants have referred to other properties with boundary enclosures abutting public footways. To my mind some of the examples cited demonstrate how the absence of adequate landscaping and green spaces can degrade the environmental quality of a housing development. The appellants indicate that some landscaping strips in the locality are untidy, overgrown and obstruct the footways, but these are not good reasons for allowing development that further erodes the visual qualities of the area. The appellants emphasise they have security concerns and refer to problems of anti-social behaviour. I saw the return frontage of the property to Daisy Drive is subject to a high degree of natural surveillance, particularly from the dwellings opposite. In any event, there are alternative ways to address these security concerns that are not dependent on reducing the original landscaping and replacing it with intrusive fencing.
7. The appellants indicate a 1.0m fence could be erected as permitted development. They will consider reducing the fence to this height if the appeals do not succeed, albeit they recognise this may harm the appearance of the area. It is not clear from the Council's submissions whether permitted development rights for the erection of boundary enclosures to the property have been removed by a planning condition, which is often the case on modern housing estates. In any event, the notice attacks the use of the land as well as its enclosure by a fence. It is established case law that a change of use notice may require the removal of works or objects provided they have facilitated or formed an integral part of the change of use. The appellants allege the use of the land is lawful as it appears on their deeds. The S.174 appeal has not been lodged on ground (c) but had it been, the onus would have been on the appellants to show no breach of planning control has occurred, whatever the land ownership. As matters currently stand, there is no clear evidence from the appellants to contradict the Council's view that a change of use from open amenity land to private garden has taken place.

8. In summary I conclude the development harms the character and appearance of the area, contrary to the objectives of policies D2 and D3. It is also inconsistent with the objectives of the Council's SPG to secure a high standard of layout and design.

Other Considerations

9. The appellants have made submissions relating to Article 8 of the European Convention on Human Rights. The Council has given a period of 6 months for compliance with the notice, which in my view is a reasonable and proportionate response to the breach of planning control. I recognise the dismissal of these appeals would interfere with the appellants' home and family life. However, this consideration must be weighed against the wider public interest. For the reasons given above I find this development significantly harms the character and appearance of the area contrary to the objectives of the relevant development plan policies, and I am satisfied this legitimate aim can only be adequately safeguarded by the dismissal of the appeals. On balance, I consider the dismissal of the appeals would not have a disproportionate effect on the appellants. For the same reasons given in respect of Article 8, I consider the interference with the appellants' peaceful enjoyment of their property is proportionate and strikes a fair balance in compliance with the requirements of Article 1 of the First Protocol.

Conclusion

10. I have taken into account all the other matters raised in the written representations, including the support for the development from some of the neighbouring residents, but I find they do not outweigh the main considerations that have led to my decisions. I conclude the Section 174 ground (a) appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed applications. I further conclude that the S.78 appeal should be dismissed.

Formal Decisions

Appeal Refs: APP/C1950/C/07/2055254 & 2055256

11. I dismiss the appeals and uphold the enforcement notice. I refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal Ref: APP/C1950/A/07/2055768

12. I dismiss the appeal.

Nigel Burrows

INSPECTOR