Appeal Decision

Site visit made on 9 August 2010

by David Pinner BSc (Hons) DipTP MRTPI

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

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Decision date: 18 August 2010

Appeal Ref: APP/T9501/C/10/2123097
The Badger, Swindon, Sharperton, Morpeth NE65 7AP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by William Pickering against an enforcement notice issued by Northumberland National Park Authority (NPA).
- The notice was issued on 22 January 2010.
- The breach of planning control as alleged in the notice is without planning permission, the change of use from agricultural land to residential garden.
- The requirements of the notice are to cease the use of the land as residential garden, remove the timber fence between points X and Y shown on the plan attached to the enforcement notice and return the land to its former condition as pasture.
- The period for compliance with the requirements is 12 weeks after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
- An application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Decision

1. I allow the appeal on ground (f), and direct that the enforcement notice be varied by the deletion of the requirement to return the land to its former condition as pasture and by its substitution with a requirement to remove from the land all garden ornaments, enclosures and cultivated beds. Subject to these variations, I uphold the enforcement notice.

Ground (a) and the deemed application

2. I am aware of the previous appeal decision of 24 February 2009 against the decision of the NPA to refuse to grant planning permission for the change of use of land at The Badger to a garden. Although I am not bound by that decision, (which was to dismiss the appeal) it is a material consideration to which I attach significant weight. Nevertheless, I acknowledge that there have been some changes in circumstances since that decision, notably that a certificate of lawful existing use or development (LDC) has been granted in respect of the use of an area of land at The Badger (not including the appeal site) as garden and also in respect of the fence, the greater part of which the enforcement notice requires to be removed. I am also aware that the NPA officers recommended approval of the application that was eventually unsuccessful, indicating that there is an element of subjectivity with regard to the perception of the impact of the use on the surrounding landscape and that opinions vary on this. I also acknowledge that additional information has been provided to the effect that The Badger and the adjoining cottages once had

extensive gardens on land on the opposite side of the road. However, I attach no significant weight to that fact.

3. The land the subject of the enforcement notice is contiguous with the land that is lawfully domestic garden and there is nothing on the ground to distinguish between the two. Apart from this lack of distinction, the most obvious features that make the land appear as garden land are the fence separating the garden form the adjoining field, an enclosed planting bed and various standing stones, which I shall refer to as garden ornaments.

4. I saw for myself that the garden intrudes into the undeveloped landscape and I have no reason therefore to disagree with the findings of the previous Inspector to that effect or his conclusion that the development conflicts with policies C1 and CD1 of the Northumberland National Park Local Plan insofar as they aim to protect the character and appearance of the landscape. However, I am firmly of the view that it is the fence around the garden that makes it appear intrusive. The native hedgerow species that have been planted along a substantial part of the fence line do not make the garden appear intrusive and have blended in with the hedgerow bounding the adjoining field to the north and the woodland that the appellant has planted within the area subject to the LDC. I could not make out individual plants from normal public viewing distances and the overall impression I got from a distance was not of an ornamental garden but of a vegetated area that does not stand out as being intrusive or unusual in the wider landscape. It would seem from the photographs submitted with the appeal documentation that the garden was more prominent in the landscape before the trees and shrubs within it reached their current stage of maturity.

5. From that assessment, it might seem that the appeal on ground (a) should succeed, subject to a condition requiring the fence to be replaced with a stockproof wire fence as the appellant has offered. However, I have serious concerns that to grant planning permission to use the land as a residential garden could pave the way for future owners to alter the appearance of the land in ways that would be most intrusive and out of keeping with the local landscape. Dependent on the preferences of the occupants for the time being, residential gardens can range from perfectly manicured lawns with oases of rare and exotic plants to weed-infested repositories for discarded domestic junk. Between such extremes there would be a very wide spectrum of garden types and uses. The previous Inspector touched on this and the appellant's agent recognises it as a potential problem. I accept that conditions could remove permitted development rights but not everything that could be done under the umbrella of a domestic garden use constitutes development. For example, garden furniture and children's play equipment would not normally involve building operations. It would be impractical to include a list of restrictions in a condition to control the garden use to the extent that it would need to be controlled in this case. Furthermore, enforcement of such a condition would place an unacceptable burden on the NPA.

6. In effect, the appellant's case relies on a finding that his efforts to increase biodiversity in the area by the planting he has undertaken outweigh the harm to the appearance of the area that has been caused (or could be caused) by the use of the land as a garden. I note that his views on biodiversity are not shared by all, including by some of his neighbours who have relevant

qualifications in such matters. One such view is that the area already has a rich and diverse ecology and does not need a helping hand and another more extreme view is that the appellant has introduced alien species that might have damaged the local ecology.

7. Whatever the truth of the matter, it seems to me that it is not necessary to enclose land as part of a domestic garden in order to increase biodiversity. No change of use would have occurred if the appellant had simply ceased to use the land for agriculture. Some planting could have been undertaken without bringing about a change of use. The appellant provides an example of this in his reference to grant-aided planting on an adjoining owner's land. Whether left to nature or subject to some planting, the land could have been protected against livestock damage by the erection of a stockproof fence as permitted development under the relevant provisions of the Town and Country Planning (General Permitted Development) Order 1995.

8. It is my overall conclusion that any increase in biodiversity arising from the change of use of the land is a result of the appellant's personal preferences and is not necessarily reliant on the use of the land changing to a domestic garden. The harm to the landscape and conflict with relevant policies identified by the previous Inspector (findings with which I agree) are not outweighed by any increase in biodiversity resulting from the change of use. I therefore conclude that planning permission should not be granted for the change of use of the land to a domestic garden.

Ground (f)

9. Although the fence is the subject of a LDC, it has been held in the courts that works that have been carried out to facilitate an unauthorised change of use may be required to be removed by an enforcement notice issued in respect of such a use whether or not those works constitute development or are in themselves lawful. The fence was erected in order to include the land within the appellant's garden and it is therefore not excessive for the enforcement notice to require its removal.

10. As for the requirement to restore the land as pasture, this would involve grubbing out everything that has been planted in the garden. I consider that to be excessive for two reasons. Firstly, the appellant was entitled to cease the use of the land for agricultural purposes and no change of use would have been involved. Secondly, much of what he has planted could have been planted without changing the use of the land to a domestic garden. I have therefore removed the requirement to reinstate the land as pasture and substituted the lesser measure of requiring the removal of those features that give the land the appearance of a domestic garden. Much as I would like to, I cannot require that a fence be erected to separate the lawful garden from the appeal land because this would make the notice more onerous.

David C Pinner
Inspector