



WOKINGHAM BOROUGH COUNCIL

Statement by Local Planning Authority

Appellant:	Mr Aaron Shone
Site:	Land at 1 Wheelton Close, Earley, Wokingham, RG6 7YD
Local Planning Authority References:	RFS/2024/089902 & 251532
Planning Inspectorate Reference:	APP/X0360/C/25/3368394
Date	20 th August 2025
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Appendices

- Appendix 1 – RFS/2024/089902 Enforcement Notice
- Appendix 2 - RFS/2024/089902 Expediency Report
- Appendix 3 – 230291 Officer Report
- Appendix 4 – 230291 Decision Notice
- Appendix 5 – 230291 Appeal Decision (APP/X0360/W/23/3322810)
- Appendix 6 – 240650 Officer Report
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1. INTRODUCTION

- 1.1. This statement of case relates to the issuing of an Enforcement Notice (RFS/2024/089902) for an alleged breach of planning control at Land at 1 Wheelton Close, Earley, Wokingham, RG6 7YD. The alleged breach is outlined as follows:

“Without planning permission, the material change of use of amenity land to residential and the erection of associated fencing and posts.”

- 1.2. The Enforcement Notice (**Appendix 1**) was hand delivered and thus served on the Appellant on 17th June 2025. The Notice outlines the following requirements to ameliorate the alleged breach:

- i) Cease the residential use of the Land.
- ii) Remove from the Land the fencing including fence posts and its foundations between the points marked A to B shown in the approximate location edged in blue on the attached plan.
- iii) Return the Land to its former condition prior to the breach taking place.
- iv) Permanently remove all resultant materials associated with steps (ii) and (iii) from the Land.

- 1.3. The time period for compliance as set out in paragraph 1.2 above is 3 months. A Copy of the Enforcement Notice Plan can be seen in **Figure 1** below. The Expediency Report is available under **Appendix 2**.

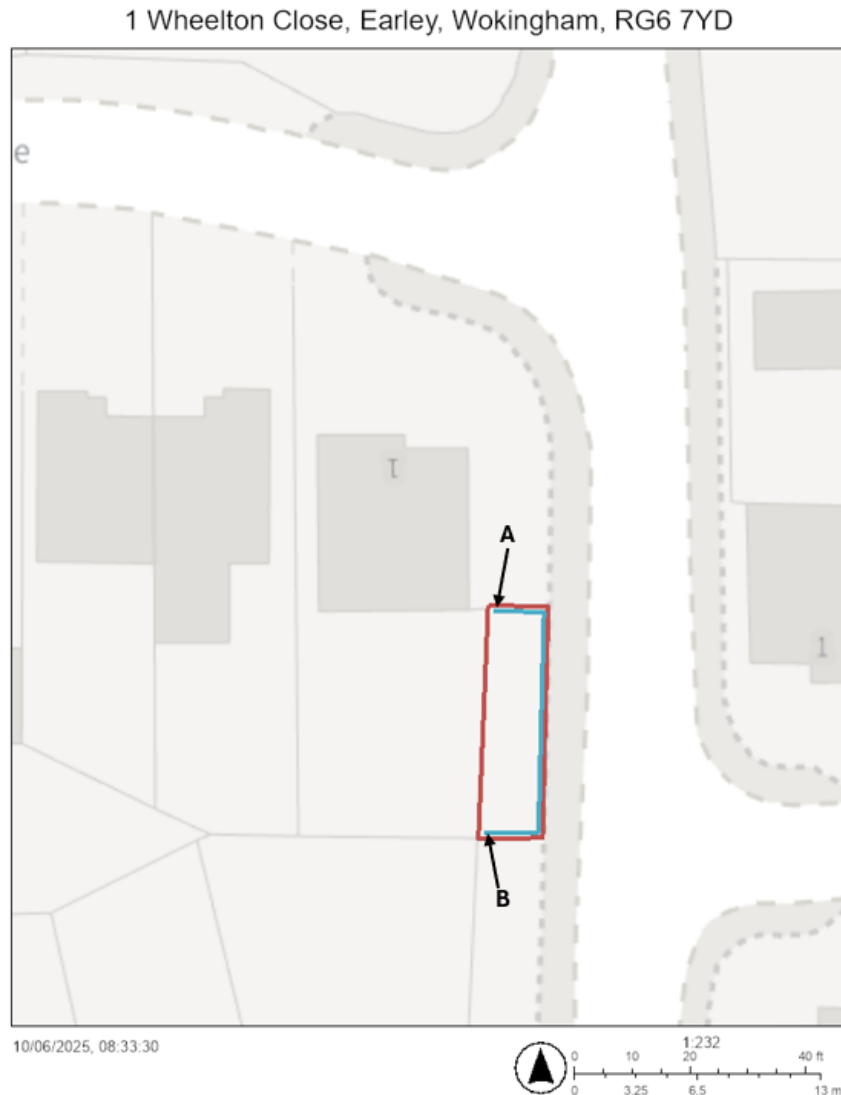


Figure 1: Enforcement Notice Plan (RFS/2024/089902)

1.4. The grounds of appeal set out by the Appellant (in appropriate order) are as follows:

- Ground c) – that the breach of planning control alleged does not constitute a breach of planning control.
- Ground f) – that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

- 1.5. The LPA acknowledge that the Appellant has been barred from a ground a) appeal. The reasoning behind this surrounds the fact that the unauthorised development related to this Notice was subject to two planning applications (230291 and 240650) that were both refused by the LPA on 9th March 2023 and 24th April 2024 (**Appendices 3, 4, 5, 6 & 7**). The Planning Inspectorate also dismissed an appeal related to application 230291 (APP/X0360/W/23/3322810) dated 24th January 2024. It is important to note that the unauthorised development was erected **after** the determinations listed above.
- 1.6. Each ground of appeal listed above will be addressed in the latter sections of this statement.

2. THE SITE

- 2.1. 1 Wheelton Close is a corner plot adjacent to the road junction shared between Wheelton Close and Skelmerdale Way. The land subject of this notice forms part of a large area of amenity space that faces onto Skelmerdale Way. When the estate was constructed in the 1970s onwards, purposeful amenity space was provided adjacent to the Highway to create a sense of openness and naturalness in the surrounding area. An ariel photo of the site can be seen below (**Figure 2**) from 2010 which shows the amenity land densely vegetated, with no.1 Wheelton Close's fence line unchanged. The Appellant, Mr Shone, purchased the site in August 2012.



Figure 3: 2010 Aerial Image of the Appeal Site

- 2.2. Prior to the breach occurring (see **Figures 2 and 3**), the amenity space was

predominantly open grassland with a handful of mature hedgerows adjacent to the existing eastern garden fence. This form of suburbia resulted in a spacious environment and a pleasant and attractive area. Other examples of amenity space of a similar appearance are observed on Skelmerdale Way, Melling Close and Ribbleton Close.

- 2.3. The original creation of the amenity space in this location is important as it improves the visual connectivity and permeability of the surrounding roads. From Skelmerdale Way, the road bends across to the East, connecting both the dwellings and pedestrian routes from the North to the South. There is also a continuity of greenspace from Melling Close to Skelmerdale Way. This minimises the visual impact of the highway and limits sense of enclosure.



Figure 3: Streetview image of the appeal site prior to the breach occurring (dated May 2023)

3. PLANNING HISTORY

Application No.	Description	Decision & Date
08510	Outline Detached Houses and Garages	Approved 08/06/1978
09873	Alteration to house design pursuant of Consent 08510	Approved 18/07/1979
222592	Householder application for the proposed erection of an 1800mm high brick wall to the side eastern boundary.	Withdrawn 21/10/2022
230291	Full application for the proposed change of use of amenity land to residential garden and erection of a 1.8m high brick wall.	Refused 10/03/2023, Dismissed at Appeal (APP/X0360/W/23/3322810) 24/01/2024
240650	Full application for the proposed change of use of amenity land to residential garden and erection of a 1.8m high wall.	Refused 24/04/2024

4. GROUND C) APPEAL

- 4.1. This ground of appeal alleges that the breach of planning control does not constitute a breach of planning control.
- 4.2. The Appellant's statement is very brief (limited to 5 paragraphs across grounds c) and f)), but the main assertion by the Appellant with regards to ground c) is that the land's use is already residential and therefore, the erection of the fencing on site is considered permitted development. The Appellant states that the Council do not have any evidence that the land is defined as 'amenity land'.
- 4.3. Firstly, even if the assumption was that the land was already residential in use, the Appellant is incorrect about the fencing being permitted development, insofar that its height exceeds 1 metre and is located adjacent to a highway used by vehicular traffic (Schedule 2, Part 2, Class A of the General Permitted Development Order). In isolation from discussions around land use, the fencing would require permission regardless.
- 4.4. Attention therefore turns to the use classification of the land. The LPA acknowledge that amenity land is not a recognised formal use class. However, areas of land with amenity value (commonly defined as amenity land and understood in Planning) to be land which provides non-monetary benefits to those who use it. In the case of a residential estates, these parcels of land are commonly found adjacent to established residential boundaries and provide several valuable uses, namely;
 - Landscape buffers to visually enhance and soften the setting of urban development, making an attractive public realm.
 - Improving visual connectivity and permeability of the surrounding roads.
 - Facilitate safe vehicular access for roads, particularly visibility splays (it should be noted that WBC Traffic Management raised concerns about the development subject of this breach on these grounds).

- 4.5. The appeal site exhibits all the characteristics listed above. When the estate was constructed in the 1970s onwards, purposeful amenity space was provided adjacent to the Highway to create a sense of openness and naturalness in the surrounding area; Consent 09873, determined 18/07/1979, secured the technical details for the estate development and the approved landscaping plan can be seen in **Figure 4** below:

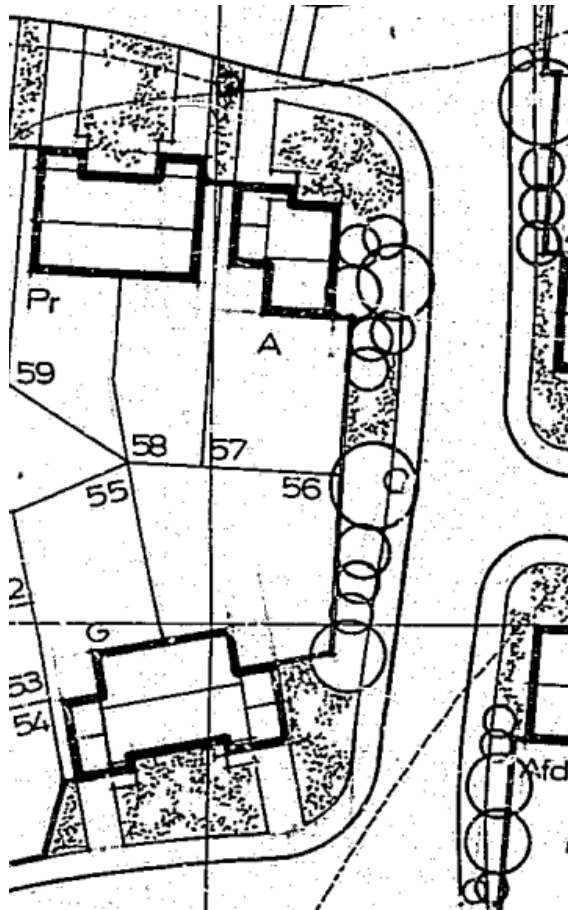


Figure 4: Approved Landscaping Plan for Consent 09873, dated 18/07/1979

- 4.6. The circles shown above on the land indicate the areas of trees and hedgerows that were approved to be planted on the land. Additionally, as can be clearly seen, the land is separated in annotation from no.1 Wheelton Close's Garden. This case be seen in aerial photographs and street view until recently. There is also a clear change in character between the dwelling's front garden space and the amenity land to the side of the property. From the LPA's viewpoint, this reinforces the assertion that the land is considered to be amenity land.

- 4.7. It is important to revert to the Inspectorate's decision regarding the 230291 appeal (**Appendix 5**), which was for *'the proposed change of use of amenity land to residential garden and erection of a 1.8m high brick wall'*. The Planning Inspectorate, when determining this appeal, could have concluded that the land subject of the development was not amenity land and therefore did not constitute a material change of use. They did not do this. In fact, the Inspector made the following comments regarding the land:

*"This strip of land sits within a wider corner plot which features verdant landscaping, albeit partly overgrown. Nonetheless, **its undeveloped green nature contributes to the landscape qualities of the area and a sense of spaciousness. These features provide relief from the wider developed character of the locality.**"* (Paragraph 6)

*"The proposed development would retain some space around the dwelling including the corner of the appeal site where Wheelton Close meets Skelmerdale Way. However, **the erection of a hard boundary adjacent to the highway would significantly erode the openness of the existing undeveloped and verdant strip of land when viewed from public vantage points.**"* (Paragraph 7)

*"I acknowledge the retention of two existing trees. Nevertheless, **the loss of the landscaped amenity land and its replacement with an austere hard boundary edge close to the highway would fail to integrate appropriately into the street scene. This would be harmful to the sense of spaciousness and verdant character of this area.**"* (Paragraph 8)

- 4.8. The Appellant also claims that enclosing the land with fencing does not constitute a material change of use. The LPA dispute this claim when taking into consideration the principles established by *Murfitt v Secretary of State for the Environment [1980]* (with additional consideration for *Kestrel Hydro v Secretary of State for Communities and Local Government [2016]* and *Caldwell v Secretary of State for Levelling-Up, Housing and Communities [2023]*).
- 4.9. Taking the principles of the examples above into consideration, what has occurred at the appeal site is an enclosure of amenity land with fencing, creating an extension of the dwelling's garden and therefore constituting a material change of use. Without the fencing, it would not be part of the house's

garden. Therefore, the use is wholly reliant on the fencing (operational development) which has been erected. The LPA assert that it was not within the originally established curtilage of the dwelling, as evidenced by its physical separation from the garden/house by the original fence line. It was not accessible, nor useable for residential purposes prior to the unauthorised works carried out.

- 4.10. The Appellant's last point on ground c) surrounds the tree that is located on the area of amenity land, now enclosed by the unauthorised fencing. The Appellant states that its enclosure within the garden ensures the ongoing maintenance of the tree and that they *"don't want to have to cut the tree down to satisfy the planning officers view that the tree makes the land amenity land."* To clarify, the LPA have at no point requested the removal of this tree, nor does it classify the land as 'amenity' in isolation from the land's other characteristics. The Appellant does not adequately justify why maintenance of the tree cannot occur if it was outside of the enclosed garden; they own the land and are responsible for its maintenance, with no clear obstacles to maintenance from the pathway/amenity land.
- 4.11. Overall, based on the reasons outlined above, the unauthorised development does constitute a breach of planning control and the Appellant's appeal on Ground c) should fail.

5. GROUND F) APPEAL

- 5.1. This ground of appeal alleges that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
- 5.2. The Appellant first requests that the notice is varied to maintain the existing fence and to landscape the development to 'increase the greenery'. The LPA strongly contest this variation as it would disregard the nature of the breach entirely and ultimately the aim of the Enforcement Notice to remedy the breach of planning control, that being to remove the fencing and cease the unauthorised material change of use of the land. Purely planting to 'screen' the fence would not be possible as planting is not considered to be development in isolation and the Appellant's argument to mitigate the situation would fall under the ground (a) appeal instead which has been barred.
- 5.3. The Appellant's second request is to vary the requirement of (iii) to specifically refer to what the former condition of the amenity land was prior to the breach occurring. The LPA acknowledge that the removal of the vegetation from the land did not require planning permission and therefore its replacement cannot be enforced. Notwithstanding the loss of vegetation, the LPA and Appellant are aware of the land's condition prior to the breach occurring, insofar that it was open grassland/amenity land that was not enclosed by fencing. The LPA do not consider that requirement (iii) is vague in any sense and assert that there is a shared understanding between the parties as to what the land's condition was prior to the breach occurring.
- 5.4. That said, iii) is accepted standard wording and the Inspector should they wish to clarify in iii) can add the words 'that being grassed' without prejudice to either party. It is therefore considered that the requirements are not excessive and the appeal on ground f) should fail.

6. CONCLUSION

- 6.1. The LPA considers that a breach of planning control has occurred and that the steps required in the notice are reasonable and not excessive to remedy the breach of planning control. As such the LPA respectfully asks that the appeal is dismissed and the enforcement notice is upheld.