
Appeal Decisions

Site visit made on 15 November 2016

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 15 December 2016

Appeals A & B: APP/U1430/C/16/3146410 & APP/U1430/C/16/3146411 West View, Kane Hythe Road, Battle, East Sussex TN33 9QU

- 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 Mark Fenlon (3146410, Appeal A) and Mrs G Fenlon (3146411, Appeal B) against an enforcement notice issued by Rother District Council.
- The enforcement notice, numbered RR/2015/2065/P and ENF/114/15/BAT, was issued on 17 February 2016.
- The breach of planning control as alleged in the notice is: 'Without planning permission the erection of a close boarded fence 120m in length and 2m high on land adjacent to a highway used by vehicular traffic in the approximate position shown by a blue line on the attached plan'.
- The requirements of the notice are: 'Remove the fence or reduce the height of the fence to 1m or less'.
- The period for compliance with the requirements is one month.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period on Appeal B, the initial appeal on ground (a) and application for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered in that case. Appeal B is therefore proceeding on ground (f) only.

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

The notice

1. The subject fence is unlikely to be exactly 120 metres in length and, therefore, this measurement should be identified in the alleged breach of planning control as approximate. Moreover, the height of the fence above ground level is far from uniform and is less than two metres in places. Consequently, the reference to height is best removed from the allegation altogether, the plan attached to the enforcement notice being sufficient to identify the structure in question. I will correct the notice accordingly at section 3 and am satisfied that no injustice to any party is so caused.

The appeal on ground (a) – Appeal A only

Main issue

2. The main issue in determining the appeal on ground (a) is the effect of the development on the character and appearance of the surrounding area, including whether it preserves and enhances the natural beauty of the High Weald Area of Outstanding Natural Beauty (AONB) in which it is located.
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Planning policy

3. The development plan includes the Rother Local Plan Core Strategy 2014 (CS). Paragraph 215 of the National Planning Policy Framework (the Framework) records that due weight should be given to relevant policies in existing plans according to their degree of consistency with it. I find no significant conflict between the Framework and the development plan policies cited in this case. Accordingly, I will give them full weight insofar as they are relevant to the appeal scheme.

Reasoning

4. I found this part of the AONB to be characterised by open rolling countryside interspersed with areas of mixed woodland and a sparse scattering of built development. This section of Kane Hythe Road is relatively busy and unsuited to safe use by pedestrians. Nonetheless, it is submerged in woodland that makes an important and pleasing contribution to the natural beauty of the AONB, albeit one appreciated at close quarters by passing vehicle-borne road users rather than in sweeping vistas across the wider landscape.
5. Within this context, the subject fence reads as a harsh, uncompromising intrusion of utilitarian design that fails to take the opportunities available for improving the character and quality of the area in accordance with national policy. By reason of its substantial height, considerable length and significant prominence in an elevated position above the road it draws the eye over long distances as an incongruous and urbanising feature. It is not subsumed in public views by any development it is intended to screen.
6. The option of reducing the height of the fence to one metre, as proffered by the enforcement notice, provides the Appellants with a lawful fallback position. As this might well be implemented in the event that the enforcement notice is upheld, it is an important material consideration in deciding whether or not to grant planning permission for the existing structure and a comparison therewith must be drawn.
7. I acknowledge that the fallback position would still impact adversely on the appearance of the road. However, by simple reason of reduced height the lower fence would not be as noticeable and the harm so caused would be markedly less than at present. I have seen no evidence to the effect that the fence as existing is less harmful in visual terms than anything it helps to screen might be if enclosed only by a one metre high fence.
8. The Appellant has suggested that the fence as existing could be rendered acceptable by undertaking screen planting on the roadside verge in front of it, some of which is already in place. This has sparked disagreement between the parties as to whether the verge is wide enough to accommodate such planting for the entire length of the fence and I have noted the Appellants' comments to the effect that the distance between road and fence is not less than 1.4 metres at any point.
9. I have no sound reason to query that assertion. Nonetheless, setting aside the unexplored question of whether land of that width is owned by the Appellants rather than the highway authority, I am mindful that parts of the verge are steep and uneven rather than flat, such that they are likely to be less suited to successful planting. However, notwithstanding this, more pertinent is the fact that indigenous planting appropriate to the area would take several years to establish an effective screen. In any event, by its very nature it would be an

impermanent means of mitigation and could not be relied upon to soften the visual impact of the fence in the longer term.

10. I conclude that the fence fails to preserve and enhance the natural beauty of the AONB in accordance with the statutory purpose of that designation. Moreover, on the evidence before me it causes significantly greater detriment to the character and appearance of the surrounding area than would a lower means of enclosure compliant with the lawful fallback position, whilst screen planting would not provide adequate mitigation. Retention at its present height would therefore be contrary to CS Policies OSS4, RA3 and EN1 and the relevant provisions of the Framework.

The appeals on ground (f) – Appeals A & B

11. It is clear from the wording of the enforcement notice that its statutory purpose is to remedy the breach of planning control in its entirety, in accordance with paragraph (a) of section 173(4) of the 1990 Act as amended, rather than merely remedy any injury to amenity arising from that breach in accordance with paragraph (b). It follows that, in appealing against the notice on ground (f), the Appellants must demonstrate that its requirements exceed what is necessary to remedy the breach and that lesser steps would fulfil that purpose. The only suggestion put forward by the Appellants under this heading is the provision of screen planting in front of the fence which, needless to say, would not remedy the breach of planning control.
12. Moreover, it is not legally possible by means of an enforcement notice to require the submission of a planting scheme for the Council's approval or secure the retention and maintenance of such a scheme for a term extending beyond the period for compliance prescribed by the notice. This being so, such a suggestion is more properly considered in the context of an appeal on ground (a) as a potential condition attached to a grant of planning permission. I have already found screen planting to be an unacceptable solution in that context for the reasons set out above. I therefore conclude in the absence of cogent evidence to the contrary that the requirements of the enforcement notice are not excessive. Accordingly, the appeals on ground (f) fail.

Conclusion

13. For the reasons given above I conclude that the appeals should not succeed. I will uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal decisions

14. It is directed that the enforcement notice be corrected by, in section 3, the insertion of the word 'approximately' after the word 'fence' and the deletion of the words 'and 2m high on land adjacent to a highway used by vehicular traffic'.
15. Subject to these corrections, the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Alan Woolnough

INSPECTOR