
Appeal Decisions

Site visit made on 9 January 2017

by Sukie Tamplin Dip TP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 11 January 2017

Appeal A: APP/B9506/C/16/3151231

Wild Close, Woodgreen Common Road, Woodgreen, Fordingbridge, Hampshire SP6 2QX

- 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 Dr Alison Everest against an enforcement notice issued by New Forest National Park Authority.
- The enforcement notice was issued on 28 April 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of a fence shown in the approximate position marked blue on the plan attached to this Notice (Plan attached to the Notice).
- The requirements of the notice are:
 - 5.1 Dismantle/remove the fence shown in the approximate position marked blue on the plan attached to this Notice to ground level; and
 - 5.2 Remove any resultant debris arising from compliance with step 5.1 from the land affected.
- The period for compliance with the requirements is 8 weeks
- 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.

Summary of Decision: The appeal is dismissed, the requirements of the notice are varied, subject to which the notice is upheld and planning permission is refused for the deemed application.

Appeal B: APP/B9506/W/16/3151230

Wild Close, Woodgreen, Fordingbridge, Hampshire SP6 2QX

- 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 Dr Alison Everest against the decision of New Forest National Park Authority.
 - The application Ref 16/00170, dated 26 February 2016, was refused by notice dated 28 April 2016.
 - The development proposed is described as:
 - "1. Replace dilapidated fence (made of post and rail with barbed wire and chicken netting) with new timber feather board fence.
 - 2. Replace timber pedestrian gate with new timber pedestrian gate.Height range 160cm–180cm along gradual slope of ground
Length 38m
New timber fence is preserved with natural colour stain and of similar structure to neighbouring properties.
This is essential work to remediate derelict and unsuitable structure in order to prevent endangerment of grazing animals and pedestrians.
The new fence encloses an apiary to protect bee hives and enhance the biodiversity of the garden and forest habitat. It protects the pond from light and traffic pollution".
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Summary of Decision: The appeal is dismissed.

Procedural issue

1. In most respects the appeals concern the same development namely the close boarded fence along the north-west boundary and part of the southern boundary. However the allegation in the Notice (Appeal A) does not include the 'dogleg' fence and pedestrian gate in the northern corner of the site, but this is included in the development subject of Appeal B. I understand that the appellant no longer wishes to proceed with a 1.6 m high gate at the northern extremity of the site and thus I do not need to consider this any further.
2. Because the developments are effectively the same I shall consider the ground (a) appeal (Appeal A) and the planning appeal (Appeal B) together.

Appeal A, Appeal on ground (a), and Appeal B

Main issue

3. The main issue in these appeals is the effect of the fence on the character and appearance of the National Park and the Western Escarpment Conservation Area (WECA) in particular.

Reasons

4. Wild Close is a large 2 storey detached house set in a roughly triangular plot on the outside of a bend in the Woodgreen Common Road. It is one of many similar properties that are located in an intermittent ribbon of dwellings along this essentially rural road. The properties hereabouts are generally located well back from the road and their built form is secluded within verdant large gardens so that their impact on the rural road is limited. The appeal site is no exception to this and it is heavily vegetated along the north western boundary so that even in the winter months the house is not readily visible from the public road.
5. The Conservation Area Action Plan notes that a particular feature of the WECA is the widespread use of traditional boundary treatments in the form of hedges, picket fencing, low walls and estate fencing. I saw that adjacent to Woodgreen Common Road boundaries tend to be visually permeable and dominated by vegetation and informal clumps of rhododendron in particular. There is extensive use of post and rail fencing, picket fencing, furze, palings and post and wire, the latter commonly on top of earth mounds which may have historically marked the edge of common land. All of these maintain the informal rural and agricultural character of the WECA.
6. In contrast the fence subject of the notice varies between 1.6m and 1.8m in height and has been erected close to the highway so that it provides a solid and substantial boundary typical of those found in suburban areas. At the time the Notice was served it appears that the fence had not been treated with a dark stain and there was no planting along the edge of Woodgreen Common Road. I must consider the appearance as at the time of the issue of the Notice, but even if this was not the case the dark stain and the thin line of planting which has now been undertaken has done little to mitigate the effect of the

harsh impermeable roadside boundary which is incongruous in this informal rural location and atypical of boundaries in this part of the WECA.

7. The appellant says that close boarded fencing has been permitted elsewhere in the vicinity and in particular at a property opposite to the appeal site. However this latter example of close boarding is set well back from the road and behind the roadside earth bank which is topped by a visually permeable paling fence, so it does not provide the highway boundary. Neither are the circumstances at Godshill Wood Cottage comparable. I saw that this stretch of road, which is about $\frac{1}{4}$ of a mile to the west, has a wide grassy verge backed by substantial bushes and thus has a different character to the more enclosed nature of the road closer to the appeal site. Moreover the fence relied upon has been erected several metres back from the road behind the bushes. I am not aware of the planning status of this fence but it appears to be outside the WECA. In any event its appearance is not typical of the rural informal boundaries in the locality. As noted above informal boundary treatments are a particularly positive feature of the character and appearance of the WECA.
8. However the appellant says that a solid boundary is necessary for security purposes, firstly because she keeps bees and the hives are located close to the road, and secondly it appears that the property has been burgled sometime in the past. In terms of the former, it is not clear if the hives must be in their current location and there is nothing before me to suggest that an alternative location could not be found elsewhere. In respect of the latter argument, whilst I note the distress that is likely to result from a break-in and the reported comments of the Hampshire constabulary, other measures could be undertaken to resist anti-social behaviour. It is also suggested that the fence prevents car lights sweeping across the appeal site. But I saw that the principal elevations face north and south and it is probable that the effect of the headlights is limited to the west side elevation. In any event given the dense vegetation within the garden such effects would be significantly mitigated. Nor do I find that the effect on a garden pond is determinative. The pond is surrounded by vegetation and an overhanging tree and the fence does not provide any respite from sunshine from the south. Finally, on the evidence before me, I do not agree that the previous post and rail fencing was visually unsatisfactory because it was similar to other boundaries in the locality and typical of those found in the WECA.
9. Thus the suggested benefits of the fence do not, individually or collectively outweigh the harm to the street scene. Moreover, they do not outweigh the harm caused by the visually alien and harsh fence or the consequential loss of rural character and thus fail to preserve the character and appearance of the WECA. Whilst in the context of the heritage aims of the National Planning Policy Framework (the Framework) such harm is less than substantial¹, for the reasons I have given, I give less weight to the claimed benefits. Thus the harm to the WECA is not outweighed by demonstrable public benefits.
10. The overtly suburban fence fails to conserve and enhance the natural beauty and cultural heritage of the New Forest which is a statutory purpose of the National Park Authority. Consequently the fence conflicts with the aims of Policies DP1, DP6 and CP8 of the New Forest National Park Core Strategy and

¹ Paragraph 134 of the National Planning Policy Framework

Development Management Policies which all seek, amongst other matters, to ensure that development enhances the National Park and does not result in a gradual suburbanising effect. Similarly, retention of the fence would not be in accordance with the Framework which says that great weight should be given to conserving landscape and scenic beauty and that cultural heritage is an important consideration in such areas.

11. Consequently for the reasons I have given, Appeal A on ground (a) fails as does Appeal B and planning permission will be refused.

Appeal A, appeal on ground (f)

12. Under this ground it is necessary to consider whether the requirements go too far or are unreasonable or that the steps required by the notice are excessive.
13. The appellant says that the GPDO² grants deemed permission for fences adjacent to a highway used by vehicular traffic if their height does not exceed 1m. In these circumstances she says that the fence should not be required to be removed in its entirety. But the deemed permission granted by the GPDO cannot be granted retrospectively and thus the existing structure is unlawful in its totality.
14. In this case the Notice is not explicit as to whether the purpose of the steps is to remedy the breach (S174(4)(a)), of the Act) or to remedy any injury to amenity which has been caused by the breach (S174(4)(b)). Although the Council says that the purpose is to remedy the breach of planning control alleged, from my reading of the reasons for issue of the Notice it seems to me, that the purpose is to remedy the injury to amenity. In these circumstances it is appropriate to consider whether a lesser step which requires a reduction in height will remedy the harm to amenity.
15. The Council say that even at a lower height the fence, by reason of length, impermeability and conspicuous siting, would be harmful. Whilst I have some sympathy for this position, I must take account of the fall-back position that is available to the appellant. This is because there is a realistic probability, given the deemed permission granted by the GPDO, that the appellant would choose to erect a lower fence at a later date. In these circumstances, the Council would be unable to stipulate the design of any future replacement boundary treatment.
16. Consequently I shall vary the steps of the Notice so that the fence can be reduced in height commensurate with the deemed permission which would have been available under the provisions of the GPDO. In coming to this conclusion I have taken account of the appeal decisions relied upon by the Council and note that of these, the Notice in the Sway³ appeal required the fence to be reduced in height. In terms of the Landford⁴ decision this was a planning appeal under S78 of the Act and thus the issue of reducing the height was not an option before the Inspector. Finally in terms of the Brockenhurst⁵ decision and the attendant ground (f) appeal, the alternative steps were to do with staining and planting and thus are not comparable with the lesser steps

² General Permitted Development (England) Order 2015

³ Appeal reference: APP/B9506/C/14/2216553 & 2216554

⁴ Appeal reference: APP/B9506/D/11/2160210

⁵ Appeal reference: APP/B9506/C/15/3018492

suggested in this subject appeal. Indeed a reduction in height as proposed by the variation would be consistent with the Council's own approach in the Sway Notice.

17. Accordingly I shall vary the first step so that it requires the height of the fence to be reduced to not more than 1m in height above the adjacent level of the road and the appeal on ground (f) succeeds to that extent.

Formal Decisions

Appeal A: APP/B9506/C/16/3151231

18. It is directed that the enforcement notice be varied by deleting the entirety of paragraph 5.1 and substituting the following paragraph:

"5.1 Reduce the height of the fence shown in the approximate position marked blue on the plan attached to this Notice to a height not more than 1m above the level of the adjacent highway"

19. Subject to this variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused for the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal A: APP/B9506/W/16/3151230

20. The appeal is dismissed.

Sukie Tamplin

INSPECTOR