
Appeal Decision

Site visit made on 2 June 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 05 June 2020

Appeal Ref: APP/C1570/C/19/3240440

**The Old Tower, High Street, Great Chesterford, Saffron Walden, Essex
CB10 1PL**

- 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 Mr Bruce Clark against an enforcement notice issued by Uttlesford District Council.
 - The enforcement notice was issued on 14 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a closed boarded fence.
 - The requirements of the notice are to remove the closed boarded fence in its entirety and all resultant debris from site.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)[a] of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice upheld and the deemed planning application is refused.

Ground (a) and the Deemed Planning Application (DPA)

2. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main Issues

3. The main issues are the effect of the development on:
 - The character and appearance of Great Chesterford Conservation Area (the CA), which is a designated heritage asset; and
 - The safety of drivers and other road users of the junction of High Street and Walden Road.

Reasons

Character and appearance

4. The Old Tower occupies a site at the junction of High Street and Walden Road which lies at the edge of the CA and defines one of the key access points into it. Its elevation to High Street forms part of a predominately residential street

- leading into the village. The flint and brick wall which forms this boundary makes a positive contribution to the CA and is compatible with similar walls and verdant frontages which characterise this part of High Street.
5. The character of Walden Road contrasts significantly with that of High Street. The width of the road, the speed and amount of traffic using it and the grass and other vegetation which bounds the footway reflect its character as a main distributor road running through the countryside.
 6. The fence which has been constructed runs alongside Walden Road for most of its length with a comparatively short return running behind the building line of The Old Tower as it fronts High Street. On its own this return element is not particularly prominent in the street scene. The incorporation of a gate in the fence to afford access from the front garden, which was screened by potted plants at the time of my visit, would, if those features were removed, be more visible. However, the flint and brick wall and the attractive frontage of the house would remain the dominant elements of the street scene.
 7. That part of the fence which runs along Walden Road comprises a significant run of fencing which is positioned on top of an earth bank. The bank has been planted with a hedge which appears to comprise mainly laurel bushes, although the appellants refer to this as a beech hedge. The hedge screens the majority of the fence from views along the road. Parts of the fence close to the access serving the parking are more visible and provide an indication of the appearance of the fence were the planting not to be in place.
 8. The appearance of the frontage to Walden Road is compatible with the natural appearance of the low wall, hedges and verge on the opposite side of the junction with High Street and more widely in the vicinity of the site along Walden Road. However, the current appearance of the fence, or rather its lack of contribution to the character and appearance of the area, is highly dependent on the screening effect of the planting. Were the bushes to be removed, or extensively cut back the fence would appear as a solid man-made object at odds with the soft and natural appearance of the boundaries to Walden Road.
 9. I have given consideration as to whether a planning condition could be imposed to ensure retention of the hedge. However, in the light of the advice from the highway authority such a condition may not be enforceable.
 10. The appellant points out that he has been maintaining the bank and that he has taken positive action to preserve it. However, there is no evidence to demonstrate that the appellant has control of the space within which the hedge has been planted. Whilst this matter remains unresolved there is a possibility that the hedge would be removed which would expose the fence. In the light of this the fence has the potential to have an adverse impact on the character and appearance of the CA.
 11. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in making decisions on planning applications and appeals within a CA, special attention is paid to the desirability of preserving or enhancing the character or appearance of the area. In addition, Paragraph 193 of the National Planning Policy Framework (the Framework) requires when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

12. Paragraph 196 of the Framework directs that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal. In this case, whilst the appellant has identified positive aspects of the development these do not amount to public benefits. Consequently, public benefits would not outweigh the harm to the designated heritage asset that I have found in this instance.
13. I conclude that the fence has a harmful effect on the character and appearance of the CA, which is a designated heritage asset. The development is contrary to Policy ENV 1 of the Uttlesford Local Plan (2005) (the Local Plan), which amongst other things, requires development to preserve or enhance the character and appearance of a Conservation Area.

Highway Safety

14. Walden Road is an unlit, single carriageway road which is the subject of a 50mph speed limit. It has a footway on the same side of the road as the appeal site which separates the new fence, bank and hedge from the edge of the carriageway. The footway continues around the corner onto High Street on both sides of the junction. During my site visit, which I acknowledge is only a snapshot in time, there was a steady flow of traffic of all types on Walden Road and some vehicles, including a double decker bus negotiated the junction.
15. Neither of the two parties has provided visibility splay diagrams to demonstrate how the visibility of other traffic to road users at the junction would be affected by the fence. Nevertheless, the Council describe Walden Road as a main distributor road and the appellant himself says that although the speed limit is 50mph this is largely ignored. Adequate levels of visibility at the junction are important considerations in this context.
16. The Council argue that the fencing and vegetation arrangement encroaches onto the highway and in their comments on the planning application which sought to retain the fence, the highway authority refers to the removal of highway encroachment including the laurel hedging. The notice requires the removal of the fence. Even if the bank and planting of the hedge amounted to development for which planning permission is needed, there is no requirement to remove the bank or planting.
17. From my observations on site I conclude that it is the hedging which obscures visibility along Walden Road from the High Street junction and not the fence. I therefore conclude that the fence does not have a harmful effect on the safety of drivers and other road users of the junction of High Street and Walden Road. The development is in accordance with Policy GEN 1 of the Local Plan which requires that the design of the site must not compromise road safety.

Other matters

18. The appellant refers to the benefits of the fence in terms of security, control of rubbish and traffic noise. The fence which is the subject of the notice in part encloses an area to the side of the Old Tower, however further fencing and gates separate the parking area from the side garden area. This fencing and gates do not fall to be considered as they are not shown on the notice plan, however they provide security to the rear of the Old Tower. The fence which is the subject of the notice does not fully enclose the parking area, access to which is open from Walden Road.

19. Whilst passers-by throwing rubbish is unpleasant there is no evidence before me to demonstrate that the fence is either justified by the volume of such rubbish or the only means by which this problem could be controlled. Similarly, there is no substantive evidence to demonstrate that the fence is required or the only way in which noise from passing traffic can be controlled to a satisfactory level.
20. I do not find that the benefits of the fence to the appellant or the support for the development which the appellant says he has received from his neighbours, outweighs the harm that I have found in terms of the effect of the fence on the character and appearance of the CA.

Conclusion

21. For the reasons set out above, and considering all other matters raised, I conclude that the appeal should be dismissed, that the enforcement notice should be upheld and that the deemed planning application should be refused.

Sarah Dyer

Inspector