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## Appeal Decision

Site visit made on 26 May 2020

**by R Satheesan BSc PGCert MSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 09 June 2020**

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**Appeal Ref: APP/A2280/C/19/3237678**

**27 Lyndhurst Avenue, Gillingham, Kent ME8 0HE**

- 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 Stephen Greensted against an enforcement notice issued by Medway Council.
  - The enforcement notice was issued on 5 September 2019.
  - The breach of planning control as alleged in the notice is without the benefit of planning permission the erection of a boundary treatment exceeding one metre in height adjacent to a highway and alteration of the land level to the side and rear of the land.
  - The requirements of the notice are:
    - a) Reinstate the garden to its previous land level
    - b) Remove the fence from the approximate position marked A to B on attached plan
    - c) Remove all resultant debris from the site;
  - The period for compliance with the requirements is two months.
  - 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. It is directed that the enforcement notice be varied by:
  - deleting the existing requirements in section 5 (what you are required to do) and replacing them with:
    - Remove the fence in the approximate position marked A to B on attached plan;
    - Remove all resultant debris and materials from the site.
2. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### Application for costs

3. An application for costs was made by Medway Council against Mr Stephen Greensted. This application is the subject of a separate Decision.

## **Procedural Matters**

4. My attention has been drawn to a recently dismissed appeal decision<sup>1</sup>, for various extensions and alterations to the appeal site, which included the fence to the side and rear of the property. I have therefore had regard to this recent appeal decision. However, due to some differences between what was built on site and those shown on the submitted plans, the previous Inspector determined the appeal on the basis of the proposed development shown on the plans rather than what has been constructed at the site. Since the current appeal relates to an enforcement notice, and not a planning application, I have determined the appeal on the basis of what has been built on-site.
5. Following the previous the appeal decision, where the Inspector raised no objection to the alterations of the land level, the Council have confirmed that they agree to varying the Notice to remove the first requirement. I will do so as no injustice would be caused. This decision will therefore focus on the boundary fence to the side and rear of the land.

## **Main Issues**

6. The main issues are the effect of the development on:
  - highway safety; and
  - the character and appearance of the area.

### *Preliminary*

7. The site is on the corner junction of Lyndhurst Avenue and Brockenhurst Close which is a residential area. Lyndhurst Avenue comprises primarily semi-detached properties with low front boundary walls. The fence has been erected which is approximately 2m in height with the boundary of the drive at 62 Brockenhurst Close and it continues at this height for some distance along Brockenhurst Close until it steps down towards the front garden of the property to approximately 1m in height. There is currently no boundary treatment fronting Lyndhurst Avenue, where hard surfacing provides off-street parking spaces for the appeal property. The appellant states that the reduction in height of the fence towards the front of the property has been done in response to the previous Inspector's findings who had raised concerns regarding this.

### *Highway safety*

8. Given the overall height of the rear and side fence, in close proximity to the adjoining property's drive at No 62, it blocks drivers' visibility from the drive towards Brockenhurst Close. Whilst this is a quiet residential road, the overall height and scale of the fence makes it impossible for anyone leaving the drive in either a forward or reverse gear to have a full view of the pavement until after the bonnet of the car has left the drive and manoeuvred onto the pavement. I therefore agree with the previous Inspector's findings and consider that this is an unacceptable risk to the safety of pedestrians, especially small children.
9. I appreciate the appellant's frustration that there are a number of other tall boundary treatments in the area. However, the existence of these does not

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<sup>1</sup> Appeal ref: APP/A2280/D/19/3231503 dismissed on 8 October 2019.

justify further risk to the pedestrian and highway safety. I also note the side boundary fence on the opposite side of the road at 29 Lyndhurst Avenue. However, I observed that this fence is lower in height where it adjoins the adjacent property in Brockenhurst Close. In any case I have assessed the development on its own merits, having regard to the previous Inspector's decision.

10. I therefore conclude that the rear and side fence results in significant harm to highway safety and the development conflicts with Policies T1 and T3 of the Medway Local Plan 2003 (LP). Amongst other things, these state that proposal will be permitted provided that the development will not significantly add to the risk of road traffic accidents and provide safe pedestrian access. The development would also be contrary to paragraph 109 of the National Planning Policy Framework, 2019 (Framework), which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

#### *Character and appearance*

11. The close boarded fence is solid and somewhat long, but it is not uncommon to find fences or walls approximately 2m in height around corner plots as they are used to screen the main private amenity area at the rear. Furthermore, the fence drops in height to approximately 1m adjacent to the front garden, which is not dissimilar to the height of other boundary treatments in the area. Therefore, I do not consider that the fence appears out of place within this residential area.
12. I therefore find that the fence does not harm the character and appearance of the area. Consequently, there is no conflict with Policy BNE1 of the LP and Paragraph 127 of the Framework. In combination, these policies seek to ensure that developments are sympathetic to local character and are appropriate in relation to the character, appearance and functioning of the built environment.

#### *Other matters*

13. Whilst I find no harm under 'character and appearance', this is a neutral factor, and does not outweigh the significant harm to highway safety and consequent conflict with the LP and Framework policies. Nor do the increased privacy and security benefits for the occupiers of the site.

#### **Conclusion**

14. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*R Satheesan*

INSPECTOR