
Appeal Decisions

Site visit made on 1 June 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2020

Appeal A Ref: APP/L3815/C/19/3243317

Appeal B Ref: APP/L3815/C/19/3243318

Land at Ferndale, 133 Birdham Road, Appledram, Chichester PO20 7DY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mrs B Bradbury and Appeal B is made by Mr J Bradbury, against an enforcement notice issued by Chichester District Council.
 - The enforcement notice, numbered 18/00393/CONHH, was issued on 6 November 2019.
 - The breach of planning control as alleged in the notice is the erection of a close boarded fence and double gates in approximate position shown on the attached plan.
 - The requirements of the notice are to remove the said close boarded fence, including posts, and the double gates from the Land.
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (f) and (g) 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.
 - Appeal B is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

Appeal A

1. The appeal is dismissed, 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.

Appeal B

2. The appeal is dismissed and the enforcement notice is upheld.

Procedural matter

3. Appeal B, is only proceeding on grounds (f) and (g) as no fee has been paid for the deemed application. However, as the evidence for both appeals under grounds (f) and (g) is the same I shall consider them together.
4. The nature of the development can be readily viewed from the public domain and therefore internal access to the site was not required to allow the

development to be properly assessed. Accordingly, an unaccompanied site visit was carried out.

Appeal A - The deemed application

Main Issue

5. The main issue is the effect of the development on the character and appearance of the area.

Reasons

6. The appeal site comprises a detached dwelling in a ribbon of development to the north west of Birdham Road. The dwellings in the area are characterised by a wide grassed verge providing a substantial set back from the highway. The dwellings have generally open frontages with boundaries marked with mainly small walls and hedging, open accesses, with landscaped gardens beyond. The site lies opposite an area of open countryside and this adds to the rural character and appearance of the site and wider area.
7. In contrast with other boundary treatments, the subject fencing is highly visible in the street scene, due to its height and considerable length. This overly prominent appearance is exacerbated, as it also extends along the side boundary, making it highly visible to those travelling towards Stockbridge. The fence and gates appear harsh and incongruous in the street scene and when viewed in the context of the prevailing rural character of the area. I appreciate that it was the appellants intention to replace the current gates with solid oak gates. However, the enforcement notice targets the gates that are currently in place and accordingly it is these that I have considered.
8. My attention has been drawn to other similar development in the area including No's 131 and 151. I do not have details of the planning history for these sites, although the Council's evidence confirms that they do not have the benefit of planning permission. Nonetheless, I took the opportunity to view them at my site visit. To my mind, these fences differ from the fence and gates subject to this appeal. The next door property at No 131 has a significantly lower timber fence with open trellis above. In common with other properties in the area, this still allows open views of the frontage and the bungalow beyond. The fence at No 151 is set behind an established hedge with an open vehicular access, thus allowing views through the garden towards the dwelling.
9. The fence and gates as a result of their excessive height and design cause unacceptable harm to the character and appearance of the area. They are therefore contrary to policies 33, 45 and 48 of the Chichester Local Plan: Key Policies 2014 – 2029 (2015). These policies seek to ensure that new development meets the highest standards of design and have minimal impact upon the landscape and rural character of the area, contributing to its setting and quality.
10. I understand that the appellants have carried out some additional planting inside the boundary fence. However, whilst a condition could be imposed to protect such screening for several years, there is no guarantee that it would remain permanently. Similarly, I understand that the appellants are seeking to plant new trees on the grass verge to provide screening for the fence. This would be on land that falls outside the appellants ownership. Again, there is

no guarantee that it would remain permanently, and the level of screening is likely to change from month to month and year to year. Moreover, screening does not adequately mitigate the unacceptable harm identified to the character and appearance of the area.

11. My attention has been drawn to a s78 appeal decision for the same fencing and alternative oak gates (APP/L3815/D/19/3242530). I have had regard to this decision, in addition to all of the other evidence provided by the parties.

Appeals A and B – the appeal under ground (f)

12. The appeals on ground (f) are that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. It is the appellants case that the fencing and gates are temporary and therefore will not last as long as one of stone construction. Additional planting is suggested to screen the fence or painting the fence and gates to break up its appearance.
13. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the notice requires that the fence and gates are removed, and the land restored by the removal of the resultant materials. I therefore consider that the purpose of the notice is to remedy the breach of planning control.
14. An appeal under ground (f) provides some scope for a solution short of a complete remedy. However, any substituted scheme must be precisely defined. I do not have a fully worked out landscaping or painting scheme before me that adequately demonstrates that any lesser steps would remedy the breach of planning control, as required by the notice. Consequently, it has not been demonstrated that there is a viable alternative or that the steps required by the notice are excessive. The appeal under ground (f) therefore fails.

Appeals A and B – the appeal under ground (g)

15. Ground (g) is that the period for compliance falls short of what could reasonably be allowed. The appellants suggest that a period of four years would allow time for the proposed trees to mature and establish the boundary. Following this the fence would be taken down to an agreed lower level.
16. The development must be considered in the context of the identified harm to the character and appearance of the area. Moreover, the time for compliance refers to the time required to undertake the works, in this case the removal of the fence and gates, together with the resultant debris. The required works do not involve any complex building operations. Moreover, if I was to extend the period for compliance as suggested, this would effectively amount to granting temporary planning permission, which would not address the harm I have identified above.
17. Consequently, I am not satisfied there is good reason to extend the compliance beyond 3 months. The appeals on ground (g) fail accordingly.

Other matters

18. I have considered the Human Rights issues that may be pertinent to this appeal, and I appreciate the appellants are keen to ensure the welfare of their children, pets and those using this busy road. Nonetheless, there is no

evidence to demonstrate that a fence of this design and height is the only way to secure the property. Accordingly, the decision I have reached is both proportionate and necessary to overcome the harm caused by the unauthorised development.

19. I acknowledge that in their final comments, the appellants make it clear that they were not aware of the need for planning permission before carrying out these works. I also recognise that it can be frustrating when a planning application is submitted, but then refused. However, there is no obligation for the Council to approve an application, and I must determine the appeal on the basis of the evidence before me, in accordance with the development plan for the area and any other material considerations.

Conclusion

Appeal A

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

Appeal B

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Hilary Orr

INSPECTOR