
Appeal Decision

Site visit made on 14 July 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2020

Appeal Ref: APP/C3620/C/19/3237861

The land known as Rusper Track (North of Chaffolds Farm), Rusper Road, Newdigate, Horsham, Surrey RH12 4RP

- 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 Tony Verbeeten against an enforcement notice issued by Mole Valley District Council.
- The enforcement notice was issued on 30 August 2019.
- The breach of planning control as alleged in the notice is:
 - Without planning permission the erection of 2.47 metre electric gate and erection of 1.8 metre high close boarded fence adjacent to the highway used for vehicular traffic. (The approximate position of the gate and fence is marked by a blue line on the attached plan).
 - Without planning permission the creation of an earth bund 1.5 metre in height with a length of 150 metres. (The approximate position of the bund is marked by a green line on the attached plan).
- The requirements of the notice are:
 1. Remove entirely from the Land the earth bund (shown in green on the attached plan) and reinstate the Land to its former level.
AND EITHER
 2. a. Remove entirely from the Land the close boarded fence and gate (marked by a blue line on the attached plan)
or
b. Reduce the height of the close boarded fence and gate so that it does not exceed 1 metre in height at any point when measured from natural ground level (marked by a blue line on the attached plan).
- The period for compliance with the requirements is three months.
- 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. 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

The Appeal on Ground (a) and the Deemed Planning Application

Main issue

1. the effect of the gate, fence and bund on the intrinsic character and beauty of the landscape and adjacent rural lane.

Reasons

2. The land north of Chaffolds Farm subject of the enforcement notice provides access and the frontage of a dirt motocross track sculpted onto an open field. The frontage to Rusper Road is predominantly treed with a metal framed timber sliding gate and a tall close boarded fence around the access. To the rear of the tree line alongside the road is a bund that has begun to grass over. The surrounding area is rural in character, with woodland over the road from the site and on neighbouring land adjacent to the access track.
3. The fence and gate around the access are of a utilitarian design that does not reflect the rural surroundings. They are visible in views from the road, albeit from a relatively short section. Nevertheless, the fence and gates appear somewhat incongruous and prominent in this location.
4. There are other substantial gates, walls and fences in the surrounding area and visible from the road, but I have limited information as to whether those are authorised. These appear to reflect the use of the associated land and buildings, including some residential accesses. In any event, I need to consider the development on its individual merits.
5. The bund is largely hidden to the rear of the trees on the roadside verge and it has grassed over to some extent, such that it is largely hidden in views from the road. It is suggested the bund has been formed from material taken from the site and that it reflects the sculpted motocross track. It could be further planted and landscaped that would further reduce its visibility. Nevertheless, it is a long bund across most of the frontage of the land that alters the topography of the area in a manner that does not reflect this countryside location.
6. For these reasons, I conclude that the fence, gate and bund harm the intrinsic character and beauty of the landscape and adjacent rural lane. As such, they are contrary to Policies CS1 and CS13 of the Mole Valley Core Strategy and Policies ENV3 and ENV22 of the Mole Valley Local Plan that seek to protect the countryside and state that new development should respect and enhance the character and distinctiveness of the landscape.
7. I understand that the fence, gate and bunds were provided to limit access to the site. It is unclear the extent of unauthorised access or whether access could be restricted by other means that would better reflect the character and beauty of the landscape and adjacent rural lane. As a result, this carries modest weight but is not sufficient to outweigh the harm and policy conflict identified.

Conclusion

8. For the reasons set out above, I conclude that on balance the development does not accord with the development plan. The appeal on ground (a) therefore fails.

The Appeal on Ground (f)

9. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has

been caused by any such breach. In this case, the requirements seek to remove the fence, gates and bund, in order to restore the land to its condition before the breach took place. The appellant seeks only to amend the requirements as they relate to the bund. They indicate that the requirements are not excessive in relation to the fence and gate and I see no reason to disagree with that. Clearly, therefore, in relation to the bund the purpose of the notice requirements is to remedy the breach of planning control.

10. The appellant states that a bund existed in the same location, but that was of a lower height. They suggest that the notice should be varied to enable the bund to be reduced to the level it was prior to importation of additional material to build it to its present height. I have limited information to ascertain what was on the site prior to the latest works, and what form of bund, if any, was lawfully on the site. Nevertheless, irrespective of what was on the site prior to construction of the present bund, I do not consider that the word "entirely" needs to be included in the requirements in relation to the bund in order to make clear what is required. If there was a previous lawful bund, this would mean the requirement would only relate to the additional material imported to increase the height. If there was no previous bund, it would still require the removal of the bund. In either event, it would result in the land being restored to its condition before the breach took place.
11. As a result, I conclude that the requirements of the notice exceed what is necessary in order to remedy the breach of planning control. As such, the appeal succeeds on ground (f) to the limited extent described.

Formal Decision

12. It is directed that the enforcement notice is varied by:
 - Deleting the word "entirely" from the enforcement notice in paragraph 5.1. what you are required to do, such that it states "Remove from the Land the earth bund (shown in green on the attached plan) and reinstate the Land to its former level".
13. Subject to the variations, the appeals are 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.

AJ Steen

INSPECTOR