



Appeal Decision

Site visit made on 10 August 2020

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 2 September 2020

Appeal Ref: APP/L3815/C/20/3248792

12A Nettleton Avenue, Tangmere, West Sussex PO20 2HZ

- 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 S Smith against an enforcement notice issued by Chichester District Council.
 - The enforcement notice was issued on 30 January 2020.
 - The breach of planning control as alleged in the notice is the erection of a wooden close boarded fence.
 - The requirements of the notice are 1) dismantle the wooden fence panels, posts and boards and 2) remove the resulting materials from the land.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) & (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 2 months and the substitution of 3 months as the period for compliance. Subject to this variation the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

Ground (a)

2. The development plan includes the Chichester Local Plan [LP] and the adopted Tangmere Neighbourhood Plan [NP]. LP Policy 1 has a presumption in favour of sustainable development and that there will be a positive approach, noting that development that accords with the local plan policies will be approved, unless material considerations indicate otherwise. LP Policy 2 sets out the development strategy and settlement hierarchy and has little relevance to this appeal. LP Policy 33 relates to new residential development, which again has little relevance to this appeal, but it sets out the principal for high quality and notes that design should be in keeping with the surrounding environment. LP Policy 47 relates to historic heritage and notes that the authority will continue to conserve and enhance the historic environment through preparation of conservation area and character appraisals etc.
3. NP Policy 1 relates to development proposals within the settlement boundary, which are supported if they are consistent with policies in the development plan. NP Policy 10 refers to design and again notes that development proposals

- will be supported provide the design reflects the local character of the village in its scale, massing, height, landscape design and materials.
4. The development is also within the Tangmere Conservation Area. Within this area there is an article 4 direction removing certain permitted development rights, including 'All alterations (and demolition) within the classes of permitted development affecting a front or public elevation. These will require planning permission: including viii) the erection or demolition of a gate, fence, wall or other means of enclosure'.
 5. The main issue is the effect on the character and appearance of the area.
 6. The surrounding area is characterised by a mix of boundary treatments, including some timber panel fences. There is an open area opposite bounded by a low bank. However, the overall character of the area is generally relatively open, with boundaries formed of low structures and/or vegetation. There are one or two other similar fences in Gibson Road and Edwards Avenue.
 7. There was a timber fence in part of the position of the fence now subject to this appeal and that fence appears to continue further along the boundary to Gibson Road. However, photographs suggest it was materially different from that now constructed. The fence was much lower and generally had accompanying vegetation forming the boundary treatment. At the appeal site the length of original fencing has been completely removed and replaced with a much higher timber structure which, even if of high quality, forms an alien and obtrusive feature in the streetscene and conservation area and does not accord with LP Policy 47.
 8. The presence of the other timber fences does not alter the overall character of the area or justify the construction of this fence. It does not conserve or enhance the conservation area and contradicts Policy 1 of the Local Plan and is not sustainable development. It also is not in accordance with NP Policy 1 or 10.
 9. For the purposes of the National Policy Framework the harm caused would be classed as 'less than substantial' harm, where public benefits need to be considered.
 10. The appellant identifies the need to provide a safe inclusive environment for his family and that there is a freedom for homeowners to alter their properties as addressed by article 8 of the Human Rights Act. I have taken into consideration the Human Rights Act 1998 and the European Convention on Human Rights and I recognise that dismissal of the appeal could potentially interfere with rights under Article 8. However, given the harm identified, the action is in accordance with the law and pursues legitimate aims of protecting the environment and is proportionate to the situation and the Council's Policies.
 11. The appeal on ground (a) fails.

Ground (f)

12. The appellant effectively argues that a number of panels are much older and should be retained. However there is no ground (b) or ground (d) to examine this matter in detail. The appellant appears to rely on a Google photograph which shows three panels that were formerly in the position of a section of the new fence. However, from this photograph it is clear that the old panels that

were there were much lower and have been removed, so not the same as what has replaced them. The entire fence is a new construction and not repair and is unacceptable. A boundary in this position requires planning permission because of the presence of the article 4 direction. For reasons explained in the ground (a), the presence of the former fence does not justify retention of any panels in the present fence.

13. The appeal on ground (f) fails.

Ground (g)

14. I have considered the time period of two months. It is adequate to actually remove the fence, but formulating a specification and obtaining tenders can take some time, so I shall extend the period for compliance to 3 months as requested.

The appeal on ground (g) succeeds.

Graham Dudley

Planning Inspector