



Appeal Decisions

Site visit made on 24 November 2020

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 06 January 2021

Appeal A Ref: APP/P1750/C/20/3256472

Appeal B Ref: App/P1750/C/20/3256473

Land at 162 Fleet Road, Farnborough, Hampshire GU14 9SL

- Appeals A and B are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Milosz Sleczeek (Appeal A) and Mrs Elzbieta Sleczeek (Appeal B) against an enforcement notice issued by Rushmoor Borough Council.
 - The enforcement notice was issued on 6 July 2020.
 - The breaches of planning control as alleged in the notice are, without planning permission, the erection of:
 - (a) Front boundary fencing,
 - (b) Gates, and
 - (c) Open sided outbuilding.
 - The requirements of the notice are:
 - (i) Remove the partially open sided outbuilding.
 - (ii) Reduce the height of the front fence and gate to 1m.
 - The period for compliance with the requirements is three months.
 - The appeals are proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/P1750/W/20/3253593

162 Fleet Road, Farnborough, Hampshire GU14 9SL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Milosz Sleczeek against the decision of Rushmoor Borough Council.
 - The application Ref 20/00056/FUL, dated 22 January 2020, was refused by notice dated 11 March 2020.
 - The development proposed is described as 'Retention of a 2m high timber fence with access front gate to front property and covered car port'.
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Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by replacing 'ten' with 'four' in the first paragraph of section 4.
2. Subject to the correction, Appeals A and B are dismissed and the enforcement notice is upheld.

Appeal C

3. The appeal is dismissed.

Preliminary Matters

Appeals A and B

4. The appellants initially made the appeals on ground (d) but have subsequently confirmed that they wish the appeals to be considered on ground (f). The Council has had an opportunity to consider the representations made by the appellants and I will therefore determine the appeals accordingly.
5. The Council's stated reasons for issuing the enforcement notice include that it appears that the breach of planning control occurred within the last ten years. However, the immunity period for operational development is four years, as set out in s171B(1) of the Town and Country Planning Act 1990, as amended (the 1990 Act). I therefore sought the views of the parties as to whether I could amend the enforcement notice to refer to four years, rather than ten, without causing injustice. Both confirmed that I could. I agree and will amend the notice accordingly. The appellants also confirmed that despite the immunity period being four years, they do not wish to pursue a ground (d) appeal.
6. The appellants have described why they wish to keep the alleged fencing and open sided outbuilding – for reasons which include privacy, security, personal circumstances and character and appearance. I also note and sympathise with the stress issues raised by the appellants. Moreover, I have noted the representation submitted in support and objecting to the development. However, I am unable to consider the planning merits of the development or personal circumstances under Appeals A and B because the appellants have not made the appeals on ground (a), which is that planning permission should be granted for what is alleged in the notice. Nevertheless, for the avoidance of doubt, these are matters which I have considered for Appeal C.

Appeal C

7. The application description is the 'retention of a 2m high timber fence with access front gate to front property and covered car port'. Although 'retention' is not development within the meaning of s55 of the 1990 Act, it is not necessary to amend the description having regard to my decision.
8. I saw that the fence (with gates) wraps around the entire frontage of the appeal property. However, the Council acknowledge that the fencing to the side boundaries do not require planning permission. I have therefore restricted my consideration to the front boundary fence and gates, along with the partially open-sided outbuilding, described as a car port.

Appeals A and B on Ground (f)

9. An appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice – which, under s173(4) of the 1990 Act, shall be to remedy the breach of planning control or to remedy any injury to amenity.
10. The breaches of planning control in this case are the erection of front boundary fencing, gates and an open sided outbuilding. Requirement 5(i) is to remove the partially open sided outbuilding. The purpose of this requirement is therefore to remedy the breach. As the appellant has chosen not to pursue a ground (a) appeal, general planning considerations or arguments about character and appearance cannot be introduced under ground (f). The appeal

on this ground can only succeed if it is shown that the steps set out in the notice are excessive for the purpose of remedying the breach.

11. In this regard, I find that requirement 5(1) of the notice tallies with the corresponding allegation and is not excessive for the purposes of remedying the breach. The appellant has suggested removing the roof of the open sided outbuilding but doing so would only partially remedy the breach.
12. Requirement 5(ii) is to reduce the height of the front fence and gate to 1m - rather than their complete removal. This is consistent with an intention to remedy an injury to amenity. Reducing its height in line with what could be erected under permitted development rights¹ is not therefore excessive.
13. The appellants state that they are willing to move the fence back approximately 30cm in order to provide creeper planting, but, are unwilling to reduce the height. The appellants also state that reducing the height of the fence will expose the front garden area 'which is not the prettiest view'. Again, however, as there is no appeal seeking planning permission on ground (a), it is not open to me to deal with general planning considerations through ground (f). In any case, I have considered these matters under Appeal C and come to the opposite conclusion.
14. The ground (f) appeal fails.

Appeal C

Main Issue

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

Reasons

16. The appeal property comprises a two-storey, semi-detached dwelling constructed in red brick with a red tile roof. The property is situated within a row of similarly designed dwellings, which are set back from the road, with relatively large front garden spaces that, in the main, are largely open (save for low brick walls) or enclosed with hedges, above low brick walls. Vehicular accesses are predominantly open or enclosed with gates with a good deal of visual permeability. The verdant character is further reinforced by the roadside verges and street and frontage trees.
17. In stark contrast to its context, the front boundary of the appeal site comprises a high, close boarded timber fence with steel gates clad in timber. Although they appear to be soundly constructed with good quality materials, their height, length and solid appearance combine to present a harsh and incongruous boundary treatment that is unduly dominant and harmful to the verdant character of the street scene.
18. The car port/open sided outbuilding utilises part of the front and side of the fencing and has a flat roof of approximately the same height. Consequently, it is only the roof which is visible from outside of the site. Even so, the siting appears incongruous given the lack of any significant structures forward of the

¹ Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended grant planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure adjacent to a highway where the height would not exceed 1m above ground level.

dwelling in the street. The harm is compounded by its somewhat crude and rudimentary appearance.

19. Due to the combined size, design and extent of the fence and gates, the harm would not be satisfactorily overcome by painting the fence in a neutral colour or varnishing it as suggested. I am also unconvinced that the harm would be overcome by growing creepers, which in any case would take a significant period of time to establish meaningful coverage and could also die back in the future. Moving the fence back approximately 30cm would make little difference to its visual impact and would unlikely provide sufficient space to allow for effective planting. Moving the access gate further back into the site would provide some limited visual relief but the combined enclosure would remain dominant and visually harmful. Removal of the car port/open sided outbuilding would remove that particular harm, but the harm arising from the fence and gates would remain.
20. I have noted the other fences referred to by the appellant but they are some distance from the appeal site and as such have no visual relationship with it. In any case, I have determined the appeal on its own merits and those cited do not justify the harm I have found.
21. I therefore conclude that the front fence and gates, and open sided outbuilding/car port significantly detract from the character and appearance of the appeal property and street scene, contrary to Policy DE1 of the Rushmore Local Plan 2014-2032, which, amongst other things, requires new development to make a positive contribution towards improving the quality of the built environment. I also find conflict with the guidance contained within the Rushmore Local Plan Home Improvements and Extensions Supplementary Planning Document, which states, amongst other things, that enclosures should be in keeping with the surroundings, especially when fronting onto the street.

Other matters

22. I have noted the privacy concerns expressed by the appellant in relation to his daughters' bedrooms. However, because of the elevated viewing angles from the road and bus stop, the fence provides no visual barrier to the first floor of the dwelling. If the bedrooms are on the ground floor, that is not made clear. In any case, the dwelling benefits from a significant setback and separation from the road.
23. Moreover, the appellant has not shown there to be no alternative to addressing his privacy and security concerns, such as hedge planting and/or CCTV, which could be expected to preserve the character and appearance of the street scene. Furthermore, it has not been shown that there are no other less prominent options for the storage of the items currently in front of the dwelling.

Conclusion on Appeal C

24. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Richard S Jones

INSPECTOR