The Planning Inspectorate

Appeal Decision

Site visit made on 8 December 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2021

Appeal Ref: APP/B9506/C/20/3253245
Land at Hordle Dene, Vaggs Lane, Hordle, Lymington SO41 0FP

- 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 J Sandford-Hart against an enforcement notice issued by New Forest National Park Authority.
- The enforcement notice was issued on 6 May 2020.
- The breach of planning control as alleged in the notice is without planning permission erection of walls, gates and fencing adjacent to the highway.
- The requirements of the notice are: 5.1 Demolish and remove the front walls, brick piers and gates. 5.2 Demolish and remove the close boarded fence. 5.3 Permanently remove all demolished wall, fencing, gates and associated materials from the site. 5.4 Reinstate and make good the land to the ground level fronting the walls, fence and gates with topsoil and grass or native planting.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variation.

Application for costs

1. An application for costs was made by Mr J Sandford-Hart against New Forest National Park Authority. This application is the subject of a separate Decision.

Ground (c) appeal

2. The ground of appeal is that the matters alleged in the enforcement notice did not constitute a breach of planning control. It is for the appellant to show that their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.

3. The appeal property consists of a substantial dwelling and associated outbuildings, occupying spacious grounds. The works attacked by the notice comprise brick faced wing walls and gate piers erected either side of the vehicular entrance to the property, together with a pair of wrought iron gates hung from the piers and a close boarded timber fence erected parallel to the property frontage. The wing walls are set back at least 2 m from the edge of the carriageway and have grass covered verges in front. The piers and gates are set back further, being around 7.5 m from the carriageway. The fence is set back around 2.5 m from the carriageway behind a pre-existing timber paling and wire fence, with a vegetation covered verge in front.

4. Erecting the wing walls, piers, gates and fence comprised in the works has involved development as defined in s55 (1) of the Act. Planning permission is required for the development of land, having regard to s57 (1) of the Act. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) at Article 3, Schedule 2, Part 2, Class A grants planning permission for development including the erection of gates, fences and walls. Paragraph A.1 of Class A limits the height of such development to not exceeding 1 m where it is adjacent to a highway used by vehicular traffic (paragraph A.1 (a) (ii)) and up to 2 m elsewhere (paragraph A.1 (b)).

5. As the wing walls, piers, gates and fence are clearly more than 1 m high, it is necessary to establish whether they are 'adjacent' to the highway. As there is no definition in statute, what is adjacent to a highway will depend on individual, site-specific circumstances and will be a matter of fact and degree in every case. In *Simmonds v SSE & Rochdale MBC* [1980] 40 P & CR 432, the Court held that to be 'abutting' a highway does not mean to actually touch it. The reference to 'abutting' has been replaced by 'adjacent' in subsequent iterations of the GPDO. However, in practice there is little difference in how both terms have been interpreted. In *Simmond*s, the structure in question was closer than 1 m to the highway. Nevertheless, it does not necessarily follow that gates, fences and walls situated further from a highway are incapable of being adjacent to it. Although other dictionaries might offer a differing definition, the Compact Oxford English Dictionary defines 'adjacent' as 'next to or adjoining something else'. This also suggests that it is enough for a gate, fence or wall to be next to a highway in order to be adjacent to it.

6. The works are not set back a great distance from the carriageway edge. There are no built structures between the wing walls and piers and the carriageway. The wing walls and piers provide protection, in both a visual and physical sense, to the property. The fence and the pre-existing paling fencing are closely related to one another and are viewed and function as part of the same means of enclosure, also visually and physically protecting what is beyond them. In *Simmonds*, the structure in question was set back behind a wall which fronted the highway. In any event, the paling fencing is insubstantial and dilapidated in places, with a limited visual and physical presence. As a result, in practice there are no built features between any part of the works and the carriageway. The works act to enclose and separate the property from the highway, visually as well as physically. Only the verges, which are covered with grass or self-seeded planting, separate the works from the carriageway. The verges are seen as part of the highway and to all intents and purposes function as highway verges, even if they are not adopted by the highway authority. The works also therefore serve as a visual and physical boundary between the property and the highway. Consequently, both in terms of how they are perceived visually and their physical function, it is not unreasonable to conclude that the works are next to or adjoining the highway.

7. There was a pre-existing timber fence of a similar height and in a similar position to the fence in this appeal. Although Class A paragraph A.1 (c) permits the maintenance, improvement or alteration of a gate, fence or wall where its former height is not exceeded, that cannot reasonably be interpreted as permitting the erection of an entirely new structure, as has occurred in this case. The wing walls and piers appear to be a similar distance from the carriageway edge to the demolished dwarf walls. Also, I understand that the

verge is not owned by the appellant. However, these factors have little bearing on the visual and physical effects of the works.

8. Therefore, based on the available evidence, as a matter of fact and degree and on the balance of probability I find that the works are adjacent to the highway. It follows that the works exceed the 1 m height limit at Class A paragraph A.1 (a) (ii), they are not granted planning permission by the GPDO and in the absence of a grant of express planning permission, are in breach of planning control. The ground (c) appeal fails.

Ground (a) appeal

Main Issue

9. The main issue in this ground of appeal is whether the works have conserved the landscape and scenic beauty of the New Forest National Park (NP).

Reasons

Landscape & scenic beauty of the NP

10. The property is located in countryside outside the built-up part of the village. In the Authority's Landscape Character Assessment 2015 (LCA) the property and its surroundings form part of the Ancient Forest Farmlands Landscape Type, in the Sway Pasture and Residential Settlements Character Area. Recognised qualities of the landscape type include a sense of enclosure, thick hedgerows with frequent oaks, a network of leafy lanes, scattered farmsteads and roadside cottages of traditional materials.

11. The LCA seeks to protect the traditional, tranquil character of the rural road network and ensure that new development is integrated into its landscape setting. The LCA identifies unsympathetic modern development out of keeping with local vernacular styles, scales and using inappropriate building materials as one of the key issues and trends in landscape change in the character area. The Authority's Landscape Action Plan (LAP) published in 2013 seeks to avoid suburbanising garden features, high boundary walls and fences and to ensure that the design and construction of boundaries meet the needs of owners whilst enhancing landscape character. It identifies boundaries along roads that introduce 'suburban' elements such as close boarded fencing and ornamental walls, as a key issue. These documents sit alongside the Development Plan and whilst not having the same status, should be afforded some weight.

12. The property fronts a rural road. A dense row of maturing trees along the frontage is set back behind the verge at the edge of the carriageway. Grassy verges with tall maturing tree planting behind continue along the road and together with well-managed mature hedgerows form the frontages of scattered residential development in the locality or adjoin open fields. Higher built enclosures are generally screened from the road by maturing planting. Maturing hedge planting, post and rail fencing or a combination of both, adjoin low-key and reasonably unobtrusive vehicle accesses. These factors contribute significantly to the leafy, sylvan feel along the road, they give the environs a distinctive rural character and appearance and are consistent with the above LCA landscape qualities.

13. The wing walls, piers and fence comprised in the works are of not insubstantial scale, having regard to their considerable height, overall length and the solid

materials of construction. The works are positioned close to the carriageway edge and they have a somewhat harsh, angular profile. As a result, the works are seen as assertive built features on the property frontage when approaching along the road. Their appearance is entirely at odds with the less assuming qualities of frontage boundary treatments in the vicinity, including the softer, more naturalistic shapes of maturing trees, hedges and verges and they do not respect or reflect the prevailing pattern of local development. The appearance of the works is not dissimilar to that which might typically form the frontage of a large property in a suburban setting. Also, the use of bricks of a more orange shade fails to reflect the deeper red brick finish typical of many traditional buildings in the NP, emphasising the jarring contrast between the wing walls and piers and their setting. Consequently, the works have given the property frontage a more engineered and defensive appearance and they are viewed as alien features, significantly eroding the leafy, sylvan qualities of the locality and creating an appreciably more urbanised form of enclosure in the surroundings.

14. I was referred to examples along the road and elsewhere in the locality of close boarded fencing and brick walls and piers along property frontages. However, by and large those examples did not reflect their rural surroundings and the prevailing pattern of local development. In any event, as I was supplied with limited details it is not clear whether the circumstances in which the developments referred to took place are comparable with those in this appeal. Whilst urbanising frontage treatments might also be found elsewhere in the NP, that is not a good argument for permitting further unsympathetic development. Weathering of the external materials over time and additional planting on the verges would not ameliorate the adverse visual impact of the works. I am given to understand that the gates are likely to be original, having been recovered from an outbuilding at the property; they are more permeable, weathered features with a limited visual presence in the context of other parts of the works and are set well back from the road. Even so, I have to consider the works in totality.

15. For the above reasons, the works fail to conserve the landscape and scenic beauty of the NP. It follows that there is failure to accord with Policy DP2 of the New Forest National Park Local Plan (LP), as the works do not demonstrate high quality design, they are not appropriate and sympathetic in terms of scale, appearance and siting and the materials and boundary treatments are not appropriate to the property and its setting. The works also fail to accord with LP Policy SP7, as the landscape has not been conserved and their design and scale detract from the natural beauty of the NP. In addition, by eroding the NP's local character and having a suburbanising effect, the works fail to accord with LP Policy SP17. By not achieving a well-designed place or conserving the NP's landscape and scenic beauty, the works are also inconsistent with the National Planning Policy Framework (the Framework) chapters 12 and 15. Furthermore, the works are inconsistent with the LCA and LAP management measures and actions.

Other matters

16. I understand that the works address a fear of crime, following reported incidences in the surrounding area. However, there is no firm evidence to show that frontage enclosures similar to the works provide a significant deterrent to crime. In my view other measures, including defensive planting or

CCTV, on their own or in combination, are likely to be equally if not more effective in this respect. Therefore, I afford this matter limited weight.

Ground (a) conclusion

17. The works do not conserve the landscape and scenic beauty of the NP, they fail to accord with the Development Plan and are not consistent with the Framework. Therefore, the ground (a) appeal does not succeed.

Ground (f) appeal

18. The ground of appeal is that the requirements of the notice are excessive.

19. At s173 (4), the Act provides that an enforcement notice can have two purposes. These are to remedy the breach, which can include making development comply with the terms (including the conditions and limitations) of any planning permission which has been granted in respect of the land or by restoring the land to its condition before the breach took place, or; to remedy any injury to amenity caused by the breach.

20. Whilst its purpose is not specified, the notice requires removal of the works as opposed to, for example, requiring a reduction in their height to an extent that amenity is no longer adversely affected. Therefore, the purpose of the notice must be to remedy the breach by restoring the property to its condition before the breach took place.

21. To my mind, there is no lack of clarity in what the notice requires the appellant to do. There would inevitably be areas where the ground levels had to be reinstated, particularly following demolition of the wing walls and piers. The appellant is likely to be best placed to know what the previous ground levels at the property were. The notice cannot sensibly be read as requiring the property's vehicular access to be stopped up.

22. Whilst the appellant may wish to retain and re-use materials recovered following demolition that would not remedy the breach, as parts of the works would remain at the property. Moreover, I am unable to draw any conclusions regarding the likelihood of the materials being re-used at the property in the absence of further information, including exactly where they would be utilised and the timescales involved.

23. Varying the notice to require reduction in the height of the wing walls, piers and gates to 1 m high would not restore the property to its condition before the breach took place, as no part of a development undertaken in excess of GPDO limits is lawful. In any event, the fence would remain at its existing height.

24. Nevertheless, enforcement action is intended to be a remedial measure. Therefore, whether the planning difficulties could be overcome at less cost and disruption than total demolition is a relevant consideration. A means of enclosure not exceeding 1 m in height could be erected at the property adjacent to the highway to accord with Class A, following compliance with the notice. It is not unreasonable to expect the appellant to require some form of physical boundary along the property frontage once the works are removed. This raises the realistic prospect of the works being re-erected up to 1 m high shortly after their removal, in the event the notice is upheld.

25. Reducing the wing walls, piers, gates and fence to 1 m in height would bring the works within the relevant height limit in Class A. There are no other relevant limitations or conditions in Class A. Remedying the breach by making a development comply with the terms of a planning permission includes when that permission is granted by the GPDO. It would be possible to accurately measure the height of the works once reduced; Article 2 (2), of the GPDO prescribes how the height above ground level is to be measured. As a result, a requirement to reduce the works to not exceeding 1 m in height would be sufficiently precise.

26. Consequently, whilst I find that the steps required by the notice are not excessive for their purpose, I shall vary the notice as set out above as an alternative remedy to the breach and the ground (f) appeal succeeds to that limited extent.

Conclusion

27. For the reasons given above I shall uphold the enforcement notice with variation and refuse to grant planning permission on the deemed application.

Formal Decision

28. It is directed that the enforcement notice be varied by, at paragraph 5 after step 5.2. and before step 5.3, inserting the following step 5.2.1:

    - "*As an alternative to steps 5.1 and 5.2 above, reduce the height of the front walls, brick piers and gates marked blue on the plan attached to the notice so that they do not exceed 1 metre above ground level and reduce the height of the close boarded fence marked green on the plan attached to the notice so that it does not exceed 1 metre above ground level, to make the development comply with the terms (including the conditions and limitations) of the planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 at Article 3, Schedule 2, Part 2, Class A".*

    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.

Stephen Hawkins

INSPECTOR