



Appeal Decision

Site visit made on 27 July 2021

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 31st August 2021

Appeal Ref: APP/H1840/C/20/3264681

Land known as East side of Evesham Road, Cleeve Prior, North Littleton, Evesham

- 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 Michael Maguire of Trimmager Ltd against an enforcement notice issued by Wychavon District Council.
- The enforcement notice was issued on 4 November 2020.
- The breach of planning control as alleged in the notice is: -
 - 3.1 The laying of hard-core driveway approximately hatched blue on the plan attached to the enforcement notice which is not in accordance with planning permissions W/16/01270/CU and 14/02664/CU or extant planning permissions 17/01003/FUL and 17/01004/FUL.
 - 3.2 The laying of 30 concrete caravan pads, measuring 20 metres by 6.14 metres approximately within area hatched red on the attached plan, which are not in accordance with planning permissions W/16/01270/CU and 14/02664/CU or extant planning permissions 17/01003/FUL and 17/01004/FUL.
 - 3.3 Without planning permission, the erection of a boundary fence alongside the west boundary, north boundary, east boundary between pin A and B approximately hatched green on the attached plan.
- The requirements of the notice are: -
 - 5.3 To permanently remove all the fencing erected alongside the entire west boundary, north and east boundary, approximately between points A and C shown green on the plan attached to the enforcement notice.
- The period for compliance with the requirements is 6 calendar months after the enforcement notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

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

Procedural Matters

1. Originally, when issued, the enforcement notice included the following requirements: -
 - 5.1 To permanently remove all hardcore laid for the driveway, approximately hatched blue on the attached plan unless required by planning permissions W/16/01270/CU and 14/02664/CU or extant planning permissions 17/01003/FUL and 17/01004/FUL (drawing nos. 1057/1 and RA002 approved under the aforementioned planning applications are enclosed for reference).

- 5.2 To permanently remove all caravan concrete pads (20 metres x 6.14 metres) approximately within the areas hatched red on the attached plan, unless required to site caravans specifically permitted by planning permissions W/16/01270/CU and 14/02664/CU or extant planning permissions 17/01003/FUL and 17/01004/FUL (drawing nos. 1057/1 and RA002 approved under the aforementioned planning applications are enclosed for reference).
 - 5.3 To permanently remove all the fencing erected alongside the entire west boundary, north and east boundary, approximately between points A and C shown green on the attached plan.
2. After the appeal was submitted the Council gave notice that, pursuant to its powers contained in section 173A of the 1990 Act, it has amended the requirements of the enforcement notice under section 173A(1)(b) of that Act by removing/waiving requirements 5.1 and 5.2. As such, only requirement 5.3 remains as part of the enforcement notice. This is reflected within the banner heading above. Nevertheless, the removal/waiving of requirements 5.1 and 5.2 does not alter the alleged breaches of planning control as described at section 3 of the enforcement notice.
 3. The appellant stated on the appeal form that the grounds of appeal were (a), (b), (c), (f) and (g) as set out in section 174(2) of the 1990 Act. Following the removal/waiving of requirements 5.1 and 5.2 the appellant has confirmed that they are now pursuing grounds (a), (c), (f) and (g) in relation to the alleged breach of planning control described at section 3.3 of the enforcement notice. Furthermore, they have confirmed that they do not wish to pursue any grounds of appeal in relation to the alleged breaches of planning control described at sections 3.1 and 3.2 of the notice. I have dealt with the appeal on this basis.
 4. I observed from Evesham Road that a fence has been erected adjacent to the one side of the vehicular drive that runs perpendicular to Evesham Road. In my judgement this fence is not part of the alleged breach of planning control, described at section 3.3, as it is not within the points shown green on the plan attached to the enforcement notice. I have dealt with the appeal on this basis.
 5. Third parties have highlighted issues in relation to the determination and approval of the Certificate of Lawfulness¹ (hereon referred to as 2019 LDC) for the proposed use of the appeal site for the stationing of 40 holiday chalets in accordance with the two-planning permissions W/16/01270/CU and W/14/02664/CU. However, the appeal before me only relates to the enforcement notice issued by the Council on the 4 November 2020.
 6. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. However, the relevant sections to this appeal have not materially altered. As such, in the circumstances of this case I do not consider that it is necessary to seek the further views of the parties. I am required to consider the appeal on the basis of the current Framework.

The Notice

7. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act,

¹ Ref No: 19/01219/CLPU

or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.

8. The wording of the description of the alleged breach and the requirements should be reflective of each other for the purposes of clarity. In this case the wording of the description of the alleged breach at section 3.3 does not reflect the wording of the requirement at 5.3. I intend to delete the wording '*pin A and B approximately hatched*' and replace it with '*points A and C shown*'. Both parties have been given the chance to comment on these corrections and whether they can be carried out without injustice to either of them. It is clear from the evidence before me that both parties understand what is alleged by the description of the alleged breach at section 3.3. I consider that the corrections can be carried out without injustice to the parties.

The ground (c) appeal

9. An appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. In an appeal on this ground the appellant has to demonstrate on the balance of probability that the matters alleged, to have occurred, in the notice do not constitute a breach of planning control. The planning merits of the development are not relevant as my decision on this ground of appeal rests on the facts of the case, on relevant planning law and judicial authority.
10. Schedule 2, Part 5, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) sets out permitted development (PD) rights relating to development on caravan site required by conditions (hereon cited as Class B). It states that '*development required by the conditions of a site licence for the time being in force under the 1960 Act*' is PD.
11. Schedule 2, Part 2, Class A of the GPDO sets out PD rights relating to gates, fences, walls etc. (hereon cited as Class A) It states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is PD. The limitations at A.1 state that '*development is not permitted by Class A if (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed (ii) in any other case, 1 metre above ground level; (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level...*'
12. The appellant considers that the erection of the fencing has been undertaken as a condition of the caravan site licence and is therefore PD. The Council argues that without any restrictions on height specified for a fence in the site licence that its height would need to comply with the conditions and restrictions set out at Class A.
13. The site licence was granted on 10 February 2021 under the Caravan Sites and Control of Development Act 1960 (CSCDA60). One of the conditions of that licence is that '*the boundaries of the site shall be clearly marked, for example by fences or hedges*'. At the time the enforcement notice was issued nor the fence erected the site licence was not in force. As such, when the fence was erected it was not PD in relation to Class B.

14. In any case, whilst a condition of the site licence requires the boundaries of the site to be clearly marked it does not require a fence of a specific height to be erected. It follows that any such fence erected as a means of enclosure around the appeal site would need to meet the limitations and conditions of Class A to be regarded as PD.
15. There is no dispute between the parties that the fence erected between points B and C, as shown on the plan attached to the enforcement notice, exceeds 2 metres above ground level in places. The Council have stated that it exceeds 2 metres by 0.5 metres in places and this is not specifically disputed by the appellant. Moreover, the fence erected between points A and B on the above plan runs approximately parallel and next to a grass verge alongside Evesham Road. It seems to me that the verge forms part of the highway and that this part of the fence is clearly intended to secure the boundary between the appeal site and Evesham Road. As a matter of fact and degree I find it to have been constructed adjacent to a highway used by vehicular traffic. As such, the fence erected between points A and B cannot be PD as there is no dispute that its height exceeds 1 metre above ground level.
16. Based on my observations and the evidence before me it is more likely than not that the whole of the development described at section 3.3 of the alleged breaches has been designed and constructed as a single operation. That operational development as a whole does not fall within PD rights. Therefore, express planning permission is required.
17. I conclude that the matters alleged at section 3.3 of the enforcement notice constitute a breach of planning control. There is no evidence that planning permission has been granted, therefore, the appeal on ground (c) must fail.

The ground (a) appeal and deemed planning application

Background and Main Issues

18. An appeal on ground (a) is that planning permission ought to be granted, either wholly or in part, for the breaches of planning control alleged at section 3 of the enforcement notice.
19. As stated above, the Council has waived requirements 5.1 and 5.2 from the enforcement notice through its powers under section 173A(1)(b) of the 1990 Act. Moreover, the appellant has stated that their ground (a) appeal and deemed planning application only relates to the alleged breach described at section 3.3. Consequently, based on my observations and the evidence before me, the main issues in relation to the erection of the fence alongside the west, north and east boundaries of the appeal site are:
 - The effect of the fence on the character and appearance of the area;
 - The effect of the fence on highway safety.

Reasons

Character and appearance

20. The appeal site is a relatively large rectangular piece of land that extends between Evesham Road and a public footpath. The area surrounding the appeal site is distinctly rural in character, typified by scattered dwellings and farms, amidst fields and paddocks. The appeal site is bordered by Evesham Road to

the west, paddocks to the south, a public footpath to the east, beyond which are more open fields, and a farm and associated buildings to the north, with open fields around them. Tree and hedge boundaries and open fields create a strong sense of rural spaciousness. I observed that boundary treatments in the immediate vicinity of the appeal site are in the main characterised by trees/hedges and post and rail/stock fencing.

21. The fencing that is the subject of the enforcement notice consists of two main parts, on either side of an access point leading from Evesham Road. The part to the north and east boundaries is formed of tall close-boarded fencing on concrete gravel boards and concrete posts. The eastern section lies parallel and in close proximity to the public footpath, there are security signs attached to the fence and a CCTV camera on a metal pole near to the boundary. To the south of the access point, a section of tall close-boarded fencing exists that runs parallel and in close proximity to Evesham Road.
22. The appellant argues that the fencing has been erected for security purposes given the lawful use of the land as a caravan park and should be seen in that context. The fencing is one solution to providing increased security to the site. However, in my experience there are other solutions to improving security on a site used as a caravan park. Furthermore, the types of enclosures which have been erected on the boundaries of the site consist of tall close-boarded fencing, which is very domestic in character and appears wholly out of place in this rural mainly agricultural context.
23. The fencing is seen from Evesham Road and from the public footpath. It appears that the footpath is well used, given its well-trodden nature and the amount of people using it on the day of my visit. In those views it contrasts obviously with the hedge and post and rail boundaries that are characteristic in the immediate vicinity, creating a harsh sense of enclosure at odds with the softer boundaries to other enclosures. This is exacerbated by the proximity of the fencing to the public footpath and Evesham Road, its height and the security signs and camera.
24. As a result, I find the fencing has resulted in a discordant and obtrusive feature, which does not amount to appropriate landscaping as it does not respect the rural agricultural character of the area and it harms its appearance. Consequently, the fencing conflicts with Policy SWDP 36 of the South Worcestershire Development Plan (DP) which states, amongst other things that proposals for proposed extensions or improvements to existing static and touring caravan, chalet (including 'log cabins') and camping sites will be permitted where appropriate landscaping is provided within the site and around its boundaries. It also conflicts with paragraph 130 of the Framework which, amongst other things, states that planning decisions should ensure that developments are sympathetic to local character.

Highway safety

25. Evesham Road (B4085) appears to be a relatively busy thoroughfare and the national speed limit applies adjacent to the appeal site. The Council has stated that the fence adjacent to Evesham Road appears to impede the visibility splay that is shown within the access details, plan RD/001, and required by condition 3 of a planning permission² (the 2016 permission) relating to the appeal site.

² Ref No: W/16/01270/CU

However, the copy of the submitted plan does not explicitly indicate a visibility splay and neither does condition 3 require that a specific visibility splay is to be created and thereafter retained. I also have no technical information or drawings to indicate the visibility splays that could be achieved in both directions from the access point with and/or without the fencing in place. In addition, there is nothing before me that shows that there have been any accidents or suchlike to date near to the appeal site.

26. Nevertheless, I observed that there is a sweeping bend on Evesham Road adjacent to the appeal site and due to the topography the access point/drive from the appeal site slopes up towards Evesham Road. In my experience these factors would restrict the visibility when looking in a southerly direction from the access point. I also observed that the fencing that runs parallel to Evesham Road adjacent to the access point, due to its height and proximity to that road, severely limits the available visibility in that direction.
27. At the time of my site visit it did not appear that the caravan park was in active use. There is no information before me in relation to the amount of traffic that would be generated when it is in active use. However, the evidence before me indicates that up to 40 holiday chalets/caravans could lawfully be stationed on the site in line with the 2019 LDC. As such, that lawful use would be highly likely to generate an appreciable number of vehicular trips from the site especially in the peak holiday periods. In addition, Evesham Road is a relatively busy thoroughfare with traffic moving at speeds up to 60mph.
28. The erection of the fencing results in severely limited visibility in a southerly direction. This means that drivers in vehicles leaving the access point would have very little time to react to vehicles approaching at speeds of up to 60mph from that direction. Consequently, in my judgement the fencing adjacent to Evesham Road is highly likely to have an unacceptable impact on highway safety.

Other matters

29. I have considered the appellant's fallback position of being able to remove and re-erect the fencing in line with the relevant limitations and conditions of Class A of the GPDO. I observed on site that it appears that some of the fence panels have been removed and it is highly likely that the appellant would remove the fence and re-erect in line with the relevant heights under Class A. As such, this represents a realistic fallback position. Nevertheless, it follows that a reduction in height of the fencing by virtue of its reduced mass, would have less of an impact on the character and appearance of the area. Furthermore, the reduction in height would be likely to increase the available visibility and therefore it would have less of an impact on highway safety than the fencing as enforced against. As such, the fallback position would not justify the harm that I have identified in this instance and thus I afford it limited weight.

Conclusion – ground (a) appeal and deemed planning application

30. I have found that the fencing is contrary to DP Policy SWDP 36. Taking into account paragraph 219 of the Framework I consider that this policy is consistent with paragraph 130 of the Framework. Therefore this conflict has full weight. I conclude that the proposal would conflict with the development plan as a whole. I consider that there are no material considerations of such

weight to lead me to the conclusion that the proposal should be determined other than in accordance with the development plan. The appeal on ground (a) fails.

The ground (f) appeal

31. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
32. The notice does not specify which of the two purposes it seeks to achieve. Nevertheless, the requirements are to remove the fencing that has formed part of the breach of planning control alleged in the notice. It is evident that, since requirements 5.1 and 5.2 have been removed/waived the Council has chosen to "under-enforce" under section 173(3) of the 1990 Act in relation to the elements described at sections 3.1 and 3.2 of the enforcement notice.
33. Section 173(11) of the 1990 Act would be applicable in relation to the alleged breaches of planning control described at sections 3.1 and 3.2 of the enforcement notice if (a) and (b) of that section are met. This section states that:

'where (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.'
34. Nevertheless, I am satisfied that the purpose of the notice is to partly remedy the breach of planning control, as the remaining requirement would have the effect of partly returning the land to its former condition prior to the breach taking place.
35. The appellant has stated that the remaining requirement of the enforcement notice could be varied to reflect the fallback position cited above in that the fence could be reduced in height; to 2 metres above ground level between points B and C; to 1 metre above ground level between points A and B. However, the GPDO does not grant retrospective planning permission and the fence is unlawful as a whole, not just the part of the fence that exceeds the PD limits in Class A.
36. If the requirement was varied as suggested by the appellant the fencing would only have planning permission after the enforcement notice is complied with by virtue of section 173(11) of the 1990 Act not as PD. As such, varying the requirements in this way would not remedy the breach of planning control.
37. Nonetheless, case law has established that it is incumbent on me to consider an obvious alternative that would overcome the planning difficulties at less cost and disruption than total removal. Reducing the heights of the fence to that cited above would achieve the same result as removing and re-erecting the fence under Class A of the GPDO. I have found above that the appellant would more than likely do this. Therefore, it is an obvious alternative that could be

achieved with less cost and disruption. As such, requiring complete removal of the fence as the only option would therefore be excessive.

38. The Council have stated that the fence between points A and B should be relocated to meet the visibility splays shown on the approved plan and required by condition 3 of the 2016 permission. However, as stated above, the copy of the submitted plan does not explicitly indicate a visibility splay and neither does condition 3 require that a specific visibility splay is to be created and thereafter retained. Moreover, there is no dispute that a new fence that does not exceed 1 metre in height could be erected between points A and B as PD under Class A.
39. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

The ground (g) appeal

40. On ground (g) it is argued that a period of 12 months would be needed as the site is presently being laid out in accordance with the lawful use, and those operations will continue for some time. The appellant considers that it is inappropriate to require the removal of the fence prior to completion, given that the fence provides suitable security to the site during the construction phase.
41. Whilst I acknowledge that a longer timescale would be helpful to the appellant, I must also take into account the wider public interests which would be best served by a timely remedy to the harm which I have identified. The notice (as I intend to vary it) will be less onerous as it will provide for the reduction in height of the fence as an alternative to complete removal.
42. In these circumstances I consider a period of six months (as specified) strikes an appropriate balance between the conflicting private and public interests without placing a disproportionate burden upon the appellant. I do not consider it necessary or appropriate to extend the time period for compliance. The appeal on ground (g) fails.

Overall Conclusion

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

Formal Decision

44. It is directed that the enforcement notice is corrected and varied by:

- Deleting the wording '*pin A and B approximately hatched*' and replace it with '*points A and C shown*' in section 3.3 of the enforcement notice;
- Adding the following wording at the end of requirement 5.3:

'OR reduce the height of all the fencing erected, approximately between points B and C shown green on the plan attached to the enforcement notice, so that it does not exceed 2 metres above ground level and

reduce the height of all the fencing erected, approximately between points A and B shown green on the plan attached to the enforcement notice, so that it does not exceed 1 metre above ground level.

45. Subject to the corrections and variations, 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.

D. Boffin

INSPECTOR