



Appeal Decisions

Site Visit made on 13 August 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 October 2021

Appeal A Ref: APP/B1550/C/21/3272432

Land adjacent 30 Woodlands Road, The Spinneys, Hockley, Essex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Elsayed Aboushanab against an enforcement notice issued by Rochford District Council.
- The notice was issued on 8 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of land from open grass verge to use as domestic garden (the grass verge is shown hatched on the attached plan).
- The requirements of the notice are to:
 1. Cease the use of the land as domestic garden.
 2. Remove the fence and associated posts shown marked by XXXXs and labelled A to B.
 3. Remove any domestic paraphernalia from this land.
 4. Reinstate the original domestic curtilage boundary by erecting a means of enclosure in the position shown marked by 0000s and labelled C to D.
 5. Remove from the site, all resultant material, debris and waste arising from compliance with the above steps and restore land to its condition before the breach took place by levelling the ground and reseeding with grass.
 6. Reinstate the road sign 'The Spinneys' onto its original position on the grass verge
- The period for compliance with the requirements is: Eight (8) weeks.
- 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 of decision: the appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Appeal B Ref: APP/B1550/W/21/3273309

30 Woodlands Road, Hockley SS5 4PL

- 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 Elsayed Aboushanab against the decision of Rochford District Council.
- The application Ref 20/00935/FUL, dated 4 October 2020, was refused by notice dated 13 January 2021.
- The development proposed is enclosure of grass verge incorporating it into domestic garden and erection of a 1m tall picket timber fence.

Summary of decision: The appeal is dismissed.

Preliminary Matters

1. Since the appeal was lodged, the Government published its revised National Planning Policy Framework (July 2021) ('the Framework'). The parties have had

the opportunity to comment on the implications of the changes during the appeal process.

2. I have taken the description of the development for the section 78 appeal from the application form, excluding the words 'application for' which do not describe development.
3. The appellant has confirmed that he does not own the grass verge adjacent to 30 Woodlands Road. However, the appellant owns 30 Woodlands Road, which is affected by the enforcement notice. I shall therefore consider the appeal accordingly.

Ground (a) and S78 Appeal

4. The ground (a) appeal and the section 78 appeal relate to the material change of use of the appeal site to domestic garden. Given the similarity between the two appeals, I shall deal with them together.

Main Issues

5. The main issues are the effect of the appeal scheme on:
 - The character and appearance of the area; and
 - Highway safety.

Reasons

Character and appearance

6. The appeal site is located in a residential area, generally characterised by low level boundary treatments and planting, which gives the area a verdant character. While residents in the area generally have access to gardens, grass verges and open areas, such as the appeal site and the grassed area at the corner of Kilnwood Avenue, provide a sense of spaciousness and make a positive contribution to the character and appearance of the area.
7. The appeal site comprises a parcel of land between the highway and No 30 Woodlands Road, which has been enclosed by a picket fence, incorporating it into the garden of No 30 Woodlands Road. I have seen photographs which show that the land was previously grass verge, with shrubs and trees running along the boundary shared with No 30 Woodlands Road, the majority of which have been removed.
8. Although the area was laid to grass and was generally free of domestic paraphernalia during my visit, in the event that planning permission is granted, I see no reason why such items would not be located in the appeal site, diminishing the sense of space and verdant character of the area.
9. Policy DM1 of the Rochford District Council Development Management Plan (DMP)(2014) seeks development which promotes the character of the locality and Rochford District Council Supplementary Planning Document 2: Housing Design (SPD 2)(2007) recognises the contribution that grass verges and amenity areas make to the character and appearance of housing estates and states and, where such areas continue to make an important contribution in this respect and where neglect is not a problem, seeks their retention rather than enclosure into a private garden.

10. The appellant asserts that the appeal site was poorly maintained and has provided a series of witness statements and photographs to support this position, as well as a letter of support submitted in response to the consultation on the planning application. A statutory declaration signed and witnessed by the occupant of the property opposite the appeal site and a letter signed by another nearby resident, support the appellant's contention that the appeal site was used for the deposit of dog waste, amongst other things.
11. While the letters submitted appear to support the appellant's contention that the site was not always well maintained, the documents do not provide sufficient detail for me to conclude that neglect has been a problem at the appeal site.
12. A number of the statements appear to be written by individuals who do not live along Woodlands Road or The Spinneys. It is not clear what period the comments cover or how often some of the individuals would have seen the site. A number of individuals attended the property after the appellant purchased it to carry out works and so would have observed the site over a limited period of time.
13. Photographs submitted by interested parties, although undated, show the appeal site to be mainly laid to lawn, with mature vegetation along the boundary with number 30 Woodlands Road. A photograph provided by the appellant, dated 31 July 2019 at 12:53:05pm, similarly shows the grass to be relatively short and whilst the vegetation appears more substantial compared with those provided by interested parties, it does not appear to be encroaching onto the public footpath.
14. Although one of the photographs submitted by the appellant appears to show some litter, it is limited to some rubble, a couple of bottles, what appears to be a plastic takeaway container and lid and one or two other plastic items. It is not clear where the items came from, however, such limited quantities of litter do not, in my view, support the appellant's contention that the area was '*really neglected and full of rats, flies, dogs waste and general waste*'.
15. A number of interested parties dispute that the appeal site has not been well kept. Whilst the submissions are unsworn written statements and letters, which limits the weight I can afford them, their comments appear generally consistent with the photographs provided.
16. Furthermore, during my visit I saw that verges in the area are generally well maintained and make a positive contribution to the character and appearance of the area. In particular, the verge along Kilnwood Avenue appeared in good condition, with no evidence of neglect or accumulation of dog waste or litter.
17. The appellant asserts that the trees within the appeal site were unhealthy, dominated the outlook from 30 Woodlands and obscured the sightlines from the Spinneys to Woodlands Road. However, I have no substantive evidence that they were unhealthy or that they obscured sightlines from the Spinneys to Woodlands Road. The Highway Authority has powers to require the removal or cutting back of vegetation that obstruct or endangers highway users. Consequently, even if the vegetation was causing obstruction, the Highway Authority could have required their removal.

18. The appellant states that when he purchased the site, the vegetation had become overgrown and had damaged the fence and caused a wall to crack, potentially causing a danger to his young children. However, removal of the vegetation would have been sufficient to ensure it does not cause further damage to structures within the appellant's land. Whilst there may have been a need to carry out repair works to the affected structures, this does not justify the incorporation of the land within the appellant's garden.
19. Indeed, the appellant advises that the site has no known owner, and so, as a fallback, there is a real prospect that he could remove the vegetation to prevent it from interfering with his enjoyment of his property at 30 Woodlands Road. While such action could have other legal consequences, since the appellant does not own the land, such action would not necessitate the enclosure of the land and incorporation within the appellant's garden. Thus, even if I consider there to be a real prospect of this as a fallback position, it does not support the material change of use of the land and its enclosure.
20. While Woodlands Road backs on to extensive woodland, it is the contribution that the verge makes to the character and appearance of this part of the area which is of value. Thus, for the reasons give above, I find that the appeal scheme harms the character and appearance of the area, contrary to Policy DM1 of the DMP and SPD2, the requirements of which are set out above.

Highway safety

21. The Council makes reference to Policy DM30 in its decision notice for the planning application. Policy DM30 of the Rochford District Council DMP relates to parking standards and is therefore not directly relevant to the appeals before me. Nevertheless, the Framework sets out that in assessing applications for development, it should be ensured that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.
22. The fence which has been constructed is around 1m in height and is set slightly back from the footpath. I saw that, given its limited height and setback from the pavement, visibility splays for vehicles entering and exiting The Spinneys are not significantly affected by the fencing that has been erected.
23. Although part of the site comprises highway land, the footpath which is located between the appeal site and the highway enables pedestrians to move freely. Consequently, I find that there is no significant harm to highway safety in this respect and no conflict with the Framework in this regard.

Ground (a) and S78 Conclusion

24. While I have found there would be no harm to highway safety, I have found there is harm to the character and appearance of the area. I therefore conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

25. An appeal under ground (f) is made on the basis 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. Given the requirements of the notice are to cease the use and remove the fencing and any domestic paraphernalia, it is clear that its purpose is to remedy the breach.

26. Step 4 of the notice requires the reinstatement of the original domestic curtilage boundary by erecting a means of enclosure. The appellant states that the site can be used as common land regardless of how the boundary with the curtilage of 30 Woodlands Road is marked. The appellant suggests that it is not necessary to have a wall or fence in place.
27. Section 173(4)(a) sets out the purposes of the notice are to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place. Although there were boundary treatments in place before the works took place, the requirement to erect a means of enclosure is not sufficiently precise as it is not clear exactly what the recipient of the notice is required to do. Requiring that the use of the land ceases and the removal of the boundary fencing would, in my view, be sufficient to remedy the breach. Consequently, I shall delete the requirement.
28. The street sign was originally set back from the edge of the Site on the north east corner. The appellant does not dispute that he carried out the works, or that he erected the fence. However, this is asserted to have been done separately to the movement of the street sign. The appellant states that the street sign has not been moved since he moved to the property on 31 July 2019 and has submitted a dated photograph in support of this. The Council has requested in light of this evidence, that I delete step 6 of the enforcement notice.
29. Section 173(4)(a) of the Act provides that an enforcement notice may require that a breach is remedied by restoring the land to its condition before the breach took place. Given the above, the requirement to reinstate the sign would exceed what is necessary to remedy the breach and I shall delete it.

Conclusion

30. 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 and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeal on ground (f) succeeds to that extent.

Appeal A Decision: APP/B1550/C/21/3272432

31. It is directed that the notice is varied by:
- the deletion of requirement 4 from section 5 of the notice, which states *'Reinstate the original domestic curtilage boundary by erecting a means of enclosure in the position shown marked by 0000s and labelled C to D.'*
 - the deletion of requirement 6 from section 5 of the notice, which states *'Reinstate the road sign 'The Spinneys' onto its original position on the grass verge'*
32. Subject to the above variations, the enforcement notice is upheld and planning permission is refused on the on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Decision: APP/B1550/W/21/3273309

33. The appeal is dismissed.

M Savage

INSPECTOR