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## Appeal Decision

Site visit made on 23 November 2021

**by Stephen Hawkins MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10<sup>th</sup> December 2021**

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**Appeal Ref: APP/C1760/21/3280420**

**5 Meon Road, Romsey SO51 5PU**

- 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 Mrs Debbie Goodridge against an enforcement notice issued by Test Valley Borough Council.
- The enforcement notice was issued on 5 July 2021.
- The breach of planning control as alleged in the notice is without planning permission the erection of a boundary fence greater than 1 m high adjacent to the highway.
- The requirements of the notice are to remove the fence adjacent to the highway.
- The period for compliance with the requirements is 2 months.
- 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.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.**

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### Ground (a) appeal

#### Main Issue

1. The main issue in this appeal is the effect of the fence on the character and appearance of the surrounding area.

#### Reasons

##### *Character and appearance*

2. The appeal site contains a semi-detached dwelling. The dwelling occupies a corner plot adjacent to the junction of two residential streets, the side elevation being parallel to a short cul-de-sac. Between the side elevation and the street, extending up to the rear boundary of the site, is an area of garden. The enforcement notice attacks a close board fence around 1.8 m in height with concrete supporting posts, erected adjacent to this street frontage and returning into the site to envelope the garden area.
3. The site is located on a planned residential estate which probably originated during the mid-20<sup>th</sup> Century. The surrounding area is largely comprised of semi-detached and terraced dwellings arranged in a regular fashion, occupying similarly-sized plots. Many of the dwellings have open front gardens with substantial areas laid to grass, also containing a variety of maturing planting. These factors all contribute to the generally open, spacious and suburban character and appearance of the surrounding area. Incidences of enlarged hardstandings have little bearing in relation to the general absence of built enclosures at the front of dwellings. Therefore, although the "Look at Romsey-

*Romsey Town Design Statement*” Supplementary Planning Document (SPD) was published some years ago, the visual qualities of the area still largely reflect the “...open plan gardens with grass or low-growing plants that preserve the openness of the estate” described in that document.

4. Before the fence was erected, the garden area was probably laid to grass for the most part, with a low wall along the frontage boundary and a higher wall in line with the dwelling defining the private rear garden. These factors, together with the generous size of the garden area and its corner situation, forward of the dwelling and adjoining dwellings in relation to the street, mean that the site is likely to have contributed significantly to a sense of openness and a spacious feel in the street scene, consistent with the visual qualities of the estate identified above.
5. The fence is of similar height to the maturing hedge at the front of the dwelling. However, the obviously man-made appearance and angular profile of the fence differs significantly in visual terms from the softer, naturalistic qualities of the hedge. Enveloping the garden area with a solid fence of such substantial height and length adjacent to the street has given a considerable part of the site frontage a harsh, built-up and defensive appearance and has created an appreciably more enclosed feel in the street scene. This is entirely at odds with and has significantly eroded the open and spacious visual qualities of the locality. Also, as the fence is clearly visible approaching the site from both streets, it appears as a stark and alien built feature in the surroundings. The visual impact of the fence is not ameliorated by the street verges and trees. Painting the fence would not overcome the visual harm identified above.
6. Several examples of tall, street-side fences and walls erected in the immediate vicinity of the site and in the wider area, including fencing at nearby corner plots, were referenced. Having regard to the situation prior to development taking place, the circumstances in appeals at properties nearby<sup>1</sup> differ significantly from those in this appeal. Some of the other fence examples serve to illustrate the unfortunate visual effects of tall street-side enclosures, whilst many of the walls probably originated around the time the estate was laid out. Whilst one nearby fence seems to benefit from planning permission dating from 2015<sup>2</sup>, few details were provided of this or the other examples.
7. Therefore, I cannot be certain that other tall fences originated in circumstances comparable with the fence in this appeal. The mere existence of similar development is not, in itself, a good reason to permit the fence as it could be repeated, causing further visual harm. A previous appeal for a similar fence at a nearby property was dismissed for reasons which broadly correspond with those set out above, following the refusal of planning permission by the Council<sup>3</sup>. As a result, there is little which suggests inconsistency in decision making on the Council’s part. Reference in the SPD to “*large wooden fences...some of which are obtrusive in the street*” and advice to respect the open plan layout of the area and retain its character clearly does not imply Council support for erecting tall street-side fences.
8. In the event the appeal is dismissed the appellant could, after complying with the notice, erect a fence up to 2 m high where it is not adjacent to a highway,

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<sup>1</sup> Appeal Refs: APP/C1760/C/21/3280466 & APP/C1760/C/21/3281676/7.

<sup>2</sup> Council Ref: 15/02131/FULLS.

<sup>3</sup> Appeal Ref: APP/C1760/D/13/2200146.

given the planning permission granted by the GPDO<sup>4</sup> at Article 3, Schedule 2, Part 2, Class A, paragraph A.1 (b). However, whether such a structure would be “adjacent” to a highway is a matter of fact and degree. A structure does not have to physically touch a highway to be regarded as being adjacent to it. A structure can be several metres away from a highway and still be adjacent to it for planning purposes. As a result, I am not persuaded that the fence could immediately be re-erected 2 m back from the street. Whilst the appellant could construct a hard surface adjacent to the frontage, given the permission granted by the GPDO at Article 3, Schedule 2, Part 1, Class F, that would not have a similar visual impact to the fence; even with vehicles parked at times the garden area would not be enclosed. As the fence posts would have to be removed to comply with the notice, it is not clear why any broken posts would be retained. Therefore, I am not persuaded that any “fallback” position in the above respect would have similar or worse visual consequences than the fence.

9. It was also suggested that the fence could be reduced to 1 m high. Although initially raised under ground (f), the matter is more appropriately dealt with on ground (a), as it would involve retaining part of the fence for which permission has been sought. The GPDO at Article 3, Schedule 2, Part 2, Class A, paragraph A.1 (a) (ii) grants permission to erect a 1 m high fence adjacent to a highway. In the context of what is permitted by the GPDO, reducing the fence to 1 m high would largely overcome the visual harm identified above. Whilst Article 3(6) is also relevant to whether development is permitted by the GPDO, it is likely that part of the fence adjacent to the appellant’s driveway could be modified to ensure that highway visibility is not prevented. Be that as it may, it is unclear whether the fence could practically be reduced to 1 m high without significantly damaging the remaining structure, having regard to its construction. Additionally, as a 1m high fence is unlikely to satisfy the appellant’s privacy and security concerns, I am not convinced that immediately erecting a 1 m high structure following removal of the fence represents a realistic “fallback” position. As a result, granting permission for a 1 m high fence does not represent an obvious alternative to removal.
10. For the reasons set out above, the fence causes unacceptable harm to the character and appearance of the surrounding area and by doing so, does not accord with criterion in Policy E1 of the Test Valley Borough Revised Local Plan (LP) as it fails to integrate, respect and complement the character of the area in which the development is located in terms of layout, appearance and materials. Furthermore, the fence does not accord with criteria in LP Policy E2 as there is loss of a local landscape feature and it does not positively integrate into the landscape character of the area. In addition, as the fence does not respect the open plan layout of the area nor retain its character, it is not consistent with the SPD. Moreover, by failing to achieve a well-designed place the fence is inconsistent with the revised National Planning Policy Framework (the Framework), whilst consistency with the Planning Practice Guidance: “Design: Process and tools” and the National Design Guide have not been demonstrated.

#### *Other matters*

11. I recognise that the fence was erected with the aim of providing the appellant and their family with suitable privacy, safety and security in their rear garden,

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<sup>4</sup> The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

particularly in respect of children and pets, having regard to the proximity of the street. Such an objective is entirely understandable, particularly in the light of well-reported incidences of theft and criminal behaviour and given publicised Police advice on preventing crime. I have taken the appellant's personal circumstances into account, including the effect on their health and well-being and the likely stress and anxiety they have experienced due to events prior to and during the appeal, given their relative unfamiliarity with the planning process. I have also considered representations made by local residents in support of retaining the fence.

12. Nevertheless, I am not persuaded that the fence provides significant benefits in terms of the appellant's privacy, safety and security given that the rear garden was already largely enclosed by a high wall. Moreover, I am not convinced that the fence represents the only solution by which the appellant's concerns could be addressed. There are likely to be other alternatives to the fence which would not cause the same or similar planning harm but would still achieve high levels of privacy and security for a householder. In any event, it seems to me likely that the prospect of a considerable enlargement in the area of private garden enjoyed by the dwelling played no small part in the appellant's decision to erect the fence. Consequently, I do not attach significant weight to the above matters.
13. The fence does not harm the living conditions of occupiers of adjoining residential property. This is a neutral factor which weighs neither in favour of nor against permitting the fence to remain.

#### *Ground (a)-Planning Balance and Conclusion*

14. The planning harm caused by the fence, the failure to accord with the Development Plan when taken as a whole and the inconsistency with the Framework is not outweighed by other considerations.
15. Refusing permission for the fence will interfere with the appellant's rights set out in Articles 8, 14 and Article 1 of the First Protocol of the Human Rights Act 1998 (HRA). Such rights are qualified. The refusal of planning permission is in accordance with legislation and there is a legitimate public interest in upholding local and national planning policy. Based on the available evidence, I am not convinced that the appellant has been treated differently to persons in a similar, relevant situation. As a result, the interference in the appellant's HRA rights is lawful. It is also proportionate, as there are likely to be alternative solutions which would not cause the same or similar planning harm. The degree of interference is therefore insufficient to give rise to any violation of the appellant's HRA rights.
16. For the above reasons, the ground (a) appeal does not succeed.

#### **Ground (f) appeal**

17. The ground of appeal is that the notice requirements are excessive.
18. An enforcement notice can have two purposes. Firstly, it can remedy the breach, including by restoring the land to its condition prior to the breach taking place. Secondly, it can remedy an injury to amenity. Whilst the purpose of the notice is not specified, it requires removal of the fence as opposed to, for example, a reduction in the 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 site to its condition before the breach took place.

19. Where a development is carried out in excess of the GPDO limits all of the development is unauthorised, not just that part which exceeds the relevant limitation. Therefore, reducing the fence to 1 m high would not remedy the breach; part of the fence would remain and the site would not be restored to its pre-breach condition. No alternatives that would stop short of removing the fence whilst still remedying the breach were drawn to my attention and to my mind, there are none.
20. Consequently, the notice requirements are not excessive; they are the minimum necessary to remedy the breach. The ground (f) appeal also fails.

### **Conclusion**

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

### **Formal Decision**

22. 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 as amended.

*Stephen Hawkins*

INSPECTOR