



Appeal Decisions

Site visit made on 23 November 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th December 2021

Appeal A Ref: APP/C1760/C/21/3281676

Appeal B Ref: APP/C1760/C/21/3281677

Land at 2 Meon Road, Romsey SO51 5PU

- The appeals 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 Gearold Fitzgibbon (Appeal A) and Ms Claire Lougarre (Appeal B) against an enforcement notice issued by Test Valley Borough Council.
- The enforcement notice was issued on 27 August 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 in height 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 two months.
- Appeal A 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. Appeal B is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) in Appeal B and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: Appeal A is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision. Appeal B is dismissed.

Appeals A and B-Ground (c) appeals

1. The ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. It is for the appellants to show that their appeals should succeed on this ground, the relevant test of the evidence being on the balance of probability.
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 and rear garden being parallel to a local distributor road whilst the front elevation faces over a cul-de-sac. The enforcement notice attacks a close board timber fence around 1.9 m in height, supported by concrete posts. The fence has been erected forward of maturing evergreen trees, adjacent to the distributor road frontage, with right angled legs running towards the dwelling's side elevation and also adjacent to the rear boundary, to enclose the rear garden.
3. Erecting the fence has involved building operations falling within the definition of development at s55(1) of the Act. The effect of s57(1) of the Act is that development requires planning permission. A breach of planning control is defined in the Act at s171A(1) as carrying out development without the

required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted.

4. The GPDO¹ at Article 3, Schedule 2, Part 2, Class A, grants planning permission for a fence not exceeding the 1 m height limit at paragraph A.1 (a) (ii) adjacent to the highway and the 2 m height limit in paragraph A.1 (b) elsewhere.
5. In my view, in all likelihood the fence was erected as one continuous building operation. No firm evidence was produced which might have shown that this was not the case. Consequently, as a matter of fact and degree and on the balance of probability, the right angled legs of panels and posts extending into the site are integral to and part and parcel of the fence. 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. Given that the fence is clearly more than 1 m high adjacent to the highway, it therefore exceeds the height limitation in Class A at paragraph A.1 (a) (ii) and is not granted planning permission by the GPDO.
6. As a result, the appellants have failed to show to the required standard that erecting the fencing did not involve a breach of planning control and the ground (c) appeals fail.

Appeal A

Ground (a) appeal

Main Issue

7. 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

8. The site is located on a planned residential estate which probably originated during the mid-20th 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. 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.
9. I am given to understand that prior to erection of the fence there had been a close board fence at the site in a corresponding location and of a similar overall height and length, for at least fifteen years. The evidence provided by interested parties is clear and convincing in this respect. The existence of a similar and in all likelihood, lawful, structure at the site immediately prior to erection of the fence is a factor to which I attach significant weight. In such circumstances, it is not unreasonable to compare the fence with what was at

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

the site immediately prior to its erection. The pre-existing structure clearly formed part of the established built fabric of the locality.

10. Had a structure of similar height and length to the fence been erected to enclose an expansive, previously open plot frontage, there is little doubt in my mind that it would have created a stronger sense of enclosure in the street scene, significantly eroding the open and spacious visual qualities of the locality and appearing as an alien feature in the surroundings. Even so, in the context of the fence being erected as a 'like for like' replacement of the pre-existing structure, I am unable to conclude that it has resulted in an appreciably more harsh, urbanised feel in the locality. It is likely that there has been little sense of openness along this part of the site frontage since around the time the pre-existing structure originated.
11. As a result, the effect of the fence on the visual character of the surroundings is little different to that which existed immediately prior to its erection. Whilst the fence currently has a rather stark appearance, in my view that is due mainly to the light coloured finish. Painting the sides visible from the street a darker colour which respects that of the trees behind would give the fence a more muted appearance, creating a greater sense of continuity along the affected site boundaries and thereby achieving appropriate visual integration with the setting. This could be secured by a suitable planning condition.
12. The above is all markedly different from the circumstances in the appeal for a proposed 1.8 m high boundary fence on a nearby corner plot, dismissed back in 2013². It is unrealistic to belatedly try and turn back the clock by preventing replacement of the pre-existing, most likely lawful, structure with something similar. In any event, it might be argued that the fence represents a visual improvement over the pre-existing structure, which was in all probability in a state of disrepair.
13. Therefore, I find that the fence does not harm the character and appearance of the surrounding area and accords with criterion in Policy E1 of the Test Valley Borough Revised Local Plan (LP) by integrating, respecting and complementing the character of the area in which it is located in terms of layout, appearance and materials. The fence also accords with criteria in LP Policy E2, as it has no detrimental impact on the appearance of the immediate area, it integrates into the landscape character and has not resulted in the loss of an important local feature. Furthermore, the open plan layout of the area is retained and its character is respected, consistent with guidance in the SPD.

Other matters

14. When compared with the pre-existing structure, the fence is unlikely to create a greater obstruction to the visibility of vehicle drivers emerging from the adjacent driveway onto the road, or for pedestrians using the footway. Therefore, I afford the concerns of the Highway Authority limited weight.

Conditions

15. After seeking the views of both main parties, I shall attach a condition requiring a scheme to be submitted to the Council for approval in respect of painting the fence and implementing the approved scheme within the period specified. This condition is necessary for the reasons set out in paragraph 11 above. The

² Appeal Ref: APP/C1760/D/13/2200146.

condition is drafted in the form set out below because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the implementation of the required scheme, because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the fence granted planning permission may only remain if the appellant complies with its requirements. Therefore, in my view the requirements of the condition are both proportionate and reasonable.

Conclusion

16. The fence accords with the Development Plan and is consistent with the SPD. Consequently, I conclude that Appeal A should succeed on ground (a) and planning permission will be granted. The appeals on ground (f) in Appeals A and B do not therefore need to be considered.

Formal Decisions

17. Appeal A-the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a boundary fence greater than 1 m in height adjacent to the highway on land at 2 Meon Road, Romsey SO51 5PU, subject to the condition in the attached Schedule.
18. Appeal B-the appeal is dismissed.

Stephen Hawkins

INSPECTOR

CONDITION SCHEDULE

Appeal A:

- 1) Unless within 1 month of the date of this decision a scheme for the painting of the sides of the fence visible from the street in a dark green or similar colour is submitted in writing to the Local Planning Authority for approval, and unless the approved scheme is implemented within 1 month of the Local Planning Authority's approval, the fence hereby approved shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the fence shall be removed until such time as a scheme approved by the Local Planning Authority is implemented.

Upon implementation of the approved scheme specified in this condition, the fence shall thereafter be maintained in accordance with that scheme.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.