
Appeal Decision

Site visit made on 13 June 2022

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 July 2022

Appeal Ref: APP/D1265/W/21/3288659

Plot 76 Avon Castle Estate, Hurn Road, Ringwood BH24 2BP

- 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 Mohamad Alkabani against the decision of Dorset Council.
 - The application Ref 3/21/0794/FUL, dated 17 April 2021, was refused by notice dated 16 August 2021.
 - The development proposed is described as 'erection of timber fence and gate'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my visit, the timber fence and gates had been erected on site. I have dealt with the appeal on this basis.
3. Within the context of an appeal under section 78 of the Town and Country Planning Act 1990 (the Act) it is not within my remit to formally determine whether the proposed development requires planning permission as questioned by the appellant. However, I shall consider the evidence as to whether permission is required so far as it is material to this appeal. If the appellant wishes to ascertain whether the development is lawful, they may make an application under section 191 of the Act.
4. Reference has been made by interested parties to the Avon Castle Special Character Area (SCA) but the Council have confirmed that the appeal site does not lie within the SCA. Accordingly, I have dealt with the appeal on this basis.

Main Issues

5. The main issues in this appeal are:
 - Whether or not the development is inappropriate development in the Green Belt;
 - The effect upon the openness of the Green Belt;
 - The effect of the development on the character and appearance of the area; and
 - If the development is inappropriate development whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether or not the development is inappropriate

6. Policy KS3 of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy adopted April 2014 (LP) does not specifically deal with fences in the Green Belt. That said, the National Planning Policy Framework (the Framework) establishes that the construction of new buildings is inappropriate development in the Green Belt subject to a number of exceptions. The term ‘building’ refers to any structure or erection and therefore includes fences. Fences are not in the list of exclusions at paragraph 149 but paragraph d) relates to replacement buildings provided they are not materially larger than the one it replaces.
7. The fence replaces one which existed previously. However, from the evidence before me, I note that this was a lower post and wire fence positioned closer to the road. The fence the subject of the appeal is therefore materially larger than the one it has replaced and this is accepted by the appellant in their Statement of Case. Therefore, when judged against the wording of national policy, the fence is inappropriate development in the Green Belt.

The effect on the openness of the Green Belt

8. The fence and gates are a solid man-made feature. The evidence before me indicates that the previous lower post and wire fence allowed views into and across the wooded site such that the woodland floor and underplanting could be seen giving a more natural and verdant appearance to the site. By contrast, the fence which has been erected due to its height, size and solid mass means that views into and across the site are not possible from the public domain. As such, the development results in moderate harm to the openness of the Green Belt, contrary to Policy KS3 of the LP which states that the most important purpose of the Green Belt is to maintain open land and this broadly accords with the fundamental aim set out in paragraph 137 of the Framework.

Character and Appearance

9. Although there are other developments along Hurn Road, the surroundings of the appeal site are essentially rural with a predominance of undeveloped land covered in trees and planting. There are several other fences in the locality and many of them are similar to that on the appeal site. However, these are largely in connection with the development of land that they are enclosing such as residential properties and their gardens and their suburban appearance reflects this.
10. This is not the case with the fence the subject of this appeal, which harmfully encloses a wooded site with a rural appearance. The fence is clearly visible and contrasts unfavourably with the greenery that generally fringes the road. Painting the fence a dark green or brown colour would reduce its visual impact. However, it would still be a clearly suburban feature and yet does not serve a residential property. Appearing stark with an overtly domestic appearance it is a discordant feature which is harmful to the essentially rural character and appearance of the area.
11. As such, I find that the development is contrary to Policies HE2 and HE3 of the LP and Saved Policy DES11 of the East Dorset Local Plan adopted January 2002 insofar as they require development to be of a high quality, compatible with its

surroundings and which protects and enhances the landscape character of the area.

Other considerations

12. The fence has been erected to secure the land and provide privacy. However, the appellant does not live on the land but instead uses it for recreational purposes. I understand that some items are left on the land between visits. However I have no evidence before me to suggest what these items are, whether they need to be left on site or the value attached to them. As such, I give this limited weight.
13. My attention has been drawn to two appeal decisions ¹. I am mindful that consistency in the planning process is important and like cases should be decided in a like manner. However, I do not find that circumstances surrounding either of these cases are sufficiently similar to those relating to the appeal proposal as to be material. One related to a dark green steel mesh fence which had been designed to provide good visibility through it and was visually subsumed against its surroundings. In that instance the Inspector found that there was a very real need for the internationally recognised appellants to employ additional security measures to protect the family home and its occupiers from undesirable attention. The other related to a fence which the Inspector concluded marginally improved the perception of openness over the previous gates and fence which had been positioned directly fronting the highway. In both cases, for the reasons set out, the circumstances differ from those at the appeal site and accordingly I give the appeal decisions limited weight.
14. The appellant suggests that there is a fall-back position in that the structure could be moved rearwards on the site so that it would not be 'adjacent' to the highway. Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 permits the erection of gates, fences or walls up to one metre in height where adjacent to a highway used by vehicular traffic and up to two metres high elsewhere. However, in this case, the gates exceed two metres in height in any event and therefore would not benefit from permitted development even if moved further into the site. The appellant also suggests that the fence could be replaced by one which is a metre high and as such, the fence the subject of this appeal is not materially different. However, that is not the appeal which is before me and given that the appellant has purportedly enclosed the land as they have for security purposes, I do not find that the erection of a one metre high fence would be a realistic fall-back prospect. I therefore give the stated fall-back positions very limited weight in my consideration of the appeal.

Other Matters

15. The appellant provided a tree report with the appeal but given that this did not form part of the Council's reasons for refusal and that the work to construct the fence and gates had already taken place prior to the report being carried out, it is not a matter on which my decision turns.

¹ Ref APP/G2245/D/13/2208446 and APP/G5180/C/18/3195986

16. I have considered other matters raised by interested parties including, but not limited to, highway safety but given that I have identified harm in respect of the main issues, these are not matters on which my decision turns.

Green Belt Balance and Conclusions

17. Paragraph 147 of the Framework sets out the presumption against inappropriate development within the Green Belt. It states that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
18. I have concluded that the proposal is inappropriate development that, by definition, harms the Green Belt. I have also concluded that the proposal would result in moderate harm to the openness of the Green Belt. Paragraph 148 of the Framework requires substantial weight to be given to any harm to the Green Belt. I have also identified some moderate harm to the character and appearance of the area.
19. On the other hand, the other considerations referred to by the appellant only carry moderate weight in favour of the proposal. As such, the harm to the Green Belt, and any other harm, is not clearly outweighed by other considerations. Consequently, the very special circumstances necessary to justify the development do not exist and the proposal is contrary to local and national planning policies.
20. For the reasons given above I conclude that the appeal should be dismissed.

Alison Fish

INSPECTOR