
Appeal Decisions

Site visit made on 27 February 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 28 MARCH 2023

Appeal A Ref: APP/V0510/C/21/3286920

Land known as 150 Station Road, Dullingham, Newmarket CB8 9UT

- 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 Richard Marriott against an enforcement notice issued by East Cambridgeshire District Council.
- The enforcement notice was issued on 15 October 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a 2m high fence shown in the approximate position between points A and B and points C and D marked on appendix A.
- The requirements of the notice are Reduce the height of the close boarded fence shown in the approximate position between points A and B and points C and D marked on Appendix A to 1m or less.
- The period for compliance with the requirements is Three (3) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision

Appeal B Ref: APP/V0510/W/21/3286798

Sarabex Stud, 150 Station Road, Dullingham CB8 9UT

- 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 Richard Marriott against the decision of East Cambridgeshire District Council.
- The application Ref 21/00337/FUL, dated 16 February 2021, was refused by notice dated 1st October 2021.
- The development proposed is described as 'Close boarded boundary fencing retrospective application'.

Summary Decision: The appeal is dismissed.

Preliminary Matter

1. The Appeal A ground (d) appeal was withdrawn by the appellant.

Appeal A: the appeal on ground (a) and the deemed planning application (DPA) and Appeal B

Main Issue

2. The Appeal A ground (a) appeal and Appeal B relate essentially to the same development¹ and so I deal with these together. The main issue then is the effect on the character and appearance of the area.

Reasons

3. The appeal site is formed of Sarabex Stud and the associated dwelling at 150 Station Road, on the corner of Station Road with the A1304. The site is some way from the settlement of Dullingham and lies in the open countryside. An obvious characterising sitting feature of the immediate area is that roadside boundary treatments are typically either formed of low post and rail fencing and/or various vegetation, which are unobtrusive in the rural context.
4. The long length of timber appeal fencing, by reason of its close-boarded design and height significantly urbanises these stretches of both Station Road and the A1304 to the detriment of the open and rural character of the surrounding locality. Sat behind a wide verge and in a corner position, the fencing is in a highly prominent location, drawing the eye as a visually discordant feature. Although the fence makes a clear distinction between the public space of the verge and the private space of the dwelling/stud, the same distinction could be achieved by other forms of boundary treatment which are less visually harmful.
5. The presence of greenery behind some of the fencing does little to soften the effect/appeared scale of the fence since its full height remains highly conspicuous in front of the greenery. Although the fence could weather over time and conditions could require additional greenery planted behind the fencing, or painting the fence a different colour, these would not be enough to overcome the harsh urbanising appearance.
6. The appellant comments that although the verge is understood to form part of the highway, planting could be provided to the front of the fence which, it is submitted, would not interfere with visibility splays at the junction. However, on the basis that the land is not in the appellant's control, such planting could only be achieved by means of a Grampian condition – effectively normally precluding commencement of development until the specified action occurs. However, Grampian conditions are not appropriate in enforcement cases as the development has already taken place.
7. The appellant refers to similar boundary treatments at other stud operations in the wider area, commenting that these are typically in rural locations. These are some distance from the appeal site and so do not enable a direct comparison bearing in mind site specific considerations in assessing visual impacts. Similarly, whilst there is some higher fencing at sites further along the A1304 in the direction of Six Mile Bottom including at Chaucer House, I saw from my site visit, that this is close to the built-up area and not in an equally prominent corner position to the appeal fencing.
8. I have taken into consideration fallback positions available under permitted development (PD) rights that the appellant could construct a 1 metre high fence in the same position or a fence of the same height further back from the roadside. There is a reasonable prospect of either of these being constructed. However, neither of these would have a comparably harmful impact since the

¹ The Appeal B application also sought planning permission in respect of the northern return section of fencing but since this was deemed acceptable by the Council and is not enforced against, my considerations are limited to the sections of fencing referenced in the enforcement notice in my assessment below.

former would be significantly lower in height and the latter would be less visually prominent in public views. These fallback positions thus are due very little weight and do not justify the appeal fencing.

9. I conclude then on the main issue that the appeal fencing results in material harm to the character and appearance of the area. In this way it conflicts with Policy ENV 1 of East Cambridgeshire Local Plan (2015) (LP) which states that new development should demonstrate a positive, complementary relationship with existing development including as regards location, scale, form and design. There is a failure to accord also with the requirement of Policy ENV 2 that all development is designed to a high quality and enhances and complements local distinctiveness.
10. Policy EMP 5 which relates to proposals for equestrian development is also applicable since the fencing is intended for stud security and animal welfare. There is conflict also with this policy which stipulates that the siting, scale and design of the development is in keeping with the area's character.

Other Matters

11. The appellant outlines that the fencing was erected to provide security for the stud operation which has high value bloodstock on site and has been subject to a burglary. Animal welfare concerns related to light penetration from car headlights are also cited as a reason for the erection of the fence. As referenced above, the appellant comments that a 1 metre high fence which could be constructed under PD rights would not address these concerns, and also that established vegetation prevents construction of a higher fence set back from the road.
12. I accept that a 1 metre high fence would not have the same security benefits as the appeal fencing. However, it is not uncommon for roadside boundaries to have high hedging behind a low fence to provide enhanced security, which would likely also mitigate against welfare concerns. Further, while there is some vegetation along site boundaries, there remains a long stretch along the A1304 where the fencing could be set further back and indeed, fencing could be set back behind established vegetation. In any event, as the Council comments, it would appear that a good deal of the fencing surrounds the plot of No 150, rather than immediately surrounding the stud buildings.
13. Drawing these matters together, on the available evidence, considerations related to animal welfare and security are due a low level of weight.

Conclusion on Appeal A ground (a) and the DPA, and on Appeal B

14. The appeal development results in material harm to the character and appearance of the area. In view of this, I find conflict with the development plan, read as a whole. No material considerations are advanced which indicate a decision other than in accordance with the development plan. For these reasons, the Appeal A appeal on ground (a) and Appeal B fail, and planning permission shall be refused on the DPA.

Appeal A - The appeal on ground (f)

15. This ground is that the requirements of the notice exceed what is necessary.

16. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice in this case requires reduction in the height of the fencing to one metre suggests that its purpose is to remedy the injury to amenity.
17. Under this ground, the appellant argues that the requirement to reduce the height of the fence to 1m is excessive to remedy the injury to amenity and that conditions to require additional planting or painting the fence a different colour would overcome any harm. However, I found under ground (a) above that these conditions would not overcome the injury to amenity identified.
18. No other lesser steps have been identified which would remedy the injury to amenity, and no other such lesser steps are obvious to me. The ground (f) appeal therefore does not succeed.

Appeal A - the appeal on ground (g)

19. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
20. The appellant suggests that the three-month compliance period stated in the notice is too short, taking into account that an alternative boundary treatment to provide security will still be required. A period of six months is requested.
21. In my view, a six-month compliance period would strike the right balance in resolving the visual harm fairly swiftly whilst providing the appellant with time to consider alternative options to provide security and to seek to arrange a contractor to undertake works, along with time to carry out the works. The appeal on ground (g) therefore succeeds.

Appeal A – Overall Conclusion

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

Appeal B Overall Conclusion

23. For the above reasons the appeal does not succeed.

Appeal A Formal Decision

24. It is directed that the enforcement notice is varied by in paragraph 6 deletion of the wording 'Three (3) months' and substitution of 'Six (6) months'.
25. Subject to the variation, 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.

Appeal B Formal Decision

26. The appeal is dismissed.

V Bond

INSPECTOR