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# Appeal Decision

Site visit made on 30 May 2023

**by Robin Buchanan BA (Hons) MRTPI**

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

**Decision date: 12 June 2023**

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**Appeal Ref: APP/T2215/D/22/3300228**

**Rowhill Mount, Rowhill Road, Wilmington, Kent DA2 7QG**

- 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 and Mrs Danny Andrews against the decision of Dartford Borough Council.
  - The application Ref DA/21/01864/FUL, dated 14 December 2021, was refused by notice dated 14 April 2022.
  - The development proposed was described as 'part-retrospective planning application for the erection of a replacement front boundary wall, fencing and gates, as well as associated works'.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The development has been carried out. It comprises a close boarded fence (the CBF), a weld mesh fence (the WMF), two similar metal railing fences (the MRF) and a brick wall and piers with metal railings on top and metal railing gates (the BW). The Council did not object to the WMF or the BW, other than regarding potential impact on trees, nor the associated works. I have determined the appeal on this basis.
3. In its decision notice the Council has cited policies from its emerging Local Plan Pre-Submission Document, September 2021 (the LP). This plan was submitted to examination in December 2021. Although the LP is at an advanced stage of preparation, all except Policies M11 and M13 referred to by the Council are subject to unresolved objections. I have not, therefore, taken the other LP Policies into account in determining the appeal.
4. I have also dealt with another appeal (Ref: APP/T2215/D/22/3295132) on this site. It is the subject of a separate decision.

## Main Issues

5. The appeal site is in the Green Belt and the main issues are:
  - whether the CBF or the MRF is inappropriate development in the Green Belt, having regard to local and national planning policy;
  - if the CBF or the MRF is inappropriate development, the effect on the openness of the Green Belt;

- the effect of the CBF and the MRF on the character and appearance of the area, including the effect of these fences and the WMF and the BW on trees protected by a tree preservation order; and
- whether any harm by reason of inappropriateness, or any other harm, is clearly outweighed by other considerations to amount to very special circumstances required to justify the development.

## Reasons

### *Planning policy*

6. Policy CS13(a) of the Dartford Core Strategy 2011 (the CS), Policy DP22(1) of the Dartford Development Policies Plan 2017 (the DPP) and LP Policy M13 resist inappropriate development in the Green Belt. DPP Policy DP22(2) and LP Policy M13 set out that inappropriate development will only be approved in very special circumstances.
7. These policies are consistent with objectives of the National Planning Policy Framework (the Framework) to protect Green Belt land and to regard the construction of new buildings as inappropriate development in the Green Belt. The Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

### *Whether inappropriate development*

8. There is no dispute that constructing the CBF and the MRF is 'development'. The Framework does not define 'building' but section 336 of the 1990 Act<sup>1</sup> does. It includes '*any structure or erection, and any part of a building, as so defined*'. On this basis the CBF and the MRF are buildings for the purposes of the Framework.
9. The appellants allege that the Council treated a previous planning application for a similar close boarded fence elsewhere at the appeal site as not inappropriate development in the Green Belt<sup>2</sup>. However, the excerpt from the Council officer report provided does not explain the Council's position on inappropriate development (or openness) in that case. The appellants have therefore not demonstrated that the Council has been inconsistent in its approach to close boarded fencing at the appeal site (in either respect).
10. The appellants have not sought to justify the CBF or the MRF by any exception to inappropriate development in the Green Belt set out in the Council's adopted or emerging development plan or in the Framework, including paragraph 149(c)<sup>3</sup>. There have been no other representations from the appellant as to why either fence would not constitute inappropriate development.
11. Accordingly, I find that the CBF and the MRF result in the construction of buildings and are inappropriate development in the Green Belt. Consequently, this development does not comply with CS Policy CS13(a), DPP Policy 22(1) or LP Policy M13.

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<sup>1</sup> Town and Country Planning Act 1990 (as amended)

<sup>2</sup> 14/00059

<sup>3</sup> The Council has referenced the equivalent 'paragraph 145' from a previous superseded version of the Framework

### *Openness of the Green Belt*

12. The CBF has timber boards supported by concrete posts and gravel boards. It is narrow in cross-section but is 2m tall and over 50m long. It is therefore a significant 'solid' vertical and horizontal structure with substantial surface area. Although running along part of the appeal site boundary, the CBF is close to the edge and gives an overbearing pronounced sense of enclosure along a significant part and one side of this section of Rowhill Road. It is a strong linear barrier that cuts through this part of the Green Belt. As such it has appreciable permanent spatial and visual presence and considerably reduces openness. The low timber post and rail fence (the PRF) along the back edge of the verge that it replaced was innately a more 'open', less enclosing structure so its removal does not off-set the effect of the CBF on openness.
13. The MRF is in two short rows 2m high either side of the BW, largely angled away from the road, enclosing two small sections of the appeal site boundary. A lower horizontal band contains more numerous and closely spaced vertical rails than an upper band, all supported by horizontal rails and metal posts. Though permanent in nature this inherently mainly open structure is limited in extent with little spatial and visual presence; more so than a previously approved 2m close boarded fence (the previous fence) that it replaced on one side. As such it causes no material harm to openness.
14. Part of the previous fence has been replaced by the WMF. The WMF is innately a more open structure but this part of the previous fence did not face Rowhill Road. Part of the previous fence has also been replaced by the BW but it is set further back from the road and contains a row of railings along the top, so overall the BW is a more open structure.
15. Nevertheless, the loss of openness due to the CBF does not preserve the openness of the Green Belt, which is one of its essential characteristics. As a result, the CBF is contrary to the Council's objectives for CS Policy CS13(a), DPP Policies DP22(1)(2) and (7) and LP Policy M13. It also conflicts with the fundamental aim of Framework paragraph 137 to keep land in the Green Belt permanently open.

### *Character and appearance*

16. The appeal site contains a large, detached house (Rowhill Mount) in extensive landscaped grounds. Though not far from the main built-up area of Hextable the site is in the countryside. This part of Rowhill Road is a narrow-unmade lane. While there is some close boarded fencing, including around part of the appeal site, it is still mainly edged by trees, hedgerow and shrubs and, on one side opposite the site, a similar fence to the PRF which allows foliage to appear through and over it as part of a landscaped verge. The few other dwellings near the site are also mostly set back from the lane and sporadic in siting. The lane retains a distinct verdant, rural feel in contrast to more densely developed residential development and associated domestic paraphernalia in Hextable.
17. On the south side of the BW the MRF replaced a short section of the previous fence which was dark stained with timber posts and gravel boards. On the north side the MRF replaced part of the PRF. The CBF replaced the rest of the PRF. This part of the site had therefore made a significant positive contribution to the distinctive character and appearance of the area.

18. The light colour of the CBF timber boards is conspicuous. While there is no certainty these would weather to a darker colour a condition could ensure they were stained dark brown. This would match the close boarded fence elsewhere at the site further along the lane and better assimilate this part of the CBF against background tree trunks or branches. A condition could also ensure additional planting along the verge to eventually screen these parts of the CBF.
19. However, the CBF has significantly increased (almost doubled) the perimeter of 2m high solid close board fencing at the site, which now runs along most of this part and side of the lane. It is also plainly more substantial in form than the PRF it replaced and no longer allows planting to bleed through from the site into the verge. This gives a stark, overly hard edge to the lane, manifestly out of kilter with the similar PRF opposite. While the entire close boarded fence cannot be seen at once its unexpected continuity and presence is gradually revealed to passers-by as they traverse along the lane and around the bend.
20. The light grey smooth cast concrete posts and gravel boards are an overtly manufactured feature of the CBF, repeated in sequence along it. They are conspicuous in public views in both directions along the lane and give the CBF a manifestly urban impression out of keeping with its rural setting. Even if the concrete could be painted or stained a dark colour it would retain an engineered look, distinctly different to timber posts and gravel boards used in the close boarded fencing elsewhere at the site along the lane. Planting along the verge would not overcome these inherently undesirable features.
21. I have been referred to some other close boarded fencing with concrete posts in the lane. However, it is relatively short with few concrete posts and set much further back from the lane edge. Other boundary treatments are lower, not as long or are walls, including in the more built-up part of the lane further to the northeast. These are therefore not directly comparable and do not have the same adverse effects.
22. The MRF is seen in a more limited context and as part of the BW and vehicular entrance into the site, including that the railings match the gates and the railings along the top of the wall. Their mainly black colour and mostly narrow profile recede against a background of tree trunks and other foliage or branches within or next to the appeal site, some of which partly protrude through the railings reducing their prominence. Additional landscaping could also have this effect and be required by a planning condition. The setback and angled alignment to the lane means that the MRF does not intrude significantly into the wider streetscene and there are metal railings (or gates) at two other properties near the site in the lane (Beacon Hill and Oakleigh Farm). The MRF is therefore compatible in this part of the lane.
23. The appellant's tree report<sup>4</sup> has been prepared by a suitably qualified professional. Construction of the BW has not stressed trees protected by a woodland tree preservation order (the TPO)<sup>5</sup> nor would it cause stress in the future. There are no recommendations for any mitigation in these regards. This report did not consider the effect of the WMF, the CBF or the MRF on any other trees at the site which are also covered by the TPO. The WMF is supported by thin metal posts and though the CBF and the MRF posts are more substantial these do not intrude into a large part of any root protection area. There is no

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<sup>4</sup> Tree Survey/Arboricultural Impact Assessment by Alltree Consultancy Ltd, 26 May 2022

<sup>5</sup> TPO No.5 1978

evidence that the integrity of trees important to the overall visual amenity of the area would be lost because of this development and these works.

24. Nevertheless, I find that the CBF causes significant unacceptable harm to the character and appearance of the area. It does not therefore comply with DPP Policies DP2 and DP7 or with LP Policy M11. Amongst other things these policies seek to reinforce and enhance positive aspects of the local environment, create high quality places with a sense of place and ensure that development does not erode local character.

### *Other considerations*

#### Personal circumstances

25. The appellants own two Rottweiler dogs, kept off-leash in part to deter crime at the site such as burglary. The CBF provides a means to restrain these dogs from physically interacting with people using the lane (including for safety reasons) and avoids potential distractions to the dogs, thus undue stress to people and the dogs as well as reduced noise and disturbance. The CBF also improves security in this secluded location by deterring means of access and prevents casual observation of some of the site or the house from this part of the lane. I have no reason to believe that properties in nearby Swanley and in rural areas of Kent are not susceptible to burglary or that this is not a national phenomenon.
26. Such preferences are private benefits and would prevail for the duration of the appellants occupation of Rowhill Mount. There is no certainty that future occupiers of the house would require the CBF for these same reasons. These personal circumstances have modest weight in support of this development.

#### Alleged permitted development

27. The appellants say it was unreasonable of the Council to remove permitted development rights by a condition attached to a previous planning permission for a replacement dwelling at the site. No details of this condition or its scope are before me in this appeal but this matter is not within the remit of this appeal. In any event, the CBF is adjacent to a highway used by vehicular traffic and it exceeds 1m in height as well as the height of the original PRF. Having regard to the relevant limitations and conditions<sup>6</sup>, this means of enclosure is not permitted development. There is therefore no fallback position in this respect and this consideration has no weight in this appeal.

#### Other matters

28. The appeal site is not in an area of outstanding natural beauty or in a conservation area and is not at risk of flooding. The house is not a heritage asset and there are no nearby listed buildings, public rights of way (other than Rowhill Road) or site of special scientific interest. The absence of harm in these regards is a neutral factor.

### **Green Belt Balance**

29. The CBF and the MRF are inappropriate development which is, by definition, harmful to the Green Belt. Moderate harm to the openness of the Green Belt

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<sup>6</sup> Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 1995 (as amended)

arises due to the CBF and is at odds with local and national policy to protect the Green Belt. Framework paragraph 148 sets out that any harm to the Green Belt carries substantial weight.

30. The CBF and the MRF are important to and valued by the appellants. However, there is no compelling evidence or other convincing justification that the CBF is the only alternative to meet the needs suggested. Whereas the CBF (or a future replacement) would be a permanent structure in the Green Belt and harm in this respect would endure.
31. In addition, the design, siting and linear extent of the CBF causes significant unacceptable harm to the character and appearance of the area and, as such, has appreciable weight in this appeal.
32. I recognise that dismissing the appeal would interfere with the appellants' private rights to enjoyment of their possessions, to family life and their home<sup>7</sup>. Nevertheless, these factors must be weighed against the wider public interest.
33. For the reasons given above, the development harms the Green Belt and the character and appearance of the area. I am satisfied that these legitimate aims can only be adequately safeguarded by the refusal of permission for the development. I therefore consider that dismissing the appeal for these reasons would be a proportionate outcome.
34. The other considerations outlined above are, therefore, individually and cumulatively of insufficient weight to clearly outweigh the totality of the harm in this appeal. Consequently, very special circumstances to justify the development do not exist. As such, it does not comply with DPP Policy DP22(2), LP Policy M13 or Framework paragraph 148.

### **Planning Balance and Conclusion**

35. The development does not accord with the adopted and emerging development plan taken as a whole and it conflicts with the Framework. There are no material considerations which outweigh these findings.
36. Consequently, for the reasons given above the proposal is unacceptable and therefore the appeal does not succeed.

*Robin Buchanan*

INSPECTOR

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<sup>7</sup> Article 1 of the First Protocol and Article 8(1) of the Human Rights Act 1998