



Appeal Decision

Site visit made on 24 October 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2023

Appeal Ref: APP/W3520/C/23/3323876

3 Rooks Mead, Thurston, Bury St Edmunds, Suffolk IP31 3FZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr G Last against an enforcement notice issued by Mid Suffolk District Council.
 - The notice was issued on 10 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a 1.8m close boarded fence adjacent to the highway and the erection of a 1.8m gate and posts.
 - The requirements of the notice are to:
 - A) Remove the close boarded fence and erect post and rail fencing but not exceeding 1m in height from adjacent ground level, as indicated on plans approved for DC/21/01485 and DC/21/01207, with landscape planting inside the boundary in accordance with approved plans.
 - B) Remove the gate and associated posts and replace with the picket fencing not exceeding 1m in height, as indicated on the approved plans for DC/21/01207, in order to provide the visibility splay for the site entrance as shown on the approved plans.
 - The period for compliance with the requirements is one month.
 - 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 has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of one month and the substitution of four months as the period for compliance.
2. Subject to the variation, the appeal is dismissed, planning permission is refused for the application deemed to have been made under section 177(5) of the 1990 Act as amended and the enforcement notice is upheld.

Preliminary Matters

3. The Council has advised that the Inspector's report on the examination of the Babergh and Mid Suffolk Joint Local Plan (the JLP) has been published and that the Inspector has concluded that subject to modification the JLP is sound. It has provided copies of the relevant policies and given the advanced stage of the JLP I shall attribute significant weight to them. However, the policies do not attract full weight because the JLP has not yet been adopted.
4. The appellant has had the chance to comment on the relevance of policies in the JLP to the appeal, but no comments were received.
5. 3 Rooks Mead is part of a larger housing development which is also the subject of an enforcement notice and appeals that I am dealing with (Appeal Refs).

APP/W3520/C/23/3319406 and APP/W3520/C/23/3319407) (the Barrells Road appeals).

6. The appellants in respect of the Barrells Road appeals have submitted a letter from Suffolk County Council dated 30 October 2023 (the SCC letter) which contains information regarding visibility splays at the site. I have asked the Council for comments on the relevance of the information to all three appeals and its view on whether, if it is accepted as late evidence, this would give rise to injustice.
7. The Council's view is that the SCC letter is prejudicial to its case and may give rise to injustice. However, the information in the SCC letter is relevant to the case as it addresses one of the main issues in the appeal on ground (a) and it could not have been submitted in accordance with the timetable for the appeal. Given that the Council has been made aware of its contents and has had the opportunity to provide its views, there would be no injustice were I to have regard to it.
8. In determining this appeal I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. From the evidence, my decision has the potential to affect persons with a protected characteristic for the purposes of the PSED.

Ground (a) and the Deemed Planning Application (DPA)

9. An appeal on ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Main Issues

10. The main issues are:

- The effect of the development on the character and appearance of the site and the surrounding area.
- The effect of the development on the use of the access to the site with particular regard to the safety of users of Barrells Road.

Reasons

Character and appearance

11. The gates, gate posts and fence all present a stark contrast to the natural appearance of the boundary treatment on the opposite side of Barrells Road and, on the basis of the evidence, in comparison with the appearance of the boundary before the development took place. As such, they are incompatible with their surroundings and have an adverse visual impact on the southern arm of Barrells Road.
12. The hedge planting which has been carried out has the effect of screening the close boarded fence. However, in the winter, when the hedge is not in leaf the screening effect will be reduced. Furthermore, the gates and gateposts do not benefit from any screening by the mixed native hedge.

13. The site of the housing development was previously in use as a commercial riding establishment. Therefore, it is reasonable to conclude that the construction of 9 houses has had a significant impact on the appearance of the site and the surrounding area.
14. Nevertheless being located on the edge of Thurston the housing site has an important role to play in the transition between the built up area of the village and its rural hinterland. In that context it is essential that the appearance of the roadside boundaries is treated sensitively to ensure that the development is compatible with its context and respects the character of the surrounding countryside. An important aspect of this are the roadside hedges, one of which has been retained on the frontage of the eastern arm of Barrells Road.
15. As a result of the gates, gate posts and close boarded fence the housing development as a whole does not successfully integrate into the wider landscape. Thus, even accepting that the introduction of nine houses has had an effect on the character of the area, the impact of the works which are the subject of the notice is not acceptable.
16. With the exception of the fence at No. 1, which is the subject of the Barrells Road appeals, the fences around the gardens of the other houses on the development are not as visually prominent as the gates, gate posts and fence which are the subject of the appeal. Also, there are no similar fences in the immediate site context. I do not have any information before me regarding the status of the fencing on the Mill Lane development which is referred to by the appellant.
17. Drawing all of these points together I find that the gates, gate posts and fence have a harmful effect on the character and appearance of the site and the surrounding area. The development is contrary to policies GP1 and H15 of the Mid Suffolk Local Plan (1998) (the Local Plan) and policy 9 of the Thurston Neighbourhood Plan. These policies require that proposals should maintain and enhance the character and appearance of their surroundings, that new housing should be consistent with the character of its setting and that development is designed to minimise its impact on the high quality rural environment of Thurston. The development also does not accord with the National Planning Policy Framework which seeks to ensure that effective landscaping is provided in connection with new development.
18. I do not find policies LP17 and LP24 of the JLP to be relevant to this main issue.

Safe access to/from the site

19. There are two accesses serving the housing development and it is the access off the southern section of Barrells Road which is relevant in this appeal. The requirements of the notice only relate to works within Plot 2 which is now known as No. 3 Rooks Mead. These effect the visibility splay to the south, towards the railway. The visibility splay to the north is associated with Plot 1, now No. 1 Rooks Mead, and is the subject of the Barrells Road appeals.
20. For that reason, notwithstanding the appellants' references to the northern visibility splay in their submissions, my assessment in this appeal relates only to the southern visibility splay.
21. The Council refers to the Highway Authority assessing the access and concluding that the required visibility splay is 43m. The measurement for the

visibility splay to the left (southwards) which is described as a 'current measurement', is quoted as 2.4m x 12m.

22. The SCC letter submitted by the appellants postdates this assessment and confirms that a visibility splay of 2m x 33m is acceptable. Given that the Council's submissions are drawn from advice provided to it by the Highway Authority it is reasonable to regard this as being an update to the Council's position. Nevertheless, the visibility splay which is currently available to the south falls significantly short of both the Highway Authority's initial advice and its updated position.
23. The appellant has submitted a traffic statement by G H Bullard and Associates LLP dated 24 March 2023 (the Traffic Statement) in support of his appeal. The appellant argues that on the basis of an assessment of traffic speeds which was carried out in March 2023 and the application of standards, a visibility splay to the south of 2m x 13m may be acceptable.
24. However, the Automated Traffic Count was carried out at a point 15m south of Stoney Lane. I accept the argument of the Council that at this point vehicles would be likely to be slowing down in anticipation of giving way to other vehicles at the junction. This casts doubt on the reliability of the traffic speed data to demonstrate that a visibility splay 2m x 13m would be adequate.
25. The inconsistency between the information on vehicle speeds set out in the SCC letter and the Traffic Statement further adds to the lack of clarity regarding traffic speeds on the southern arm of Barrells Road.
26. At my site visit I observed that there are limited levels of traffic on Barrells Road and generally traffic speeds appear to be low. However, the position of the gates, gate posts and fence are such that visibility to the south is severely restricted. A vehicle exiting the site would need to be edged out onto the carriageway for the driver to be able to see oncoming vehicles/cyclists/pedestrians approaching from the direction of the railway bridge. Even taking account of the low speeds and limited traffic, this manoeuvre could compromise the safety of road users. The practical effect of the parking of cars on the road associated with the use of the allotments could also exacerbate this situation, notwithstanding whether they are parked legally or otherwise.
27. Drawing all these points together, it has not been shown that the visibility splay to the south which is afforded as a result of the position of the gates, gate posts and fence is adequate to ensure that residents can exit the site safely. Similarly the current visibility splay is not adequate to ensure that drivers of oncoming vehicles would be able to see vehicles exiting the site in sufficient time to avoid collisions or unsafe manoeuvres on the highway.
28. On the basis of the evidence, the use of the access serving the development, in respect of the visibility splay to the south, is harmful to the safety of the users of Barrells Road. Therefore the development is contrary to Policy T10 of the Mid Suffolk Local Plan (1998) which requires that regard be had to the provision of safe access to and egress from the site when considering planning applications for development.

Other Matters

29. The appellant says that the fence is required to provide privacy in the rear garden. There is a significant change in level between Barrells Road and the site and potential for users of the road to look down into the private space. However, it has not been shown that a close boarded fence is the only solution to this problem nor that a post and rail fence and natural planted screen as originally proposed would not provide a similar level of protection on maturity.
30. The change in land levels between the road and the garden is also a matter of concern to the appellant given the potential for vehicles to topple into the garden from the road. He has provided a photograph showing two sizeable vehicles passing on Barrells Road which is comparatively narrow. However, again, I am not persuaded that a close boarded fence is the only solution nor that an alternative natural boundary treatment would not provide road users with an adequate signal as to the location of the edge of the road.
31. The appellant also refers to disturbance arising from lights on vehicles on the railway bridge and the screening effect of the fence. There is no substantive evidence to demonstrate the extent of this impact or whether the effect on the living conditions of the appellant and his family is significant. Furthermore, there is no information to show that the full extent of the fencing which has been erected is necessary to reduce any impact so as to reduce any harm to an appropriate level should it arise.
32. The appellant says that a close boarded fence is needed for security and refers to a child who has a disability which means that they need a secure garden environment. In practice the removal of the fence and its replacement with a post and rail fence and hedge, as required by the notice, could, at least in the short term until the hedge reached maturity, present a risk to the child. This would not be in the best interest of the child and would have a greater impact on the child as a person with a disability than for someone without this protected characteristic.
33. In these respects it has been established that the best interest of the child is a primary consideration, and no other consideration is inherently more important. Furthermore, the PSED is engaged in the appeal and the decision must be proportionate to achieving legitimate planning aims.
34. In respect of the PSED the retention of the gates, gate posts and fence would enable a disabled child to use the rear garden safely. This would eliminate discrimination against them and would advance equality of opportunity.
35. I find that the adverse effect of the provision of the gates, gate posts and fence on the character and appearance of the site and the surrounding area is outweighed by the best interests of the child and the opportunity to eliminate discrimination and provide for equality of opportunity. However, when set against the legitimate aim of providing safe conditions for the users of Barrells Road I find that dismissing the appeal is a proportionate response.
36. Notwithstanding the appellant's concerns about security and other matters, he suggests that as an alternative to compliance with the requirements of the notice the fence could be reduced in height. This would reduce the visual impact of the fence and it would be screened more quickly by the hedge. However, a reduction in the height of the fence only would not address my

concerns about the harmful impact of the gates and gate posts in terms of both their effect on the character and appearance of the area nor the safety of users of Barrells Road. Furthermore, in the absence of clarity regarding the necessary visibility splay, I am not persuaded that a reduction in the height of the fence would address my concerns in this regard either.

Conclusion on ground (a)

37. The development does not accord with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal on ground (a) should not succeed, and that planning permission should not be granted for the DPA.

Ground (f)

38. An appeal on ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

39. The notice requires the removal of the gates, gate posts and fence and that picket fencing/post and rail fencing be erected in accordance with the approval of reserved matters for Plot 2 and the planning permission which was granted for the extended garden area for Plot 2. Therefore the purpose of the notice is to remedy the breach of planning control.

40. The appellant argues that the height of the fence could be reduced. I have addressed this alternative as part of my reasoning on ground (a). The appeal does not succeed on ground (a) and given that the purpose of the notice is to remedy the breach of planning control, any lesser step than that would not remedy the breach.

41. For the reasons set out above the appeal on ground (f) does not succeed.

Ground (g)

42. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed.

43. Given the extent of the fencing to be removed and replaced, it may take more than one month to arrange and complete the works and carry out the hedge planting. However, I consider that an amended compliance period of six months as suggested by the appellant is not justified. In any case, the optimum planting period for the associated hedge would fall outside the six month period in this case. I find that a compliance period of four months would be reasonable.

44. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Conclusion

45. 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.

Sarah Dyer

INSPECTOR