



Appeal Decision

Site visit made on 24 September 2024

by Eleni Marshall BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 October 2024

Appeal Ref: APP/W1525/D/24/3346732

14 Ongar Road, Writtle, Chelmsford, Essex, CM1 3NU

- 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 Robert Moore against the decision of Chelmsford City Council.
 - The application reference is 24/00450/FUL.
 - The development proposed is retrospective application for the retention of fence to northeastern boundary and construction of new access onto Ongar Road.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issue is the impact of the proposal upon i) the setting of the locally listed building and the character and appearance of the area, ii) a tree subject to a tree preservation order and iii) highway safety.

Reasons

Setting of the locally listed building and the character and appearance of the area

3. The appeal site is a detached residential dwelling which is a mid-Victorian double frontage dwelling which is included on the Writtle Local Register, as a good example of its type, and is considered by the council to be a non-designated heritage asset. At the time of my site visit, I noted the siting being close to Ongar Road and its location on the approach from The Green where, on my approach from that direction, I note that there is a split in the road with those wishing to turn left, on Ongar Road, being directed to an area of the junction which is directly opposite the appeal site itself. In addition, when approaching from Lordship Road, the northeastern boundary of the appeal site is highly visible due to set back of the adjacent property and unsurfaced track (known as The Chase) which runs along the appeal site boundary. This track is a public right of way (a footpath). Overall, I find the appeal site to be prominent and highly prominent and visible due to the site characteristics.
4. I note, from the plans and my site visit, that the as built fencing along the northeastern boundary of the appeal site extends for a length which exceeds that which is the subject of this appeal. For the avoidance of doubt this appeal is only to be based upon a consideration of the length of the fence denoted by the blue line on the submitted plans. In addition, I note that the plans indicate that the fencing is to be in the region of 1.85 metres in height despite comments, from the Council, that as constructed the fencing exceeds this. The proposal before me is to be considered on its own merits as per the plans.

5. The proposed fencing is a timber vertical boarded fence, timber posts and concrete gravel boards extending to in the region of 11.5 metres in length along the northeastern boundary. I find that the first refusal reason is specific in it being based upon the panel fencing and not the access, onto Ongar Road, as noted within the development description within the overall proposals. I find that the fencing in question results in high level panel fencing along the boundary with The Chase (the public right of way) that extends forward of both the host dwelling, the immediately adjacent dwelling as well as being up to the edge of the pavement.
6. I note that there was previously a tree lined boundary to the edge of The Chase and this has been removed which results in a visually inappropriate view of panelled fencing, against the setting of the dwelling itself, within what was a previously verdant setting according to the imagery within the appellant's statement of case. I note, from correspondence between the then applicant, and the Council, that the site was overgrown, but I have no evidence before me to justify the works that have taken place in the context of the character and appearance of the area and the setting of the dwelling as a non-designated heritage asset.
7. The appellant's statement, in paragraph 7.1, directly quotes four paragraphs of the Council's assessment as to character and appearance but does not go on to directly challenge the Council's statement that there are no examples of any lawful high level solid boundary treatments within the vicinity. The appellant states that the fence at 1 Lordship Road is stated to been installed between July 2019 and October 2021. I do not find this commentary, within the appellant's statement, sufficient to conclude the Council consider the fence to be lawful in light of the specific comments made to the contrary within their assessment. Based upon the evidence before me, therefore, the examples high-level boundary treatments in the wider area are, therefore, likely unauthorised which limits the weight which I can apply to them in terms of their contribution to the character of the area within the consideration of this proposal.
8. I noted, during my site visit, that there are examples of high-level timber boundary treatments alongside The Chase, however, the adjacent example does not extend to the edge of the pavement. The visual implication of that fencing is not comparable to that which is before me. Even if I had found, for example, that the proposal was consistent with the type of fencing seen within the locality of the appeal site, and that this type of fencing was not uncharacteristic, this would not alter the negative impact I have identified in relation to the fencing and its siting on the boundary, and being viewed directly against/within the setting of, a locally listed building. The proposal would be contrary to Chelmsford Local Plan 2020 (LP) Policy DM14 which requires proposals to retain the significance of a non-designated heritage asset, including its setting. Where proposals would lead to harm to the significance of a non-designated heritage asset proposals should demonstrate that the level of harm is justified following a balanced judgment of harm and the significance of the asset and that the harm is minimised through retention of features of significance and/or good design and/or mitigation measures.
9. The proposal would also be contrary to LP Policy DM23 which requires proposals to respond to context and respect the character and appearance of the area in which it is located as well as being compatible with its surroundings

having regard to scale, siting, and boundary treatments. The proposal would also be contrary to paragraph 209 of the National Planning Policy Framework 2023 which, in a similar manner to LP Policy DM14, requires the effect of an application on the significance of a non-designated heritage asset to be taken into account in determining the application.

10. The Making Places – Supplementary Planning Document 2021 (SPD) notes that boundaries are important in defining the character of a place and the quality of a street and that consideration should be given to the most appropriate form of boundary treatment for any development type. Security is, of course, a consideration but the use of high-quality materials for boundaries are of particular importance where they would be publicly viewable as is the case with the appeal proposal. The Writtle Neighbourhood Plan 2021 (NP) is also clear that boundary features should be selected which are complementary to the streets and that enhance the rural character of the village with the use of panel fencing in publicly visible locations being avoided with traditional low fencing and railings being more appropriate for the village setting.

Tree preservation order

11. No Arboricultural assessment has been submitted in support of the proposals in relation to a Yew Tree which is protected under Tree Preservation Order (TPO) reference TPO/2000/61. The Council state that the extent of the works, and their proximity to the Yew Tree, mean that it is considered likely that significant roots have been severed/harmed and no landscaping strategy has been included within the application to compensate for any potential harm as a result of the development. Works to the tree have been undertaken, however, it is stated by the appellant (appendix 8 to their statement of case) that application 23/05122/TPO approved the works undertaken to the protected tree as set out within that description. I have no evidence before me, therefore, to support that the protected tree has been cut without permission.
12. The Council's reference to the extent of works appears to suggest a consideration of the remainder of the fencing, which is noted to have been constructed, however, not all of the constructed fencing falls within the scope of this application as demonstrated on the plans before me. The length of fence which is the subject of this appeal is noted to have likely encroached into the potential root protection zone of the tree in question. Despite this, it is evidenced, within the appellant's submissions, that there was a previous fence which stood in the same location along the boundary line. The replacement fencing has utilised the same fence post holes as before to avoid causing damage to the tree in question.
13. Overall, whilst I can appreciate the Council's understandable concern, as to the protection of the tree in question, my assessment of the proposal is limited to that length of fencing which is the subject of the appeal and not the full extent of the fencing which has been erected on site. Whilst it is, evidently, preferable to support proposals with appropriate arboricultural reports I find that the fencing was to an extent a replacement and included use of existing fence holes. I have insufficient evidence, therefore, that the proposal has harmed the health of the protected Yew Tree.
14. On the basis of the evidence before me and, again, reiterating that this appeal proposal does not consider the extent of the entire north eastern boundary fence at the appeal site, the proposal would comply with LP Policy DM17 which

supports that planning permission will be granted for development proposals that do not result in unacceptable harm to the health of a preserved tree, the overarching objectives of the NP in relation to Table 2 which seeks to preserve the natural appearance of the unmade track known as The Chase as well as the overarching objectives of the Framework which, in paragraph 136, is clear that trees make an important contribution to the character and quality of urban environments.

Highway safety

15. The proposal before me results in utilisation of the side of the appeal site as a parking area with vehicular access being from Ongar Road. This is, therefore, an intensification of the existing (now previous), accessibility to the property in terms of the frontage of Ongar Road. It is stated that the space to the west and the access to the rear of the property, via The Chase, was substandard within the appellant's statement. The appellant's comments regarding access to, and safety of, the space to the west and use of The Chase were set out within their response to the original Highway Consultee response.
16. I do not find that there is demonstrable evidence that removal of the use of The Chase, for access to the rear of the property, would result in notable improvement to highway safety. The appellant outlines that, if this appeal should fail, they would resort to on-street parking which reduces the weight I consider applicable to the actual use of The Chase as a comparable impact to highway safety – the appellant has also stated that the suitability of that access was such they could not get their car into the space. If this appeal were to fail, there is limited evidence that the appeal would utilise the access point along The Chase with any regularity. Whilst I acknowledge that the appellants could, legally, park outside the appeal site, the appellant has outlined that using such space has put them in extreme danger previously. On this basis I find it unlikely that parking would actually be utilised in this location, and I attribute limited weight to this as a fallback position within this appeal. The appellant would be more likely to find alternative parking, on-street, in a safer location as close as they could to the appeal site if this appeal failed.
17. The parking area is demonstrated within the plans and evidence provided as being intended for two vehicles. The parking arrangement within the images provided is inconsistent with the spaces shown on the submitted plans. I acknowledge the imagery provided, on page 19 of the appellant's statement, but whilst it may allow vehicles to leave in a forward gear – they appear to do so at an angle which, in turn, could still impact upon visibility (notwithstanding visibility to the west as discussed below). I do not find that such imagery is a substitute for evidence in the form of vehicle tracking details. I also have further concern that the space is also capable, in basic terms, of accommodating further vehicles as a result of visitors to the appeal site. This would then remove available turning space and result in vehicles entering or leaving in reverse. I have considered the imposition of condition on this point, however, combined with my wider concern as to highway safety this would not, in this case, result in the appeal being successful.
18. The fencing that has been erected up to the edge of the pavement would also impact upon visibility for users of The Chase which would be to the detriment of users and highway safety, however, this would likely be comparable to the

visual impact of the existing trees previously in place on the boundary of the appeal site so would be insufficient to warrant refusal based upon that element.

19. The appellant considers visibility in the context of the western approach. The Highway consultee confirms that the visibility splay should be 2.4 metres by 43 metres as measured from the nearside carriageway edge. The proposal fails to meet this measuring, on the appellant's submission, at 37m to the nearside. The proposal does, therefore, provide substandard visibility. Again, I acknowledge the existing space to the edge of the appeal site, but the proposal would result in greater, more regular, use by at least two vehicles by comparison with substandard visibility closer to the junction with The Green.
20. Based upon the evidence before me the proposal would not provide safe and suitable access to the site resulting in an unacceptable degree of hazard for both emerging and approaching vehicles and other highway users. The proposal would be contrary to paragraph 115 of the Framework that requires development only be refused on highways grounds if there would be unacceptable impact on highway safety and paragraph 116 which seeks to minimise the potential for conflict.

Other Matters

21. The appellant's case largely rests upon elements of the appeal proposal being permitted development as a fallback position. I also note, correspondence between the then applicant's agent and the Council outlining both alternative schemes as well as consideration of the proposal in the context of the general permitted development order (GDPO). The appellant has also submitted an appeal decision (APP/P2365/X/23/3331276 – Hundred End Farm) which considered Class B relating to access. The appeal at Hundred End Farm was specifically related to a Certificate of Lawfulness and, therefore, it was a direct requirement of that appeal to consider whether the proposal was permitted development in the context of S191(1)(b) of the Town and County Planning Act 1990.
22. I have taken this documentation into account, however, the proposal that is before me is made on the basis of an application for planning permission the starting point for determination is the Local Plan in accordance with S38(6) of the Planning and Compulsory Purchase Act 2004 taking into account material considerations. I acknowledge that fallback positions, which can sometimes be created as a result of permitted development rights, can be a material consideration. In this case, however, it is not my role as an Inspector (dealing solely with an application for planning permission) to determine whether a use or operation is lawful in order to determine whether an appellant is able to rely on permitted development rights as a fallback. This can only be formally determined by a lawful certificate application.
23. It is stated that the fencing could be constructed within the scope of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) which allows, in Schedule 2, Part 2, Class A (the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or means of enclosure) and that the access would be permitted under Schedule 2, Part 2, Class B (means of access to a highway) with hardstanding being permissible under Schedule 2, Part 1, Class F (hard surfaces incidental to the enjoyment of a dwellinghouse).

24. In such circumstances, for such consideration to carry any significant weight given my findings against the Local Plan, the relevant elements of the proposal contended to be permitted development should have submitted to the Council for consideration within the scope of a Certificate of Lawfulness. If refused an appeal would then consider, and assess, the proposal on that specific basis against the GDPO. Without such certification this severely limits the weight I can place upon the stated fallback positions.
25. I have no evidence before me that confirms the proposal in the context of permitted development as a whole or in part and, given that the success of this appeal would hinge entirely on the appellant's ability to implement similar proposals beyond the control of the Council, I find it would be inappropriate to attribute substantial weight to such fallback positions in the absence of certified evidence and inappropriate of me, within this type of appeal, to determine whether or not the proposal is consistent with the GDPO given my role within this type of appeal.

Conclusion

26. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be dismissed.

Eleni Marshall

INSPECTOR