



Appeal Decisions

Site visit made on 10 December 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2024

Appeal A Ref: APP/M1710/C/24/3337089

Land at Lot 4, Wishanger New Farm , Frensham Lane, Churt, Farnham GU10 2QJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Tatyana Kim against an enforcement notice issued by East Hampshire District Council.
- The notice was issued on 14 December 2023.
- The breach of planning control as alleged in the notice is within the last 4 years and without planning permission, the erection of boundary fencing of 2.5 metres in height adjacent to a highway.
- The requirements of the notice are to:
 - 1 To dismantle and remove from the land, all fencing, fence posts and gravel boards as identified in the approximate position with a heavy blue line and annotation marked in blue "Fence 2.5m in height" on the attached plan.
- The period for compliance with the requirement is: 4 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 has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed and subject to variation the enforcement notice is upheld.

Appeal B Ref: APP/M1710/W/23/3335638

Wishanger Manor, Frensham Lane, Churt, Farnham GU10 2QQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Holly Mitchell against the decision of East Hampshire District Council.
- The application Ref is 23725/064.
- The development proposed is a new boundary fencing.

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. Although the appellants are different for each appeal, both appeal developments relate to the same fence. Accordingly, to avoid duplication, I have determined them in a single decision letter.

Appeals A and B - The ground (a) appeal and the deemed planning application

Main Issue

2. The main issue is the effect of the fence on the character and appearance of the area.

Reason

3. The appeal site forms part of a substantial manor house set in extensive grounds. The extensive tree coverage and landscaped gardens create a sylvan setting. Within the immediate locality, there are some examples of boundary treatments with the road comprising close-boarded timber fences and walls. However, these are generally only short in length and form the access points to properties. Boundary treatments with roads are predominantly hedges and trees, which positively contribute to the sylvan setting.
4. The fence that is the subject of the appeals is 2.5m in height and extends a significant length along Frensham Lane. Due to its height and length, it creates an undue sense of enclosure that fails to reflect the otherwise spaciousness of this part of the sylvan setting. Moreover, the fence represents an urban form of development that appears incongruous against the natural backdrop of the trees and natural vegetation. This is exacerbated by both its significant height and length.
5. Whilst timber is a natural material I do not consider that the expanse of the fence has a natural appearance. It is clearly a manmade structure that jars with its natural setting.
6. I acknowledge the stone wall adjacent to the fence. However, this highlights the entrances to the property and is a common feature with the locality. The fence is higher than the stone wall, further highlighting its contrasting form and exacerbating its incongruity.
7. I find therefore, the fence significantly harms the character and appearance of the area. As such, it is contrary to Policies CP20 and CP29 of the East Hampshire District Local Plan: Joint Core Strategy, which seek to protect and enhance local distinctiveness, sense of place and tranquillity and seek exemplary standards of design and architecture with a high quality external appearance that respects the area's particular characteristics.

Other Matters

8. I have had regard to the examples of other timber fences and walls in the area as referred to me by the appellant. Although there are stretches of brick walls, in particular along Frensham Lane to the west of the site, this appears to be a retaining wall due to the difference in land levels between the road and adjacent land and therefore is likely to be necessary for highway safety reasons. With regard to the other timber fences, I have no planning history of these before me and therefore cannot be certain whether they need planning permission or not. Moreover, the setting of these fences is markedly different to the appeal fence, notably they do not have the same sylvan setting. In addition, the appeal fence is substantially longer in length than these examples of fences.
9. I note that a fence could be erected up to 1m in height under permitted development rights. However, such a fence would be significantly lower in height and therefore less visually harmful. Consequently, I do not attribute this fallback position any weight in favour of the proposal.

10. I acknowledge the appellant's argument that a previous appeal¹ for a 1.8m high fence in proximity of the appeal fence was dismissed, but not on the grounds of its effect on the character and appearance of the area. Whilst I do not have details of the proposed siting of the previous appeal fence, the appeal fence before me is significantly higher and longer in length. Therefore, its effect on the character and appearance of the area is likely to be significantly greater than the previous appeal fence. Accordingly, I do not find that this previous appeal decision weighs in favour of or against the current appeals.
11. The fence provides increased security for the appellant. However, I have not been presented with any alternative forms of security measures that have been discounted that would justify the harmful effects of the fence on the character and appearance of the area. Accordingly, I attribute limited weight to this matter.

Planning balance and conclusion on the Appeal A ground (a) appeal and the deemed planning application; and Appeal B

12. Although the fence provides increased security, I do not find that this outweighs the significant harm to the character and appearance of the area.
13. For the reasons given above, having regard to the development plan as a whole and all material considerations, planning permission should not be granted in response to either the ground (a) appeal against the enforcement notice and deemed application, or to the Section 78 appeal against the refusal of permission. Therefore, the Appeal A ground (a) appeal and the deemed planning application, and Appeal B fail.

Appeal A - The ground (f) appeal

14. This ground of appeal is 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.
15. Having regard to section 173(4) of the Town and Country Planning Act 1990 as amended and the stated requirements of the notice, it is reasonable to conclude that the purpose of the notice is to remedy the breach of planning control.
16. The appellant argues that the fence can be lowered to a height of 1m because such a fence could be erected under permitted development rights. Permitted development rights cannot be applied retrospectively to the existing fence. Nevertheless, a 1m high fence would have less of an effect on the character and appearance of the area and given that the appellant could erect such a fence under permitted development rights, requiring complete removal of the fence would be unlikely to achieve anything and therefore would be excessive, because the permitted development rights represent a realistic fallback position and is an obvious alternative that could be achieved with less cost and disruption.

¹ Appeal reference: APP/M1719/A/08/2065772

17. Accordingly, I shall vary the notice to include a requirement to reduce the height of the fence to no more than 1m in height. The ground (f) appeal succeeds.

The ground (g) appeal

18. This ground of appeal is that the period for compliance is unreasonably short.
19. The appellant argues that 9 months is required to ensure an alternative boundary can be sought. However, given the success on the ground (f) appeal, this is no longer necessary. I consider 4 months to be a reasonable period of time to reduce the height of the fence or remove it entirely.
20. The ground (g) appeal fails.

Formal Decision

Appeal A

21. It is directed that the enforcement notice is varied by the insertion of:

“Or,

2 to reduce the height of the entire fence so that it is no more than 1 metre above ground level.”

Following requirement 1 in paragraph 5.

22. Subject to the above variation, the appeal succeeds and the enforcement notice is upheld.

Appeal B

23. The appeal is dismissed.

A Walker

INSPECTOR