



Appeal Decision

Site visit made on 21 January 2025

by A Knight BA PG Dip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2025

Appeal Ref: APP/W3520/W/24/3348107

Land Rear of Plots 2 And 3 Rooks Mead, Thurston, Suffolk IP31 3FZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Last against the decision of Mid Suffolk District Council.
 - The application Ref is DC/24/02045.
 - The application sought planning permission for change of use of land to form gardens to serve Plots 2 and 3 without complying with a condition attached to planning permission Ref DC/23/02342 dated 15 March 2024.
 - The condition in dispute is No 2 which states:
"Notwithstanding Section 55 (2)(a)(ii) of the Town and Country Planning Act 1990 as amended and the provisions of Article 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order revoking and re-enacting that Order with or without modification):- no garage, car port, fence, gate, wall or any other means of enclosure, building or structure shall be erected on the site edged red, shown on Drawing no. 1234_14A received 12.3.21, but excluding the land shown hatched pink on the 1:1250 plan received 20.12.23, except pursuant to the grant of planning permission on an application made in that regard. For the avoidance of doubt, on the land hatched pink on the approved plan received 20.12.23, Permitted Development Rights will be retained."
 - The reason given for the condition is:
"To enable the Local Planning Authority to retain control over the development in the interests of the amenity of the locality and to safeguard local distinctiveness."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the application form the site was described as 3 Rooks Mead, Thurston, IP31 3FZ. I have used the site description from the decision notice and appeal form in the banner above, as it more accurately describes the land to which the condition subject of the appeal applies, and because the plan supplied with the appeal shows the dwelling at 3 Rooks Mead as being within the appellant's ownership but not part of the appeal site.
3. Whilst I was not met at the site as arranged and could raise no response from 3 Rooks Mead, I was able to undertake a sufficient assessment.

Background

4. In April 2020 outline permission Ref DC/19/05114 (the first permission) was granted for the erection of nine self-build dwellings. Of these, plots 2 and 3 contain two detached houses (No 2 and No 3). The appeal site comprises land to the

south of No 2 and No 3, but not the two houses themselves or the land immediately around them. The site is bordered to the west by Barrell's Road.

5. In May 2021 application Ref DC/21/01485 (the second permission) was granted for the change of use of the appeal site to residential gardens serving No 2 and No 3. Condition 3 of the second permission required, amongst other things, that boundary treatment landscaping be agreed in the interests of visual amenity, biodiversity and the character and appearance of the area. Condition 5 removed certain permitted development rights, including for any fence, gate, wall or other means of enclosure, in the interests of the amenity of the locality and to safeguard local distinctiveness.
6. In May 2023 an enforcement notice was issued in respect of the unauthorised erection of a 1.8m close boarded fence adjacent to the highway and the erection of a 1.8m gate and posts (the notice). The notice applied to No 3 and the part of the appeal site used as its extended garden. In November 2023 a subsequent appeal was dismissed¹. The requirements of the notice included removing the fence, gate, and posts and erecting post and rail fencing 1m in height with landscape planting inside the boundary, in accordance with previously approved plans.
7. In March 2024 application Ref DC/23/02342 (the third permission) was granted for the variation and part removal of condition 5 of the second permission. Condition 1 of the third permission required compliance with submitted plans and details, including Proposed Landscaping Plan 1234-13J, which showed the unauthorised fence addressed by the notice altered to become a 1m high post and rail fence. Condition 2 of the third permission removed permitted development rights for any garage, car port, fence, gate, wall or any other means of enclosure, building or structure on the site, except for in an area to the north of the site shown hatched in pink on a submitted plan (the pink hatched area) where permitted development rights remain. This condition was imposed in the interests of the amenity of the locality and to safeguard local distinctiveness.
8. The effect of the above insofar as it is relevant to the appeal is that, notwithstanding the effect of Condition 1 of the third permission, a fence, gate, wall, or means of enclosure meeting the requirements of Schedule 2, Part 2, Class A of the General Permitted Development Order (GPDO) may be erected or constructed in the pink hatched area within the site, but not otherwise.
9. I observed the following arrangements at and near the boundary between the appeal site and Barrell's Road; To the north was a close-boarded fence some 1.8m high, erected inside a lower, post and rail fence with planting in front of it. Near the centre of the appeal site, a temporary fence was positioned behind a continuation of the post and rail fence described above. Beyond this to the south is a close-boarded fence some 1.8m high near the roadside, built using a continuation of the same posts and rails.
10. Application Ref DC/24/02045 (the refused application) sought to remove the terms 'fence, gate, wall or any other means of enclosure' from condition 2 of the third permission. A plan submitted with the refused application, drawing 1234-14A, shows a post and rail fence around the site edge. However, the decision notice refers to this plan as the "defined red line plan" and states that it serves to show the extent of the site. Furthermore, in their respective statements, the appellant

¹ Appeal Decision APP/W3520/C/23/3323876

says that the appeal proposal will enable “the erection of a 1.8m high close boarded [fence] as a continuation of the close boarded fence recently constructed on land within the curtilage of the dwelling as permitted development”, whilst the Council says the revision would “enable the retention of a 1.8m high close boarded fence previously constructed”.

11. For clarity, the effect of allowing the appeal would be the provision of permitted development rights under Schedule 2, Part 2, Class A at the appeal site. Whether any of the fencing I saw at the site, or its potential continuation in the event the appeal is allowed, meets the requirements of the GPDO is not before me. At the same time, the Council has not disputed the appellant’s assertion that allowing the appeal would permit the continuation of the fence, other than to describe it as enabling its retention. I have determined the appeal on that basis.

Main Issues

12. The main issues are the effect that altering the condition would have on the character and appearance of the area and on highway safety.

Reasons

Character and appearance

13. The appeal site is on the outskirts of Thurston. It is bordered by a line of residential dwellings to the north and a railway line to the south. Nevertheless, the surrounding area is predominantly rural and includes large swathes of open land which is agricultural, equestrian, or undeveloped.
14. The southern end of the appeal site rises upwards as part of the railway embankment. A low, open, post and rail fence is positioned across the top. Greenery and open skies can be seen through and over the fence, engendering a sense of openness. The appeal proposal would allow the erection here of a close-boarded fence or similar up to 2 metres high. Such a development would be oppressive and imposing, and harmfully erode the current sense of openness.
15. The southern section of Barrell’s Road runs past the western edge of the appeal site. It is a narrow country lane, without pavements or streetlights, and mainly flanked by established hedgerows. These are occasionally supplemented by low, open, post and rail fencing, interwoven with the greenery. The result of these features is that the southern section of Barrell’s Road has rural characteristics, and makes a strong contribution to the bucolic, picturesque nature of the local area.
16. Taking account of the existing fencing at and near the roadside boundary of the site, the appeal proposal could result in distinctly formal, suburban, features, harmfully at odds with the rural setting, and erosive to the character of the wider area.
17. The appellant contends that the proposal would affect only part of the roadside boundary area, as the existing fencing at the northern and southern ends of that boundary has been erected using permitted development (PD) rights.
18. Even if the fencing to the northern end is PD, the proposal could nevertheless allow the continuation southward of a means of enclosure of a suburban, domestic character. This would undermine the benefits derived from the current arrangement, in which a more permissive approach to residential PD is taken

within the pink hatched area, and the more open, rural character of land to the south is preserved.

19. Regarding the existing, southern section of fencing, the appellant states that this has been “erected at the southern end of the site” and “is PD because it has been erected outside of the area approved by DC/21/01485 [the second permission] and erected where it is not considered to be adjacent to the highway”. The southeastern edge of the appeal site, as indicated by a red line on the relevant plan, bends away from the road. The existing, southern section of fence does not. As such, I have no reason to doubt that the fence is outside of the site of the second permission. For clarity, as the third permission and the refused application both relate to the second permission, the existing, southern section of fencing must also be outside of the appeal site, and the scope of my determination, therefore.
20. A new means of enclosure at the southeastern corner of the appeal site, broadly parallel to the road, would have a negligible effect if it were placed behind the existing, southern fencing. However, I am conscious that the Council states “Close board fencing has been erected along the roadside boundary, which was the subject of an Enforcement appeal. To comply with the Enforcement Notice and appeal this fencing should be 1m high post and rail, with planting on the inside”.
21. The land to which the enforcement notice relates corresponds to the location of the existing, southern fencing. Moreover, in comparing the existing, southern fencing to the fencing at the northern end of the roadside boundary area, I find the following; The northern fencing is behind a low post and rail fence, consistent with Proposed Landscaping Plan 1234-13J. Therefore, and irrespective of whether it is PD, that fencing is at least not likely to be the one described in the notice. In contrast, the southern section of fencing appears to be built on the same, continuous run of posts and rails that sits in front of the northern section, and which the third permission allowed to be retained in an altered form, as an alternative to compliance with the notice.
22. Overall, I have no evidence the existing, southern, fencing is lawful. As such, the appeal proposal could allow a new means of enclosure at the southern end of the boundary, significantly taller and more visually dominant than the approved post and rail arrangement. That would be harmfully at odds with the open, rural character of the area.
23. Roadside planting could be secured through conditions 1 and 3 as suggested by the Council, neither of which have raised objection from the appellant. Whilst that would mitigate the harm along the boundary area, I have no evidence it would be effective in winter months and it would, in any event, take considerable time to mature. I appreciate that fencing would provide safety and security to users of the appeal site but am not satisfied that the appeal proposal is the only way to achieve these aims, or that the approved boundary treatments would fail to do so.
24. I have not included the existing close-boarded fencing some 1.8m tall to the side of 1 Rooks Mead in my assessment of the character of the area, as that is unauthorised development addressed by an enforcement notice².

² Appeal Decisions APP/W3520/C/23/3319406 and APP/W3520/C/23/3319407

25. Altering the condition would have the effect of harming the character and appearance of the area, contrary to Policies LP17 and LP24 of the Babergh and Mid Suffolk Joint Local Plan (2023) (JLP) and Policy 9 of the Thurston Neighbourhood Plan (2019) where they require development to conserve and enhance landscape character.

Highway safety

26. The Council states that the “existing gate to the side of the property [No 3] and the fencing along the highway boundary is considered to have a detrimental impact on highway safety and requires removal following a recent Enforcement Appeal” and that “The height of the fence within the visibility splay is considered to have a detrimental impact on all users of the highway in this location”.
27. The appeal site is that defined by a red line on the submitted site plan. The Council has clarified on the decision notice that this is as shown in drawing 1234-14A. The gates and fencing alongside No 3 are outside of the appeal site and, irrespective of the implications of the enforcement notice, are not within the scope of this appeal, therefore.
28. Notwithstanding the above, the effect of the appeal proposal on the visibility splay at the entrance to Rooks Mead is before me. Having considered the detailed reasoning in respect of highway safety in the enforcement notice appeal, and given the significant distance between the entrance and the location in which a means of enclosure may potentially be erected at the appeal site, I find that altering the condition would have no harmful effect on highway safety. Therefore, the proposal would not conflict with JLP Policy LP29 which, amongst other things, seeks to prevent unacceptable impacts on highway safety.

Other Matters

29. My attention has been drawn to an appeal decision³ in which a shed, greenhouse and picket fence were allowed on the appeal site. The Inspector in that appeal found views of those developments from Barrell’s Road to be fleeting, and their appearance to accord to the typically domestic character of the area. This appeal proposal pertains to means of enclosure erected near the site boundary, which would be far more prominent than the development considered in the cited appeal. I do not consider that a precedent is set therefore, as the two cases are not directly comparable.

Conclusion

30. Whilst the appeal proposal would not have a harmful effect on highway safety, it would allow harm to the character and appearance of the area. For that reason, the appeal is dismissed.

A Knight

INSPECTOR

³ Appeal Ref: APP/W3520/D/24/3342065