



Appeal Decision

Site visit made on 1 April 2025

by **Peter White BA(Hons) MA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 April 2025

Appeal Ref: APP/P1940/C/23/3327887

Land at Grove Lodge, Fir Tree Hill, Chandlers Cross, Hertfordshire WD3 4LY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Adrian O'Malley against an enforcement notice issued by Three Rivers District Council.
- The notice was issued on 3 July 2023.
- The breach of planning control as alleged in the notice is described as, without planning permission the erection of over height close boarded fencing adjacent to the highway (the length and location of which is shown marked between a "Y" and an "Y" on the attached Site Map) and the importation, deposition and spreading of hardcore aggregate (the approximate extent of which is shown hatched in black on the attached Site Map).
- The requirements of the notice are:
Carry out EITHER Option 1 or Option 2:
OPTION 1:
 - 1) Remove the close boarded boundary fencing as marked by a "Y-Y" on the attached Site Map including concrete posts and concrete supports.
 - 2) Remove all the hard-core aggregate deposited on the Land (shown crossed hatched in black on the attached Site Map).
 - 3) Following compliance with Steps 1-2 above, remove from the Land all debris and waste material resulting from these requirements.OPTION 2:
 - 1) Reduce to 1 metre in height the close boarded fencing including concrete posts and concrete supports as marked by a "Y-Y" on the attached Site Map.
 - 2) Remove all the hard-core aggregate deposited on the Land (shown crossed hatched in black on the attached Site Map).
 - 3) Following compliance with Steps 1-2 above, remove from the Land all debris and waste material resulting from these requirements.
- The period for compliance with the requirements is: 3 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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 ("the DPA").

Summary of decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

Preliminary Matters

1. I am required to ensure the Notice is in order in accordance with Section 173 of the Act. In Section 3 the Notice refers to the erection of 'over height' close boarded fencing. The reference to 'over height' is neither clear nor necessary. As no injustice would occur to either party were I to do so, I will correct the Notice by deleting these words.
2. Section 5 Option 1(1), requires removal of close boarded 'boundary' fencing. Since the word 'boundary' is not stated in the breach of planning control in Section 3, that word should be removed for clarity. Section 5 Option 1(1) and Option 2(1) each require removal of the fencing 'marked by a "Y-Y" on the map. The words 'between "Y" and "Y"' used in Section 3 would be clearer and more precise. As no

injustice would arise to either party, I will amend Section 5 of the Notice accordingly in my formal decision.

3. In December 2024 a revised version of the National Planning Policy Framework (“the Framework”) was issued. I have taken into account the comments of the parties on the changes made.

The appeal on ground (a)/the DPA

Main Issues

4. The main issues are:
 - Whether the development is inappropriate development in the Green Belt, having regard to the Framework and relevant development plan policies.
 - The effect of the development on the openness and purposes of the Green Belt.
 - The effect of the development on the character and appearance of the area.
 - Whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Whether inappropriate development

5. The Land is located within the Metropolitan Green Belt.
6. Paragraph 154 of the Framework states that development in the Green Belt is inappropriate unless one of the stated exceptions applies. The Act defines “building” as any structure or erection, and any part of a building. The fencing does not meet any of the exceptions and is therefore inappropriate development in the Green Belt.
7. The parties agree the hardstanding element of the development was an engineering operation. Paragraph 154(h)ii exempts engineering operations, provided they preserve the openness of the Green Belt and do not conflict with the purposes within it. Whether they do so is considered below in relation to the effect of the development on the openness and purposes of the Green Belt.
8. Three Rivers District Council Core Strategy (2011) (“CS”) Policy CP11, which relates to development in the green belt, introduces a presumption against inappropriate development where it would not preserve its openness or would conflict with its purposes. Although that approach uses different language from that found in the Framework, I have seen no evidence that it is incompatible with it. Development Management Policies Local Development Document (2013) (“DMP”) Policy DM2, which relates to the construction of new buildings in the Green Belt, states approval will not be given for new buildings except in very special circumstances, or as specified in national policy and guidance.
9. The Framework states that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. These matters are considered below.

Openness and purposes

10. Paragraph 142 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence.
11. In relation to the fencing, its volume is limited and it is not spatially harmful to the openness of the Green Belt. Visually, the close boarded fencing is a prominent feature, introducing built development into a previously open area. Unlike the post-and-rail fence which preceded it, the close-boarded fence is a solid feature which removes views of the land beyond it. Its height, length and location close to the road make it a highly visible feature which creates a sense of enclosure, significantly reducing openness. This part of the development fails to safeguard the countryside from encroachment. Unless very special circumstances are demonstrated, the fencing therefore conflicts with CS Policy CP11 and DMP Policy DM2, which are described above.
12. In relation to the hardstanding, the parties describe the material as hardcore aggregate. Spatially, the Land is not materially higher above ground level than prior to the works. Visually, the resulting surface is unbound, and grass and small vegetation had grown through it by the time of my site visit. The hardstanding does not conflict with the five Green Belt purposes, and there is no harm to Green Belt openness. Consequently, the hardstanding element of the development is not inappropriate development in the Green Belt and does not conflict with CS Policy CP11 and DMP Policy DM2.

Character and appearance

13. The Land subject to the Notice is a wide area encompassing residential buildings and fields in a rural area known as Chandlers Cross. The land to the east is wooded on both sides of Fir Tree Hill, and to the south is open fields behind a belt of trees. Fir Tree Hill is a narrow road which, in the vicinity of the Land, navigates a bend in the road and rises in elevation to the east. The fence runs along the inside of the bend, enclosing woodland at its eastern end, and open land laid to grass behind a belt of trees at its western end. The access is on the inside of the bend near the lowest point, opposite an entrance on the other side of the road.
14. The sense of enclosure generated by the lines of trees and woodland contributes significantly to the character of Fir Tree Hill. The absence of footways, and the raised banks in places, creates a strong rural character. The wooded area beyond the Land to the east affords views into the woodland on each side, providing depth to that character. To the west the thick vegetation and higher banks give a strong green character, which continues even into a residential area.
15. The majority of the fencing has been erected close to the carriageway. The enclosure of one side of the road for an extensive length by a solid fence at a height of around two metres harms the character of Fir Tree Hill. The topography of the land and the curve of the road increases the visibility of the fence, and its harmful effects.
16. The Notice acknowledges that a similar fence of up to 1m in height could be erected in the same location. In that event, the harm to the character of the area would be reduced on account of the visibility over the fence of the trees behind it. The parties also agree that a fence of a similar height to the current fence could be

erected further back into the Land as 'permitted development'. In that event the harm to the character would be lower, being positioned behind some of the trees, and not being sited immediately adjacent to the carriageway. A short section of the fence at its western end demonstrates that.

17. In relation to the fence, the development therefore harms the character and appearance of the area. It conflicts with CS Policies CP1 and CP12, which require development to conserve or enhance the character and quality of the area.
18. The hardstanding, with grass and small vegetation growing through it, is not a notable feature in views from and along Fir Tree Hill. It blends into the character of the area without harm. This element of the development therefore accords with CS Policies CP1 and CP12.

Other considerations

19. A short stretch of the fencing at its western end is sited further back from the carriageway edge, behind trees and undergrowth. Even if parts of the fence in that location are deemed not to be adjacent to the highway, the erection of the fence was undertaken as a whole and, as a whole is one which requires planning permission.
20. The appellant advises he would be able to construct a fence of the same height as that erected further back from the road as 'permitted development'. That may be the case but, as I found above, the effect of such a fence on the character and appearance of the area would be much reduced, both in relation to removing the close proximity of the fencing to the road and due to the softening effects of trees and undergrowth between the fence and the road. This fallback position therefore carries little weight in favour of the development.
21. The appellant also refers to 2m high close boarded fencing at the junction of Old House Lane and Langleybury Lane. I have been provided with few details of that development, but that fence appears to be set in a landscape of a different character. In that case the area appears to be part of a more open, larger scale landscape, quite different to the small-scale enclosed landscape in the case before me. This matter therefore attracts very little weight in favour of the development.
22. The appellant advises the fencing was installed to delineate the boundary of the property, provide security, replace the previous fence, and securely keep horses within the paddock. Re-locating the fence away from the road or lowering its height would also go some way towards meeting those aims, and I therefore attribute only limited weight to these matters in favour of the development.
23. Other matters have been raised by interested parties but would not weigh in favour of the development.
24. Paragraph 153 of the Framework requires substantial weight to be given to harm to the Green Belt, including harm to openness. In relation to the fencing, the harm due to inappropriateness and the significant harm to openness attract substantial weight against the development. Further moderate weight against the fencing is attributable to the harm to the character and appearance of the area, and further significant weight to the corresponding harm to development plan policies.
25. Together the weight in favour of the development, in relation to the fallback position, close boarded fencing erected elsewhere, and the appellants aims in

enclosing the property, attract only limited weight. The harm to the Green Belt, together with other harm, is not clearly outweighed by other considerations, and very special circumstances therefore do not exist.

Conditions

26. In relation to the hardstanding, no conditions are necessary to make the development acceptable.

Conclusions on ground (a)/the DPA

27. For the reasons above, the development considered as a whole conflicts with the development plan, and there are no material considerations which require a decision to be made otherwise.
28. However, the hardstanding element of the development is a separable element which does not conflict with development plan policies. Planning permission should therefore be granted for the hardstanding element of the development.

Conclusion

29. For the reasons given above I conclude that the appeal should succeed in part only. I will grant planning permission for the importation, deposition and spreading of hardcore aggregate, but otherwise I will uphold the notice with corrections and refuse to grant planning permission in respect of the other part of the matters. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act (as amended).

Decision

30. It is directed that the enforcement notice is corrected by:
- In Section 3, the deletion of the words "over height"; and
 - In Section 5, Option 1(1) and Option 2(1), the deletion of the words "marked by a "Y-Y"" and their substitution with the words, "between "Y" and "Y"".
31. Subject to the corrections, the appeal is allowed insofar as it relates to the importation, deposition and spreading of hardcore aggregate and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended), for the importation, deposition and spreading of hardcore aggregate at land at Grove Lodge, Fir Tree Hill, Chandlers Cross, Hertfordshire WD3 4LY.
32. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the erection of close boarded fencing adjacent to the highway and planning permission is refused in respect of the erection of close boarded fencing adjacent to the highway at land at Grove Lodge, Fir Tree Hill, Chandlers Cross, Hertfordshire WD3 4LY on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Peter White

INSPECTOR