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## Appeal Decision

Site visit made on 10 April 2025

by **J Heppell BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15<sup>th</sup> May 2025

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**Appeal Ref: APP/K3605/W/24/3356312**

**27 Douglas Road, Esher, Surrey KT10 8BA**

- 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 Mr S Taylor against the decision of Elmbridge Borough Council.
  - The application Ref is 2024/2530.
  - The development proposed is the erection of a new boundary to the site frontage with wooden access gate.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issue in this appeal is the effect of the proposed development on the use of the open space.

### Reasons

3. The appeal site is a rectangular-shaped grassed area located between no 27 and no 27a Douglas Road. To the rear and sides it is enclosed by close boarded fencing just under 2 metres in height. The boundary abutting the driveway of no 27 Douglas Road is open along with most of the site frontage. There is a short section of 1 metre high close boarded fence on the frontage nearest to no 27a Douglas Road, which wraps round next to the driveway of no 27a.
4. The proposal is to attach a 1.5 metre high gate to the section of 1m fencing on the frontage, and erect a 1 metre high close boarded fence beside the driveway of no 27, with the intervening section of frontage enclosed with a 1.5 metre high hedge.
5. There is no dispute between the parties that the appeal site constitutes open space, as defined in the National Planning Policy Framework. The reason for refusal alleges that the proposed development would result in the loss of open space, contrary to Policy DM20 of the Elmbridge Local Plan Development Management Plan (DMP), which protects areas of existing open space from being built on.
6. Whilst the proposal does not seek permission to build on the site or change its use, it is necessary to assess whether enclosing the site fully from Douglas Road would impede access to the open space or otherwise make it less likely that it would be used for its intended purpose, in conflict with Policy DM20 which explains the importance of local people having access to open space.

7. The proposed boundary treatment, irrespective of whether it is a hedge or a fence, would give the site the appearance of a private garden, even if local residents would be able to see over the boundary treatment. The current short section of fence on the frontage is unlikely to deter residents from entering the site, but by contrast a continuous boundary treatment would be a physical and visual barrier, and the fact that the open space would arguably be safer for children and dogs as a result does not outweigh this concern.
8. Whilst the appellant intends to leave the gate permanently unlocked and is willing to be bound by an appropriately worded condition to this effect, I share the Council's concern about the enforceability of such a condition. Even if the gate were to be permanently unlocked, it would nonetheless reinforce the perception that the land is private. Such an outcome would run counter to the aim of Policy DM20 of encouraging local people to enjoy the recreational benefits of open space, notwithstanding that the policy does not explicitly rule out using boundary treatment to enclose open space.
9. The appellant considers that enclosing the site will improve the quality and useability of the land, citing the prevalence of fly-tipping and illegal car parking which could deter people from making use of the open space. An interested party has confirmed that the site has been used for fly tipping, and raised a concern that it could become a caravan park. However, whilst I acknowledge the appellant's legitimate desire to maintain their own land, I do not agree that enclosing the site will facilitate this in any meaningful way.
10. I therefore conclude that the proposal is contrary to Policy DM20 of the DMP, as it would have the effect of discouraging local residents from using the open space, thereby depriving them of the recreational benefits of the open space as espoused in the policy.

### **Other Matters**

11. I have been made aware of previous enforcement action on the site and a subsequent appeal<sup>1</sup> resulting in the appellant forfeiting their permitted development rights to erect boundary treatment around the site. I note that Inspector's reasoning around planning decisions which are based on a prospective breach of planning control, and the appellant's view that the Council has made such a decision here. My concern however is with the potential for reduced use of the open space rather than a possible breach of planning control resulting from a change of use, and this is the basis on which I have determined the appeal.
12. My attention has also been drawn to a previous appeal decision where the Inspector concluded that a higher boundary fence at the front of the site would not harm the openness of the site<sup>2</sup>. Such a conclusion does not conflict with my finding that enclosing the site, even with lower boundary treatment, would reduce the likelihood of local residents making use of the open space.
13. The appellant argues that boundary treatment and gates are regularly used by the Council to effectively manage open land, and has provided examples of where this has occurred; but it is equally the case that not all open space is enclosed, as is

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<sup>1</sup> Appeal reference APP/K3605/X/24/3337302

<sup>2</sup> Appeal reference APP/K3605/W/22/3309168

evidenced by the unenclosed open space elsewhere in Douglas Road. This is not a compelling reason for seeking to enclose the land.

14. The appellant has argued that the boundary fence between the appeal site and their property, no 27 Douglas Road, cannot be removed without express consent, and as such they could not practically incorporate the site into their garden. I take no view on whether this is the case since this does not alter my view that the proposal is unacceptable.
15. The appellant has referred to the Open Spaces Act 1906 and the ability it affords local authorities to enclose open spaces, arguing that they should be treated as if they were a local authority seeking to enclose open space; but there is no indication of what a local authority would do in this situation, and in any case the rights cannot be conferred on a private individual.

### **Conclusion**

16. For the reasons given above the appeal should be dismissed.

*J Heppell*

INSPECTOR