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## Appeal Decision

Site visit made on 27 May 2025

by **C Coles MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 JUNE 2025

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**Appeal Ref: APP/K3605/D/25/3363356**

**7 Forge Drive, Claygate, Esher, Surrey KT10 0HR**

- 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 Miss Natalie Bunyer against the decision of Elmbridge Borough Council.
  - The application Ref is 2024/1066.
  - The development is construction of 1.8m high fencing on concrete bases with posts.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The Council altered the description of the development during the consideration of the application to read 'Construction of 1.8m high fencing on concrete bases with posts (retrospective)'. This is a more concise description of the proposal and removes superfluous text from that set out in the application form. I have omitted the word retrospective in the banner heading which does not relate to an act of development.
3. At my site visit I noted that the fence was already in situ. I have dealt with the appeal on the basis that planning permission is being sought retrospectively for the erection of the fence.

### Main Issues

4. The main issues are the effect of the development on:
  - The character and appearance of the area, including with regard to the effect on the mature tree.
  - Informal green space;

## Reasons

5. The appeal site comprises a detached part single, part two-storey dwelling located on an estate of similar age and style of property. The site fronts onto Forge Drive and forms the corner plot at the junction with Kilnside. There is space for parking on hardstanding and an open area of land comprising grass, a mature tree and soft landscaping to the front of the dwelling. This area is unenclosed, open to public view and forms a prominent corner within the street scene.
6. The development is the construction of a 1.8m high fence on concrete bases with posts to the side and rear of the dwelling. The fence replaces a 2m high wall which ran almost parallel with the side of the dwelling and formed the boundary of the site. Prior to the development, the area of open space to the front of the dwelling extended to the side of the dwelling and comprised a grass area, some soft landscaping and a mature tree which the appellant states the public had no access to and was previously an unmanaged grass verge which is now better kept. The proposal moves the location of the side boundary adjacent to the pavement and encloses the once open space and the mature tree within the rear garden area.

## *Character and Appearance*

7. Boundary treatments within Kilnside and immediately opposite the site on Forge Drive typically have an open, spacious and verdant appearance formed of a mix of hedges and other vegetation. The open space to the front of the appeal site remains unenclosed and retains its open and spacious character. The original boundary treatment and location on the site is replicated on the corner properties at the entrance to Fisherdene (a cul-de-sac leading off Kilnside). The location of the boundary wall enclosed the rear garden but left an open grassed area with mature tree outside the private garden area of the dwelling and with space between the side boundary and the pavement. The original boundary configuration formed part of the settlement pattern and is replicated and retained elsewhere in the wider estate. As such, it positively contributed to, and reinforced, the defining spacious and green qualities that result in a pleasant residential character and appearance.
8. The development forms a hard landscape feature adjacent to the pavement which physically and visually encloses the site thereby undermining the openness of the space between the side of the dwelling and the pavement. Consequently, it is experienced differently when seen from the public realm. Its visual amenity value and contribution to the wider area is diminished as a result. The neighbouring boundary treatments do not typically comprise hard landscaping at a height of 1.8m adjacent to the pavement, instead they have a sense of openness and space and are softly landscaped. In this context, the proposed development appears as a jarring feature within the street scene and erodes the spacious, open and verdant character of the area.
9. It is acknowledged that the height of the development is lower than the previous brick wall, but the location of the development adjacent to the pavement and its stark, solid appearance unbroken by any soft landscaping, dominates and appears incongruous within the street scene and wider character of the area.

10. The fencing has enclosed the mature tree within the side garden of the dwelling, which previously was an attractive natural feature visible in its entirety on the open space. The position of the fencing inhibits the wider contribution of the tree to an extent, which exacerbates the degree of harm.
11. The Council raises concerns regarding the lack of arboricultural information to demonstrate that the tree has not been physically harmed as a result of the development. However, based on the evidence before me and my site visit, there is no obvious indication that the tree has sustained damage and the co-existence of timber fencing close to trees is commonplace.
12. In conclusion, by virtue of its height, sense of enclosure and prominent siting, the development has a detrimental impact on the spacious, open and verdant character and appearance of the area. The development is therefore contrary to Policies CS14 and CS17 of the Elmbridge Core Strategy 2011 (CS) and Policies DM2 and DM6 of the Elmbridge Local Plan Development Management Plan 2015 (LP). Amongst other things, these policies require development to be of a high quality of design and to preserve or enhance the character of the area including the local landscape.

#### *Informal green space*

13. The appellant confirms the land which has been enclosed is within her private ownership and I have no reason to doubt that. Nevertheless, ownership does not determine the use of the land in planning terms.
14. Neither would private ownership prevent the land in question from making a wider public contribution to open space due to its visual value.
15. Based on the available evidence, the open space to the side of the dwelling was informal green space included for its visual amenity value and was one of a number of such areas within the housing estate. The appellant states there is other green space within the wider estate that performs this function. Be that as it may, the proposal represents a diminution of the amenity space both in individual and cumulative terms, which would be harmful.
16. Paragraph 104 of the National Planning Policy Framework (the Framework) supports the retention of open space unless it can be shown to be surplus to requirements, is being replaced by open space of an equivalent or better provision or the use of the open space is for alternative sports and recreational provision. My attention is drawn to Policy DM20 of the LP which aligns with paragraph 104 of the Framework. Both local and national policy seek to retain existing open space which offer important opportunities for sport and recreation. In this instance, given the scale and nature of the appeal land, it is not shown that it would fall within the remit of the open space those policies seek to protect. Hence, I find no conflict with them.
17. Nevertheless, amenity green space is recognised by Policy CS14 of the CS as a form of green infrastructure. The proposed enclosure of the green space would diminish its role in the network of green infrastructure by undermining its visual contribution to the local landscape character.

18. In conclusion, whilst I find no direct conflict with Policy DM20 of the LP or Paragraph 104 of the Framework, the development has resulted in the unjustified reduction in informal green space within the wider estate, contrary to Policy CS14 of the CS which seeks to protect and enhance green infrastructure assets.

### **Other Matters**

19. In dealing with the application, the case officer report responds to third party comments relating to restrictive covenants which are not material planning considerations and impact on amenity to occupiers of neighbouring properties with specific regard to overbearing impact, sense of enclosure, visual impact, loss of outlook/privacy and light. The Council found no conflict with the development plan in respect of the above and I have no reason to take a different view.

### **Conclusion**

20. By virtue of its height, sense of enclosure and prominent siting the development has a detrimental impact on the spacious, open and verdant character of the area. The enclosure of the space also results in the loss of informal green space and for these reasons the appeal should be dismissed.

*C Coles*

INSPECTOR