



Appeal Decisions

Site visit made on 24 June 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 18 July 2025

Appeal A Ref: APP/A1530/C/24/3345031

Appeal B Ref: APP/A1530/C/24/3345032

Petalo Lodge, Boxhouse Lane, Dedham CO7 6HZ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr S Stubbs (Appeal A) and Ms J Sillett (Appeal B) against an enforcement notice issued by Colchester City Council.
- The notice was issued on 25 April 2024.
- The breach of planning control as alleged in the notice is “*Without the benefit of planning permission, the erection of a brick wall, brick piers and gates over 1 metre in height adjacent to the highway*”.
- The requirements of the notice are to: (i) Demolish/dismantle/remove the brick wall, brick piers and gates from the land (for the avoidance of doubt this is the section of brick wall, brick piers and gates, outlined in red on the attached plan); or (ii) reduce the height of the wall, piers and gates to no more than 1 metre in height above ground level at any point along their length.
- The period for compliance with the requirements is four calendar months from the date the notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeals are allowed and the enforcement notice is quashed.

Appeal C Ref: APP/A1530/W/24/3345030

Petalo Lodge, Boxhouse Lane, Dedham CO7 6HZ

- 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 S Stubbs against the decision of Colchester City Council.
- The application Ref is 232394.
- The development is retrospective application for existing field gate.

Summary Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. Appeals A and B concern an enforcement notice issued by the Council in respect of a brick wall, brick piers and gates along the eastern boundary of the property. Appeal C concerns a planning application for the same gate, which was also refused by the Council.
2. There are several other appeals concerning the same appeal site, which relate to the construction of two kennels and a garage. These applications are the subject of separate decision notices.
3. The appeal site is located within the Dedham Vale Area of Outstanding Natural Beauty (AONB). The National Planning Policy Framework (2024) (Framework) is clear that great weight must be given to conserving and enhancing the landscape and scenic beauty in National Landscapes, which include AONBs. I have determined these appeals accordingly.

APPEALS A AND B (ENFORCEMENT NOTICE)

4. Pursuant to ground (c), the appellants say that the matters alleged in the notice do not constitute a breach of planning control. This is because they say the works are permitted development. The burden is on the appellants to demonstrate their case on this ground, and planning merits are not relevant.
5. Subject to certain parameters, Class A of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits the construction of gates, fences, walls and other means of enclosure. If adjacent to a highway, these structures are not permitted if they exceed 1 metre in height. If not adjacent to a highway, the height limit is two metres. In this instance, the gate, walls and brick piers are said to measure between 1 – 2 metres in height, and would therefore only be permitted if not adjacent to a highway.
6. “Adjacent” is defined as being “*next to, or adjoining something else*”. Whilst the relevant legislation does not define it more precisely, in the *Simmonds*¹ case, it was held that for something to be “adjacent” to a highway, it does not necessarily need to touch it. A wall, fence or gate could therefore be set back from a highway, and still be considered adjacent to it.
7. Nonetheless, in this instance, there is a wide section of verge which separates the adopted highway from the gate, walls and piers. For the most part, the verge measures approximately 7.1 metres in width, although it does narrow slightly towards the northern-most section of the wall and piers. Noting that the *Simmonds* case concerned a separation of less than one metre, in my view, the substantial degree of separation in the present case is indicative of the structures not being adjacent to the highway.
8. There is also a tall and dense hedgerow between the verge and the walls and piers, which provides even greater separation between these structures and the highway. On account of the hedgerow, these structures are barely perceptible from the lane, and are therefore not readily perceived as part of the boundary which defines the separation between the property and the highway. Consequently, the walls and piers are not seen as being adjacent to it. This adds further credence to the conclusion drawn above.
9. Whilst I note an Inspector reached a different conclusion on another appeal relating to the same property (APP/A1530/C/22/3293824), the circumstances in that case were different. In particular, the verge separating the structures from the highway was much narrower, and the boundary hedgerow was also less mature and well-established. A different conclusion is therefore warranted here.
10. For the reasons outlined, I consider that the gate, walls and piers are not adjacent to the highway. Given none of these structures are said to exceed 2 metres in height (a position consistent with my own observations during site visit), they would fall within the limits of Class A. Therefore, they constitute permitted development and would not have required planning permission.

¹ *Simmonds v Secretary of State for the Environment and Rochdale MDC* (1980) 40 P&CR 432

Appeals A and B - Conclusion

11. The matters alleged in the notice do not constitute a breach of planning control, and the appeals on ground (c) therefore succeed. The enforcement notice will therefore be quashed.
12. In these circumstances, the appeals on ground (f) do not fall to be considered.

APPEAL C (PLANNING APPLICATION)

13. Whilst I have concluded that the gates are permitted by virtue of Class A, I have still considered this appeal in full. I should highlight that Appeal C concerns the gates only, and not the walls or piers.

Main Issues

14. The main issues are:

- the effect of the development on the character and appearance of the area, including the AONB; and
- the effect of the development on highway safety.

Reasons

Character and Appearance

15. The appeal site is located along the western side of Boxhouse Lane and comprises a detached dwelling set within a large plot of land. Along its eastern side, the property is bordered by tall and dense hedgerow which screens much of the property from public view. Such hedgerows are characteristic of the lane, which give it an attractive rural and verdant character.
16. The gates are located along the eastern boundary of the property, and form a modest gap within this hedgerow. Whilst the gates are relatively tall, given the hedgerow is much taller, the gates integrate discreetly within the boundary treatment to the property, without undermining its contribution to the rural character of the lane.
17. Whilst the gates are relatively suburban in appearance, they still achieve a high-quality design, which complements the well-maintained hedgerow and grass verge which border the site. There are also examples of other similar gates nearby, which mean they are not a unique feature of the lane. Again, this helps them to integrate effectively with the lane's existing character.
18. Overall, I am therefore satisfied that the gates do not harm the character and appearance of the area. I am also satisfied that they conserve the landscape and scenic beauty of the Dedham Vale AONB. In turn, the gates are consistent with Policy SP7 of the Council's Local Plan (Section 1 – 2013-2033), which requires development to respond positively to its local character and context. The development is also consistent with Policies OV2, ENV1, ENV4, DM13 and DM15 of the Council's Local Plan (Section 2 – 2017 – 2033) (Section 2 LP). Together, these policies require development to achieve high quality design which complements local character. They also require proposals to protect the borough's natural environment and countryside, and to safeguard the special qualities and tranquillity of the AONB. Finally, the development is consistent with the design

objectives set out in the Framework, including those which seek to preserve and enhance the special quality of Natural Landscapes.

Highway Safety

19. Prior to installation of the new gates, there was already a field gate providing access to the property in a similar location. The gates have therefore not introduced a new access. Whilst it is now more formal in appearance, this means vehicles would still be able to access the site in this same location, irrespective of the new gates.
20. Given the extent of grass verge between the gates and the highway, visibility along the road from the access is good. There is also ample turning space within the property (beyond the gates), which means vehicles can access and egress the site in forward gear. In turn, there is little to suggest the gates, or the access more generally, causes any particular safety concerns.
21. Overall, I am therefore satisfied that the gates do not harm highway safety. In this regard, the development is consistent with Policy DM21 of the Section 2 LP, which promotes development that creates safe, secure and convenient layouts, which also minimises conflict between pedestrians, cyclists and vehicles. The development is also consistent with the highway safety objectives of the Framework.

Other Matters

22. Whilst I note the objections from neighbours, the gates could be constructed pursuant to the permitted development rights afforded by Article 3(1) and Class A of Part 2, Schedule 2 of the GPDO. Even if harm had been identified, the outcome of the appeal would likely have been the same in any event, given the weight that would be attributed to this fallback position.

Conditions

23. I have included a single condition which restricts external lighting within the development, which will help safeguard neighbouring amenity and the dark skies which help characterise the AONB.

Formal Decisions

Appeals A and B

24. The appeals are allowed and the enforcement notice is quashed.

Appeal C

25. The appeal is allowed and planning permission is granted for an existing field gate at Petalo Lodge, Boxhouse Lane, Dedham CO7 6HZ in accordance with the terms of the application, Ref 232394, and subject to the following condition:
 - (1) No external lighting fixtures shall be constructed, installed or illuminated unless approved in writing by the Local Planning Authority.

Mr James Blackwell

INSPECTOR