
Appeal Decision

Site visit made on 24 June 2025

by **D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

an Inspector appointed by the Secretary of State

Decision date: 15th August 2025

Appeal Ref: APP/T3725/C/24/3349511

Land at Southcrest Arboretum, Crewe Lane, Kenilworth CV8 2DG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act).
 - The appeal is made by Mrs Anca Isac against an enforcement notice (EN) issued by Warwick District Council.
 - The notice was issued on 12 July 2024.
 - The breach of planning control as alleged in the EN is without planning permission, the erection of a 1.8m high security fence around the boundary.
 - The requirements of the EN are:
 - [i] Removal of the 1.8 meter security fence
 - [ii] Remove from the Land all resulting waste and materials.
 - The period for compliance with the requirements is: one calendar month.
 - 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 1990 Act.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the words '*around the boundary*' and their substitution with the words '*annotated in blue on the fence plan annexed to this decision*' in the description of the alleged breach at section 3 of the EN; and
 - the deletion of the word 'meter' and its substitution with the word 'm' in requirement (i) at section 5 of the EN; and
 - the addition of the fence plan annexed to this decision.
2. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the erection of a 1.8m high security fence at Southcrest Arboretum, Crewe Lane, Kenilworth CV8 2DG as annotated in blue on the fence plan annexed to this decision and subject to the conditions in the schedule annexed to this decision.

Preliminary Matters

3. On an appeal any defect, error, or misdescription in an EN may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. The plan attached to the EN shows a red line around the

whole of the parcel of land identified as Land at Southcrest Arboretum, Crewe Lane, Kenilworth, CV8 2DG.

4. However, the officer report relating to the planning application W23/0055, for the retention of the existing 1.8m high security fence along Crewe Lane; erection of a 1.8m high security fence around the remaining boundary of the site, indicates that only part of the fence along Crewe Lane was in-situ at that time. It also indicates that 1.8m high fencing is proposed along the western, southern and southwestern part of the site which would benefit from permitted development and would not require express planning permission.
5. On the day of my site visit, 24 June 2025, a section of 1.8m high security fence was in place on part of the boundary of the appeal site with Crewe Lane and on another section of that boundary only metal fence posts were in place. Both main parties have confirmed that the existing section of fencing fronting Crewe Lane was in place at the date of the EN. As that fencing is not around the whole boundary as outlined in red on the plan attached to the EN I consider that the description of the alleged breach of planning control is not precise in relation to where specifically the 1.8m high security fence that is attacked by the EN is located. That description and the requirements are ambiguous as to whether the metal fence posts (those with no mesh panels attached to them) are attacked by the EN and are required to be removed. This is because there is no specific mention of those fence posts within the EN.
6. Both parties were asked for their comments on these matters and whether injustice would be caused to them if I used the powers of correction at section 176(1)(a) of the 1990 Act. The Council has stated that it considers that the description of the alleged breach could be corrected to 'without planning permission the erection of a 1.8m high fence and posts annotated in blue on the attached plan' without injustice to both main parties.
7. It has also submitted a plan with the annotation in blue indicated on it. That blue line appears to be in a similar position and of a similar length to the solid green line shown on a plan submitted by the appellant. That green line is annotated as the position of the 1.8m high mesh fence. Those lines appear to correlate with the position of the 1.8m high mesh fence I saw at my site visit.
8. In my judgement the description and requirements of the EN cannot be corrected to make reference to the metal posts that don't have the mesh panels attached to them without injustice to the appellant. This is because it is ambiguous as to whether they are attacked by the EN and to include them would make the EN more onerous and the appellant may have made additional grounds of appeal specifically in relation to those posts.
9. Nevertheless, it is clear from the appellant's submissions that they have made the ground (a) appeal based on the section of mesh fencing that fronts Crewe Lane. The appellant has clearly understood that the notice had intended to target the fence in this location. I consider that on that basis there would be no injustice to them if I corrected the EN to specify the position of the fence attacked by it. As such, I intend to delete the wording '*around the boundary*' and substitute it with '*annotated in blue on the fence plan annexed to this decision*' in the description of the alleged breach at section 3 of the EN. I also intend to add the fence plan annexed to this decision. These corrections are in the interests of precision.

10. There is a typographical error in requirement (i) I therefore intend to delete the word '*meter*' and replace it with '*m*'. This is a minor error that can be undertaken with no injustice to either main party.

Main Issue

11. The main issue is the effect of the development on the character and appearance of the area.

Reasons

12. The appeal site lies to the east of Kenilworth, and it has mature trees and landscaping within it. On the opposite side of Crewe Lane is the entrance to a golf club and I noted that a relatively large housing development is currently being constructed to the south of the appeal site. Crewe Lane is largely bounded by mature landscaping that imparts a verdant character to the surrounding area.
13. The panels of the fence are green in colour and their mesh design allows a high degree of visual permeability through them. The posts have a galvanised finish and a length of plastic tape has been tied to each fence post. There is a relatively long stretch of the fence, fronting Crewe Lane and its materials and height are normally associated with a more urban environment. However, the backdrop of shrubs and trees within the site help break up its mass and its visual permeability still enables clear views into the site from the public realm. Additionally, in the areas where landscaping has grown through or climbed up the mesh panels the visual prominence of the fence is substantially reduced.
14. Nevertheless, the galvanised finish to the fence posts and the tape tied to them draw the eye and these items appear incongruous in this setting. Yet the imposition of a planning condition regarding the painting/powder coating of the posts or their replacement would ensure that the posts are finished in a colour to match the panels. Moreover, the plastic tape would need to be removed to enable the posts to be painted or it would be removed with the posts. Furthermore, additional landscaping within the site in the area adjoining the fence would ensure that it would assimilate well into the verdant setting of the site and the surrounding area.
15. I find therefore that with the imposition of planning conditions the fence would not harm the character and appearance of the area. As such, it would comply with Policy BE1 of the Warwick District Local Plan and Policy KP13 of the Kenilworth Neighbourhood Plan which, amongst other things, state that development proposals will be expected to demonstrate that they adopt appropriate materials and details and achieve a standard of design that is appropriate to the local area. It would also accord with the design objectives of the National Planning Policy Framework.

Other Matters

16. A representative of the members of the golf club objects to the development on a wider basis including in respect of road safety, setting a precedent in other urban fringe areas of Kenilworth and damage to a water main. These did not form part of the Council's reasons for issuing the enforcement notice or the reasons for refusal of the planning application, W23/0055. I have no substantive evidence before me that would lead me to disagree with the Council's findings, within the officer report

for that planning application, relating to highway safety. Given that I have concluded that the development would be acceptable I can see no reason why it would lead to harmful developments on other sites in the area. The issue of damage to a water main is covered by separate legislation and is not a matter for my consideration in this appeal.

17. While I understand that my decision will be disappointing for the members of the golf club, the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be an over-riding issue warranting dismissal of the appeal.

Conditions

18. No suggested conditions were put forward by the Council or the appellant. As such, both main parties were given chance to comment on potential conditions without prejudice to the determination of this appeal.
19. The purpose of the conditions in the schedule annexed to this decision is to require the appellant to comply with a strict timetable for dealing with the submission of schemes for the painting/powder coating or replacement of the fence posts and landscaping which need to be addressed in order to make the development acceptable. The conditions are drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter/s because the development has already taken place. The purpose and effect of the conditions is therefore to ensure that the development authorised by the grant of planning permission may only remain if the appellant complies with each one of a series of requirements. The conditions are necessary in the interests of the character and appearance of the area.

Conclusion

20. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission, subject to conditions, for the 1.8m high security fence as described in the EN as corrected. The EN will be corrected and quashed.

D Boffin

INSPECTOR

SCHEDULE OF CONDITIONS

1) The 1.8m high security fence hereby permitted shall be demolished and all materials resulting from its demolition shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 1 month of the date of this decision a scheme for the painting/powder coating or replacement of the existing fence posts shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- ii) If within 3 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

2) The 1.8m high security fence hereby permitted shall be demolished and all materials resulting from its demolition shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 1 month of the date of this decision a landscaping scheme shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- ii) If within 3 months of the date of this decision the local planning authority refuse to approve the landscaping scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted landscaping scheme shall have been approved by the Secretary of State.
- iv) The approved landscaping scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved landscaping scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.



Fence Plan

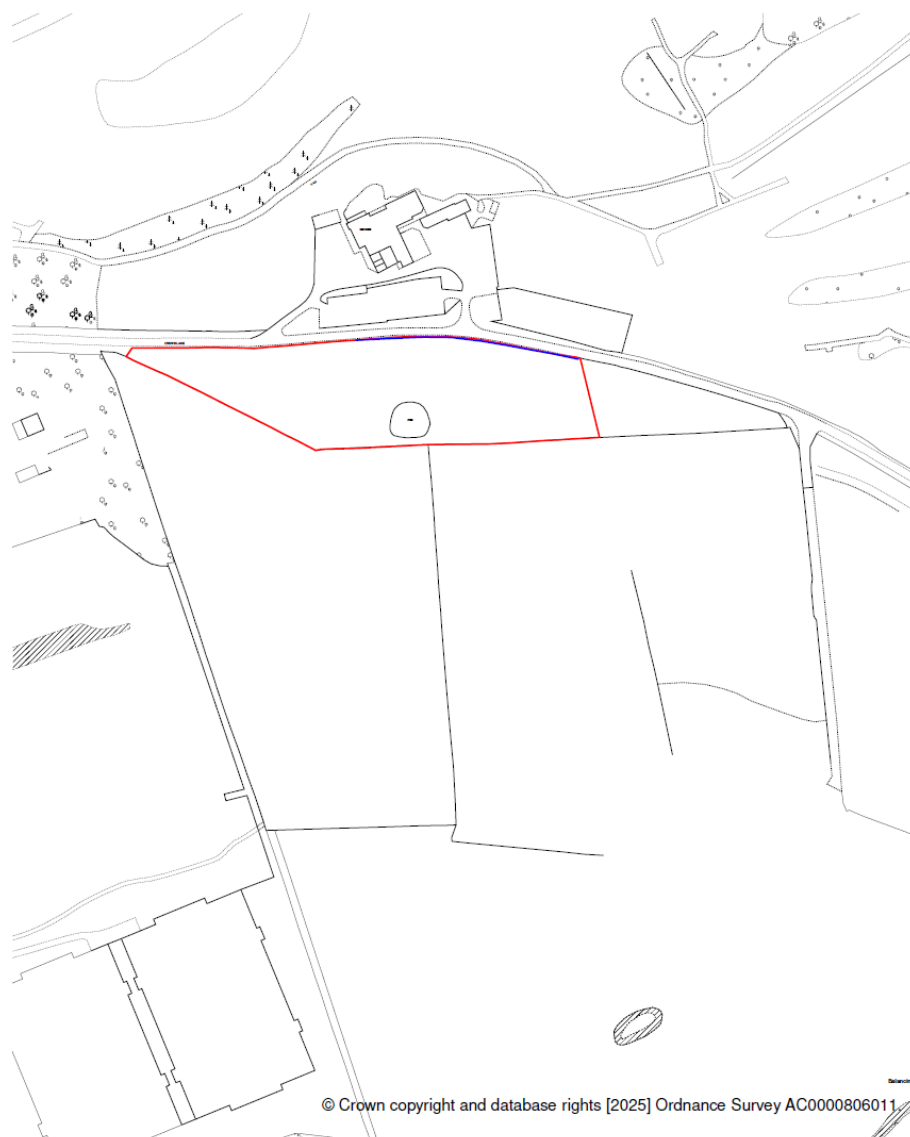
This is the plan referred to in this decision dated: 15th August 2025

by D Boffin

Land at: **Southcrest Arboretum, Crewe Lane, Kenilworth CV8 2DG**

Reference: **APP/T3725/C/24/3349511**

Scale: Not to Scale



Enforcement Notice

Southcrest Arboretum, Crewe Lane, Kenilworth CV8 2DG

LOCATION PLAN

Scale: 1:2500 Plan: 1 Drawn By: NN/KW Date: 04 July 2025 File No. ACT/0182/22 North:

Development Services: Town Hall, Parade, Royal Leamington Spa. CV32 4AT