Planning Inspectorate

Appeal Decisions

Site visit made on 8 November 2025

by A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 20th November 2025

Appeal A and B Refs: APP/H1515/X/23/3335575 and W/24/3338247
4, Junction Road, Warley, Essex CM14 5JN

- Appeal A is made under section 195 of the Town and Country Planning Act 1990 (as amended ("the Act)) against a refusal to grant a certificate of lawful use or development (LDC).
- Appeal B is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeals are made by Ms Natalie Valentine[1] against the decision of Brentwood Borough Council.
- Appeal A application ref 23/00383/S192, dated 24 March 2023, was made under section 192(1)(b) of the Act for erection of a fence alongside property as sown on plan 2023.604.01, and was refused by decision dated 11 July 2023.
- Appeal B, ref is 23/01422/FUL, is described in the Council's decision notice as follows: construct 1.8 m high fencing to side boundary and front garden enclosing land as additional garden area, construct single storey side/rear extension with alterations to fenestration including insertion of rooflight. The application was refused by notice dated 26 January 2024.

Summary of Decision: Appeal A is dismissed. Appeal B succeeds subject to conditions as set out in the formal decision.

The LDC appeal

1. Article 3, schedule 2, part 2, class A to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), grants planning permission for, amongst other things, minor operations such as the erection of a fence. The permission is subject to conditions and limitations. For example, paragraph A.1 sub-section (a)(ii) states development is not permitted if the height of any fence erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1 metre above ground level. The Courts of held that the word "adjacent" did not mean that the fence had to be abutting or touching the highway[2]. Furthermore, it is unnecessary to try and draw a distinction between the pavement and the carriageway used by vehicles. The pavement itself forms part of the highway used by vehicular traffic irrespective of the fact that it did not physically carry vehicles upon its surface.

2. The proposed close-boarded timber fence and posts would be 2 m tall and located along the side of the appeal dwelling. No. 4 is located on the corner of Junction Road and Pennyfields, which are carriageways with pedestrian footpaths. However, there are grass verges separating dwellings from the edge of the public footpath. Contrary to the agent's submission, the narrow strip of grass between the footpath and the proposed fence would be too small to provide any separation from the highway and accordingly because it would be erected adjacent to it the maximum height permitted under the GPDO would be exceeded.

[1] The appellant's name is taken the appellant's details from the LDC application form.
[2] *Simmonds v Secretary of State for the Environment and Rochdale Metropolitan Borough Council* [1981] JPL 101.

3. There is an added complexity. This is because conditions imposed on the planning permission for the estate restricted the location of fences or other screens[3].

4. For the above reasons, the erection of the fence, if begun at the date of the LDC application, would require express planning permission.

The s78 appeal

5. **Main issue**: the effect of the proposed development on the character and appearance of the street scene.

6. **Reasons**: The development comprises a single-storey side/rear extension the design and layout of which is illustrated in the submitted drawings. The Council do not take issue with the latter, and I have no reason to take a different approach. This is because the extension would reflect the simple architectural style of the host building.

7. The proposed fence would be seen in the context of the host dwelling and residential street scene. It would be sited close to the edge of the footpath taking in much of the grass verge. Nonetheless, Penneyfields is a wide and deep highway with grass verges on both sides and dwellings set back from the edge of the highway. The fence would not visually appear as an over-dominant feature in the street scene, and its design would successfully integrate with the scale of residential development. Moreover, subject to the imposition of suitably worded conditions requiring soft landscaping, I consider that the development has the potential to reinforce the verdant and open aspect of the street scene.

8. Concerns have been raised about access to the garages, but the submitted plans clearly show the fence would not obstruct access. There are no technical objections to the location of the fence in terms of potential effect on visibility. In my assessment, the development is unlikely to have any impact on highway safety given the positioning of the fence relative to the junction. Finally, the development would not have any impact on nearby residents in terms of living conditions, due to the siting of the fence and design, and layout of the extension.

9. The Council raises concerns about the incorrect scale on drawings, but this is a minor point and drawing 2023.604.01A rectifies the issue. In any case, the Council did not object to the overall scale of the extension. Nonetheless, in addition to the commencement and plans conditions, it is reasonable to impose a condition requiring details of soft landscaping and retention before the fence is constructed as these details would reduce the visual effect of the fence on the street scene. These conditions would assist in ensuring the development is acceptable in planning terms.

10. Drawing all the above points together, subject to conditions, contrary to the Council's arguments, the development would not have a visually harmful effect on the character and appearance of the street scene and accords with the main aims of policy BE14 of the Local Plan (2016 – 2033), and design guidance found in the national planning policy framework.

Appeals A and B - overall conclusions

11. For all the above reasons and having regard to all other matters raised, I conclude Appeal A should fail and I will exercise accordingly the powers transferred to me in section 195(3) of the

[3] T/BRE/54/65.

1990 Act. Appeal B should succeed, and planning permission will be granted subject to conditions.

Formal decisions

1. Appeal A is dismissed.

2. Appeal B is allowed, and planning permission is granted for a 1.8 m high fencing to side boundary and front garden enclosing land as additional garden area, to construct a single storey side/rear extension with alterations to fenestration including insertion of rooflights at 4, Junction Road, Warley, Essex CM14 5JN in accordance with the terms of the application, Ref 23/01422/FUL and the plans submitted with it, subject to the following conditions:

    1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

    2) The development hereby permitted shall be constructed in accordance with the following drawings: 2023.604.03A and 2023.604.01.

    3) No building operations involved in the construction of the fence hereby permitted, shall commence at all until a scheme of soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include details of all existing trees and plants on the land, identify those to be retained and set out measures for their protection throughout the course of development, and proposed verge landscaping along the proposed fence facing the highway.

    4) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the extension, or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The landscaping scheme thereafter be retained.

A U Ghafoor

INSPECTOR