



Appeal Decisions

Site visit made on 22 October 2025

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 29th January 2026

Appeal A Ref: APP/A1530/C/23/3327805

Appeal B Ref: APP/A1530/C/23/3327806

Cherry Garden, Earls Colne Road, Great Tey, Colchester CO6 1AL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Darren Barker and Appeal B is made by Fiona Scott against an enforcement notice issued by Colchester Borough Council.
- The notice was issued on 17 July 2023.
- The breach of planning control as alleged in the notice is 'Without the benefit of planning permission, the construction of brick piers and associated walling, gate and metal fret cut screens and gate over 1 metre in height, adjacent to the highway. (For the avoidance of doubt this is brick gate piers and associated walling and metal fret cut screens and gate in the photograph attached this notice) ("the Activity")
- The requirements of the notice are
 - (i) Demolish/dismantle/ remove the brick piers and associated walling, gate and metal fret cut screens to ground level.
 - (ii) Remove all detritus from the land resulting in the demolition/ removal of the brick piers and associated walling, gate and metal fret cut screens from the land
 - (iii) The block paving/ slabs should be removed, and the hedgerow reinstated back to a condition prior to the development first taken place. (The hedgerow should be replanted in the next planting season between 1st November 23 and 31st March 24)
 - (iv) Leave the land in a clean and tidy condition
- The period for compliance with the requirements (i) and (ii) is 3 months and requirement (iii) (i) (ii) has a period of compliance between 1 November 23 and 31 March 24.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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).
- Appeal B is proceeding on grounds (f) and (g) of the Town and Country Planning Act 1990 (the Act)(as amended)

Decisions

Appeals A and B

1. It is directed that the enforcement notice is varied and corrected by:

- (i) Deleting the allegation in full and replacing it with 'Without planning permission, the construction of brick piers and associated walling, block paving, gate and metal fret cut screens shown in the attached photograph.
- (ii) Deleting all of the requirements and replacing them with
 - (i) Demolish/dismantle/remove the brick piers and associated walling, block paving, gate, and metal fret cut screens
 - (ii) Remove all debris arising from compliance with requirement (i) from the land
 - (iii) Restore the land to its condition before the breach took place

- (iii) Deleting in full the period for compliance wording and replacing it with 'the period for compliance for all of the requirements is 6 months'.
- 2. Subject to these corrections and variations, Appeals A and B are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended under Appeal A.

The Notice

- 3. It is the duty of the Inspector to put the notice in order irrespective of the grounds of appeal. The allegation states *'Without the benefit of planning permission, the construction of brick piers and associated walling, gate and metal fret cut screens and gate over 1 metre in height, adjacent to the highway. (For the avoidance of doubt, this is brick gate piers and associated walling a metal fret cut screens and gate in the photograph attached this notice) ("the Activity")*.
- 4. Whilst the appellant has understood the allegation and requirements, they lack clarity and brevity. In the allegation, the reference to the development being over 1 metre in height is superfluous when the whole of the development is unauthorised. The words 'The Activity' are not required and usually relate to a material change of use not operational development. The wording also refers to gates twice when the development includes one gate. It is not necessary to repeat the details of what is shown in the photograph.
- 5. The third requirement includes the removal of block paving/slabs. The block paving to the front of the metal screening is not included in the allegation. However, the appellant has referred to it in the evidence and has treated it as part of the allegation. It is shown in the photograph referred to, it is included in the requirements and the appellant has no objection to its inclusion. I will amend the allegation to include the block paving which is part of the development as shown on the photograph. I will also delete references to the development being more than 1 metre and 'the Activity'. The reference to the photograph does not need to repeat all the elements already listed.
- 6. I will therefore amend the allegation to 'Without planning permission, the construction of brick piers and associated walling, block paving, gate and metal fret cut screens as shown on the photograph attached to this notice.'
- 7. The requirements need to flow from the allegation. The reference to ground level in the first requirement is superfluous. The first requirement can be expressed simply as a requirement to demolish/ dismantle/ remove the listed matters including the block paving which was in requirement three. The second requirement is then to remove any debris arising from compliance with the first requirement. The third requirement also refers to the hedgerow being 'reinstated back to a condition prior to the development first taken place.'
- 8. However, Section 173(3) of the Act sets out the purposes of the notice which includes restoring the land to its condition before the breach took place rather than further repetition. The requirement to restore the hedgerow applies only if the hedgerow was in place prior to the development taking place and it is not clear from the information before me if that is the case.

9. I will therefore amend the third requirement to 'restore the land to its condition before the breach took place' as that is the extent of what can be required under Section 173(3) of the Act.
10. The fourth requirement to leave the land in a clean and tidy condition is subjective and outside the scope of the notice and it will be deleted. In the event of the notice being upheld, compliance with the other requirements would remedy the breach. I will amend the allegation and requirements accordingly. I am satisfied that the proposed variations and corrections do not cause injustice to any party.

The ground (a) appeal and the Deemed Planning Application (DPA)

Main Issue

11. The main issue is the effect of the development upon the character and appearance of the area having particular regard to the desirability of preserving the setting of the Grade II listed building at the appeal site.

Reasons

12. The appeal site is located in a countryside location outside of the village of Great Tey on Earls Colne Road. There are other houses and farm buildings in the vicinity and a number of those buildings are listed. The character of the roadside is made up of hedges and trees with largely open accesses to dwellings and farmhouses.
13. The dwelling at Cherry Garden is made up of the historic original building that was listed in 1982 with later additions. The listing description is '*C16 cottage aligned northeast to southwest, its long walls cased in 9 inch red brick Flemish bonded with black weather boarded gable to the road. Roof ridged and gabled, thatched, red brick chimney stack near east end. Two eyebrowed dormers, opposite each other facing north-west and south-east. Ground storey range of 3 C18 sashes and 2 front doors all facing south east. Flat sectioned floor joists into heavy binding joists, heavy oak wall-plates.*' Although changes have been made to the building since 1982, the dwelling that exists now still includes special architectural and historical features.
14. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses when considering whether to grant planning permission. The Glossary to the National Planning Policy Framework (the Framework) defines the setting of a heritage asset as including the surroundings in which a heritage asset is experienced.
15. The appellant purchased the appeal site in 2018 and has carried out extensive renovation work since that date. The appeal dwelling includes the original thatched and weather boarded 16th century cottage which had a gable end to the road. Works carried out in the 1980s to the appeal property included adding a new two storey wing with a new front door onto the gable end of the original thatched cottage. In 1993, listed building consent was granted to block up the original front door in the historic part of the building on the eastern elevation and replaced with a window.

16. The works carried out by the appellant included installing new drainage works and the appellants state that as part of those works, hedgerow to the front boundary was removed. Replacement hedging has taken place which included blocking off the pedestrian access on the north east corner of the appeal site. Vehicular access is located at the other end of the appeal site on the north west corner.
17. The appellant accepts that the development which is located at the front of the appeal site has altered the immediate setting of the dwelling but considers the works to be in keeping with that setting. The development was constructed at the front of the appeal site to provide a direct access to the front door that was installed in the 1980s. It consists of red brick piers at each end with three insets between red brick. One inset consists of a black metal fret cut gate for pedestrian access and there are two other fixed panels of the same design.
18. The design includes block paving enclosed by the other elements of the development as the gate and metal screens are set back from the road. There is a post box within one of the side walls and some lighting on the middle sections of brick although the lighting has not been finished.
19. The view from the road looking directly at the appeal property includes the upper parts of the dwelling particularly the thatched roof which is visible behind the development and replacement hedging. Prior to the development taking place, there was no built development along the front boundary which detracted from this view. There are also views of the side brick elements of the development when approaching the development from either direction along the road.
20. Whilst the brick and black metal features may have intended to echo the materials of the gable end of the appeal property, black metal fretwork and red bricks are not materials usually associated with traditional thatched properties. The development with its modern, busy design with the use of red brick and black metal fret work is incongruous in this location and in stark contrast to the traditional appearance of the listed building and its setting.
21. The size of the development in terms of length, width and height is extensive and goes beyond creating a gap in a hedge boundary or providing a modest entrance. Whilst the replacement hedging either side of the development will grow, that hedging is unlikely to block all views of the development from the side due to the extent of the projection and the height of the side elements.
22. Reubens Barn is across the road from the appeal site. It has a wide open access to the road. Set back some distance into the site, there is a mix of traditional wooden gates with brick elements. The use of brick is not extensive and matches brick used in the black weather boarded building next to it. The boundary treatment at Reubens Barn is not comparable to the development. I also found no similarities between the development and the boundary treatments of the listed buildings referred to by the appellant along this section of road as part of my site visit observations.
23. Paragraph 212 of the Framework requires that when considering the impact of development on the significance of a designated heritage asset including its setting, great weight should be given to the asset's conservation, irrespective of whether the harm would be substantial or less than substantial to its significance. I do find that the harm to the setting of the listed building is less than substantial but nevertheless of considerable importance and weight. Paragraph 215 of the

Framework states that the harm should be weighed against any public benefits of the development.

24. The appellant has referred to public benefits including safe and secure pedestrian access to the appeal property and enabling visitors to identify the point of access and the quality of the design. However, locating the development at the front of the appeal site is a matter of personal choice for the appellant, as he wishes to have an access directly in line with the front door, rather than a public benefit. The quality of the design is also not a public benefit when I have found the design itself to be harmful.

Planning Balance

25. Given the above, and in the absence of any substantiated public benefit to weigh against the harm to the setting of the listed building, I conclude that, the development fails to preserve the setting of the Grade II listed building. This would fail to satisfy the requirements of the Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, paragraph 212 of the Framework and conflict with Policy DM16 which refers to only allowing development which adversely affects the setting of heritage assets in exceptional circumstances where there are public benefits.
26. The development also harms the character and appearance of the area and is also in conflict with Policy ENV1 of the Colchester City Council Adopted Local Plan 2017-2033 (the Local Plan) which, amongst other things, aims to conserve Colchester's countryside. It is contrary to Policy SP7 and Policy DM15 of the Local Plan which collectively refers to development responding to local character.

Alternative Development

27. The appellant had referred in his evidence to alternative proposals including lowering the height of the walls and changing the gate and panels to timber if this was held to be more appropriate. However, the appellant subsequently indicated in final comments that he is not seeking to alter the development. I will, however, addressed this matter under ground (a) as it also forms the basis of the ground (f) appeal.
28. Any alternative scheme would require full details and plans to be submitted for consideration by the Council with appropriate statutory and third party consultation taking place and, in the absence of those details, it falls outside the remit of this appeal.

Other matters

29. I note the comments made by a third party with regard to the overall improvements that have been made to the appeal property and the need for a visible border due to traffic volumes and speed. However, a visible border in this location to the front of a listed building is still required to comply with the relevant statutory and policy provisions.

Conclusion under ground (a)

30. For the above reasons, I conclude that the ground (a) appeal should be dismissed.

The appeal under ground (f)

31. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
32. An appeal under ground (f) is limited to whether the requirements of the notice exceed what is necessary having regard to the purpose of the notice. As the requirements include demolition of the boundary treatment, the purpose of the notice is to remedy the breach.
33. Under ground (f), the appellant originally stated that complete removal of a pedestrian access point was unreasonable and that the development could be modified. However, the appellant is not pursuing an alternative scheme within this appeal and it is, any event, a ground (a) matter as it relates to planning matters. No arguments are advanced under ground (f) which address why the requirement to demolish the development is excessive when the purpose of the notice is to remedy the breach. The appeal under ground (f) therefore fails.

The appeal under ground (g)

34. The appeal under ground (g) relates to the period for compliance with the amended requirements which is 3 months. The appellant has asked for a period of 6 months to propose an alternative scheme. The Council has indicated in its evidence that whether or not an alternative scheme is acceptable depends upon what is proposed. Nevertheless, within the appeal documentation, the Council has no objection to a 6 month period for compliance rather than 3 months. I have no reason to disagree with the Council's revised position. The appeal under ground (g) therefore succeeds and I will amend the notice accordingly.

Conclusion

Appeals A and B

35. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and variations and also refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) under Appeal A.

E Griffin

INSPECTOR