



Appeal Decisions

Site visit made on 22 October 2025

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 17th March 2026

Appeal A Ref: APP/A1530/C/22/3309435

Appeal B Ref: APP/A1530/C/22/3309669

3 Firs Chase, West Mersea, Colchester, Essex CO5 8NG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mr Fraser Hadow and Appeal B is made by Mrs Fraser Hadow against an enforcement notice issued by Colchester Borough Council.
- The notice was issued on 6 October 2022.
- The breach of planning control as alleged in the notice is 'Without planning permission, the erection of a replacement boundary fence in excess of 1 metre in height adjacent to a highway used by vehicular traffic'.
- The requirements of the notice are
 - (i) Demolish, dismantle and remove the replacement boundary fence and all supporting structures from the land.
 - (ii) Remove any demolition materials arising from step (i) above from the land**OR**
 - (iii) Reduce the height of the boundary fence and supporting structures to a height not exceeding 1 metre above ground level, to make the development comply with the terms of the planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Article 3, Schedule 2, Part 2, Class A, paragraph A.1(a)(ii) and
 - (iv) Remove any demolition materials rising from step (iii) from the land
 - (v) Leave the land in a clean and tidy condition
- The period for compliance is 2 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 (the Act) (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 Act.
- Appeal B is proceeding on the grounds set out in section 174(2) (c), (e), (f) and (g) of the Act (as amended).

Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by:
 - (i) the addition of the words 'and marked on the fence plan attached to the notice' after the words 'highway traffic' to the allegation.
 - (ii) the addition of the fence plan annexed to this decision to the notice
2. Subject to the correction, Appeal A 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 (as amended) for the development already carried out, namely the erection of a replacement boundary fence in excess of 1 metre in height adjacent to a highway used by vehicular traffic marked on the fence plan attached to the notice and subject to the following condition:

(i) Within 4 months of the date of this decision, a scheme for soft landscaping works shall be submitted to and agreed, in writing, by the Local Planning Authority for the areas of land in front of the development facing onto City Road and Firs Chase. The scheme shall include any proposed changes in ground levels and also accurately identify positions, spread and species of all proposed trees, shrubs and hedgerows. The scheme shall include a timetable for its implementation which shall be complied with.

(a) If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the development hereby approved shall be removed until such time as a scheme approved by the local planning authority is implemented.

(b) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and retained.

(c) 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.

3. Appeal B is dismissed but the notice is quashed as set out in the Decision for Appeal A.

Planning History

4. Planning permission was granted on the 20 December 2013 for ‘demolition of existing porch and detached garage. Alterations and extension of existing detached dwelling comprising single storey gable and extension and lobby, storey and half rear extension and new roof. Associated external works.’

5. The Council refused to grant planning permission for a replacement fence on the 27 May 2022 and then issued the enforcement notice relying upon the same reasons as those contained in the planning refusal.

The Notice

6. The Inspector has a duty to correct the notice irrespective of the grounds of appeal. The enforcement notice plan identifies the appeal site which is edged in black. The allegation states ‘Without planning permission, the erection of a replacement boundary fence in excess of 1 metre in height adjacent to a highway used by vehicular traffic’. However, the extent of the fence is not marked on the enforcement plan or by way of a photograph. Whilst the appellant has understood the allegation, it lacks clarity. The parties subsequently agreed a plan which is identified as ‘the fence plan.’ A reference to the plan can be added to the end of the wording of the allegation and the plan can be attached to the notice. No injustice is caused to either party in attaching the fence plan to the notice or referring to the fence plan in the allegation when the substance of the allegation is not altered.

The appeal under ground (e)

7. An appeal under ground (e) relates to the service of the notice. Section 172(2) of the Act requires that a copy of the enforcement notice shall be served: on the owner and the occupier of the land to which it relates and on any other person having an interest in the land being an interest which in the opinion of the authority is materially affected by the notice.

8. The Council states that it conducted a search at Land Registry prior to issuing the notice and the Land Registry plan confirmed that the appellants are the owners of 'the land' edged red on the enforcement plan. The appellants were served with the notice and have lodged appeals which include an application for planning permission.

9. The appellants consider that the Highway Authority at Essex County Council (the HA) should have been served with the notice but do not explain why the HA has an interest in the land or is materially affected by the notice. The role of the HA in planning matters is usually to comment upon applications rather than being served with an enforcement notice. The HA is not an owner of the land and does not have an interest in the land that has been identified by the appellants.

10. Even if copies were not served as required, Section 176(5) of the Act states that if a person required to be served with a copy of the enforcement notice was not served, that fact may be disregarded if the appellant or that person is not substantially prejudiced by the failure to serve. The appellants are not substantially prejudiced as they received the notice and have been able to lodge appeals as owners and occupiers.

11. I have no details as to how the HA has been substantially prejudiced by not being served with a copy of the notice even if the HA did have an interest in the land in accordance with Section 172(2) of the Act. The appeal under ground (e) therefore fails.

The appeal under ground (c)

12. An appeal under ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The appellant does not dispute that the fencing requires planning permission but maintains that it falls within permitted development. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) sets out permitted development rights for 'the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure' subject to limitations.

13. Whilst the appellant states that the GPDO allows 'improvement, maintenance or alteration' of an existing fence, that is not what is alleged. It is not disputed that the previous fence was removed and a new fence was erected. The wording relied upon by the appellants does not permit complete replacement. Although the allegation refers to the erection of a replacement fence, the addition of the word 'replacement' does not confer any special status in terms of assessing permitted development rights. The GPDO provision which is relevant to the appeal relates to the 'erection of a fence.'

14. The GPDO states that the erection of a fence is permitted development unless the following provisions apply:

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after carrying out the development, exceed-

(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;

(ii) in any other case, 1 metre above ground level;

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;

15. As the development does not relate to a school, if the development is adjacent to the highway and exceeds 1 metre then it is not permitted development. If the development is not adjacent to the highway, then it is not permitted if it exceeds 2 metres. The appellant maintains that the fence is not adjacent to the highway and therefore the higher allowance of 2 metres applies. Although there is no definition of 'adjacent' in the GPDO, the Oxford English Dictionary defines 'adjacent' as "near or next to something else." There is nothing in that definition or in relevant case law that requires the gate, wall or fence to touch the highway in order for it to be considered as being adjacent.

16. Whilst there are a number of decisions and caselaw which address this matter, each decision needs to be based upon the particular facts of the case. It is a matter of judgement, on a fact and degree basis, as to whether a wall or fence defines the boundary of a property as being away from the highway edge, or whether it is "adjacent" to the highway.

17. There is no dispute that Firs Chase and City Road are highways for the purpose of this assessment. Along City Road, between the development and the highway, there is a border edged with railway sleepers, filled with stone pebbles and some bollards. There is a street sign on the corner within the border. There is no longer an ornamental boat at the appeal site. The border continues to follow the bend around to Firs Chase for a short distance narrowing on the corner itself. However, the presence of the border does not in itself mean that the development cannot be considered to be adjacent to the highway.

18. When seen in the context of the appeal property, I consider the development has a clearly obvious functional and physical appearance as purposely forming the boundary of the appellant's land with the highway. The limited extent of physical structures in between does not in my view mean that the development is not adjacent to the highway.

19. The development is in close proximity to both highways and it is close enough to have the perceived function of forming a boundary between a highway and a residential property. I therefore conclude that, as a matter of fact and degree, the development is adjacent to the highways. It follows that the development alleged in the notice does not constitute permitted development under Class A, Part 2, Schedule 2 of the GPDO as it exceeds 1 metre in height. The appeal on ground (c) therefore fails.

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

20. In a ground (a) enforcement appeal, the DPA derives from the allegation which is the erection of a replacement fence. The DPA does not therefore include a gate or any area beyond the fence as identified on the fence plan.

The Main Issues

21. The main issues are (i) whether the development impacts upon highway safety and (ii) the effect of the development upon the character and appearance of the appeal dwelling and the surrounding area.

Highway Safety

22. The Council's wording for issuing the enforcement notice with regard to highway safety is exactly the same as in the planning refusal notice. The HA objected to the previous application as 'that proposal appeared to enclose land considered to be

highway along City Road and that the relocated boundary treatment would interfere with the visibility at the vehicular access to number 3 Firs Chase but less so at the junction of City Road and Firs Chase’.

23. No details are provided as to why the existing vehicular access at the appeal site is effected by the development. The location of that access at the appeal site is set back from the road as shown in the photographs provided in the Transport Assessment (TA) of the appellant. The TA addresses visibility at the junction of City Road, which is a private road, with Firs Chase and refers to the view turning left being unobstructed. A photograph provided by one of the third parties who supports the development also illustrates that vehicles coming out of City Road looking left do not have obscured views due to the set back. Having travelled to the appeal site by car, I concur. The development does not enclose land considered to be highway when the development is limited to the fence which the Council and the appellant agree is on land which is within the appellants’ ownership.

24. Third party objectors have referred to volumes of traffic and lack of pavement. They also question whether the ornamental boat which has been removed or the raised bed is part of the curtilage of the appeal property. However, the allegation relates to the fence which is within the curtilage of the appeal property. The absence of pavements and the volume of traffic are matters that drivers and pedestrians also needed to be mindful of before the development took place. Given the degree of set back and the location of the fence, I do not find that the development has an adverse effect upon highway safety.

25. The development is therefore not in conflict with Policy DM15 of the Colchester Borough Council Adopted Local Plan 2017-2033 (the Local Plan Section 2) which provides that all development must create a safe, resilient and secure environment. It is also not in conflict with Policy DM21 of the Local Plan Section 2 which refers to all development being created in a manner which maintains the right and safe passage of highway users.

Character and appearance of the area

26. The character of the area is largely residential although there are non-residential buildings such as a boatyard and the West Mersea Yacht Club in close proximity to the appeal site. There is a variety of housing types within the vicinity of the appeal site which is not far from the sea at West Mersea. However, the boundary treatments within the immediate vicinity in are largely made up of hedgerows, mature planting with some elements of fencing.

27. The appeal site consists of a dwelling with two vehicular access points on Firs Chase and City Road as the appeal site is on a corner plot. The dwelling fronts onto Firs Chase where there is an open area for car parking. The dwelling to the opposite side of City Road has some fencing but also has dense planting and mature trees.

28. The development consists of wooden fencing to the boundary with Firs Chase and City Road. The appellant indicates that the development follows the same line as the previous fence along City Road but has been extended further along Firs Chase. The access on City Road is through a vehicular gate which is made of the same materials as the development. The appeal property itself has a more modern design than more traditional surrounding properties following extensive works carried out following an earlier grant of planning permission.

29. The appellant intended to replicate a coastal character along the boundaries to the front. However, the character of the boundary treatments of surrounding dwellings is more verdant rather than coastal. The appellant also proposed to carry out soft landscaping along the boundaries to provide greenery. Whilst the original bright colouring of the fence has now faded, the extent of the development along both boundaries with the road is out of character with surrounding boundary treatments where fencing where it exists is used in association with planting. The existing fence seen against a backdrop of a pebble border is not in keeping with the character of the area particularly in comparison to the largely verdant boundary treatment at the opposite side of City Road. The development does therefore cause some adverse harm to the character and appearance of the area and to the appeal property.

30. I have concluded that the development does not cause harm to highway safety but I have found that it does cause some harm to the character and appearance of the area and the appeal property. However, where there is a finding of harm, I have to consider whether otherwise unacceptable development could be made acceptable through the use of conditions.

Conditions

31. The appellant indicated that whilst soft landscaping was proposed, it was never carried out. There is an existing single bush within the border along City Road which does illustrate that softening the appearance of the development with planting is achievable. Planting density can vary within the border to ensure that existing visibility is not impacted. In order to impose a condition, it has to meet the tests set out in the National Planning Policy Framework (the Framework) and the Planning Practice Guidance. The border is outside the red line of the enforcement plan. However, the parties agree that the condition meets the statutory requirements as the relevant area of land is within the control of the appellant for purposes of maintenance and repair including City Road which is a private road where owners or frontagers are responsible for its upkeep. I am satisfied that the condition meets the relevant tests as it is necessary, relevant to the development and to planning, enforceable, precise and reasonable in all other respects.

32. A planting condition is not always an effective or an appropriate way to address harm in relation to fencing. However, in the particular circumstances of the appeal site and considering the degree of harm that I have found, I am satisfied that a suitably worded condition can mitigate that harm. Planning permission can therefore be granted subject to a suitably worded condition.

33. The parties have agreed the wording of the condition which requires a scheme to be submitted and implemented in accordance with the approved scheme and the sanction of removal of the development until compliance takes place. The condition is 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 compliance with the condition because the development has already taken place.

34. Subject to the appropriate condition being imposed, I find that the development in terms of character and appearance does not conflict with Policies DM15 of the Local Plan Section 2 and Policy SP7 of the adopted Section 1 Local Plan 2013-2033 which, amongst other things, collectively refer to development responding positively to its

context. I also find no conflict with Paragraph 135¹ of the Framework which, amongst other things, refers to development being visually attractive and sympathetic to local character.

Other matters

35. There are a number of comments in favour of the development and there are also some objections. I have taken into account all of the comments which relate to planning matters in respect of the development in reaching my decision.

Conclusion

36. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice subject to the condition. The enforcement notice will be quashed. In these circumstances, the appeals on grounds (f) and (g) in respect of Appeals A and B do not fall to be considered.

E Griffin

INSPECTOR

¹ Previously paragraph 130