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## Appeal Decisions

Site visit made on 14 March 2016

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09 May 2016

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**Appeal Ref: APP/V2255/C/15/3132093**

**Land adjacent Chandlers Croft, fronting Swale Way, Kelmsley, Sittingbourne, Kent.**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Taylor Wimpey South East against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 10 July 2015.
- The breach of planning control alleged in the notice is failure to comply with condition No 1 of a planning permission Ref SW/05/0574 (Case 110) granted on 11 July 2005.
- The development to which the permission relates is 'Reserved matters of SW/91/0125 as amended by SW/01/0831 for the hard and soft landscaping to new housing site.' The condition in question is No 1 which states that: All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the District Planning Authority. The notice alleges that the condition has not been complied with in that in the area identified on the attached plan the hard and soft landscape works have not been carried out in accordance with the approved details.
- The requirements of the notice are: 'Remove the bund and fencing in its entirety and carry out the hard and soft landscaping of the land in accordance with the details approved under application reference SW/05/0574.'
- The period for compliance with the requirements is twelve months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.**

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**Appeal Ref: APP/V2255/W/15/3129838**

**Land at Chandlers Croft, Kelmsley Area B, Swale Way, Kemsley, Sittingbourne, Kent.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Taylor Wimpey South East against the decision of Swale Borough Council.
- The application Ref 14/505359/FULL, dated 4 November 2014, was refused by notice dated 5 May 2015.
- The development proposed is retrospective application for the retention of a bund and fencing and associated proposed landscaping.

**Summary of Decision: The appeal is dismissed.**

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### Background

1. The appeal site forms the northern and eastern extent of the housing development known as Kemsley Fields and is located about 800m from the A249, east of the Sheerness Railway Line. Swale Lane is to the north and east of the appeal site and is a distributor road serving industrial development in the local area. It becomes elevated to the west of the appeal site and rises over the Sheerness Railway Line. Swale Way forms the outer limit of residential development at Kemsley with industrial development beyond.
2. The approved hard and soft landscaping works for the residential development, including the appeal site (reference SW/05/0574), are stated to have comprised a 16m wide flat landscaped belt and a 1.8m high brick wall built on the back edge of the footway around the outer perimeter of Kemsley Fields. There were no proposals for formal pedestrian access to this landscaped belt.

### Appeal A on ground (a)

3. In the case of Appeal A, a breach of condition case, the deemed application contained within the ground (a) under s177(5) is a retrospective one, to carry out the original development without complying with the particular condition enforced against.

### Main issues

4. The main issues in relation to both Appeal A and Appeal B are the effect of the bund on the character and appearance of the area and on the living conditions of adjacent residents.

### Character and appearance

5. The local landscape context is largely flat and open land, which slopes gradually down to Milton Creek to the south east. The surrounding land uses are mixed and include large industrial buildings such as Kemsley Paper Mill and the Morrisons Supermarket Distribution Warehouse alongside areas of newly constructed residential development. There are overhead power cables and pylons. There are some areas of undeveloped land some with native species scrub, grass and marshland. The bund is a man made form, seen within the context of a road, industrial and residential development, which is viewed along Swale Way and from within adjacent residential gardens and dwellings, and also from the estate roads where gaps between buildings allow views through to it.
6. The appellant has provided details of a landscaping scheme for the currently grassed bund which includes a mixed native species hedgerow and groups of trees alongside Swale Way. The post and rail fence alongside the footway with Swale Way would remain.
7. The appeal site separates the residential development from Swale Way. There are buildings adjacent to the area (with about 50% of these being garages), private gardens, an area of open space and parking courts immediately to the south and west of the appeal site. To the north and east is Swale Way.
8. Within the local landscape context the bund does not detract from the limited number of positive features and overall is not detrimental to the character or appearance of the area. The proposed planting would add interest and provide

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and landscaped buffer between the residential properties and the road, and would not, in my opinion, appear out of place.

9. I am satisfied that, with appropriate planting and maintenance the bund would mature into an acceptable landscape feature, alongside Swale Way. As such, subject to the proposed landscaping being achieved, it complies with Policies E1 and E19 of the Swale Borough Local Plan 2008 (LP) by responding positively to positive features of the site and locality, being well sited and having a high standard of landscaping with native plant species.

#### Living conditions

10. Although formal pedestrian access to the landscape buffer zone was not previously envisaged, or planned for in the landscape buffer zone, it is clear that people do access this area and currently go onto the bund and walk along it. I was able to walk the full length of the bund, albeit climbing over a fence (with the parties and local residents) to access the area.
11. There are unrestricted views into the relatively short rear gardens of those properties backing onto the landscape buffer zone from the bund. Due to the proximity of the bund to the residential properties there are views from it not only into the rear amenity areas but also into the ground floor windows and conservatories and to the first floor windows. I find that the bund facilitates an unacceptable and significant loss of privacy for those occupiers, both within their gardens and within their dwellings. As such, the development fails to comply with Policy E1 which requires development to cause no demonstrable harm to be residential amenity.
12. Furthermore it is contrary to one of the core planning principles set out in the National Planning Policy Framework which is to seek to secure a good standard of amenity for all existing and future occupants of land and buildings.
13. The appellant has proposed landscaping the bund including locating dense, thorny species such as hawthorn and blackthorn on the top of the bund with a higher concentration of these species closest to Swale Way. The appellant considers this will overcome the issue of loss of amenity to local residents.
14. Interested parties have referred to the bund containing builders waste, broken plastic pipes and old bricks, with a small amount of earth on top. Broken man hole covers are also referred to. I saw that there were bits of brick, some metal rods and other waste within the bund at the time of my site visit. The materials within the bund have raised concerns that landscaping would not be able to become fully established. However, the Council are satisfied that, with proper preparation, landscaping will survive.
15. I accept that landscaping as proposed could provide some mitigation of the adverse effect of people walking along in the elevated position that is provided by the bund, on the privacy of adjacent occupiers. However, it would take time to establish during which time there would be a significant and unacceptable loss of privacy to adjacent occupiers. Third parties would be able to access the area and create pathways through the planting as it grew which would not necessarily result in any loss of plants or require any to be replanted as part of the maintenance regime. I therefore am not satisfied that the proposed landscaping would provide a sufficient or a permanent deterrent to third parties accessing the bund and looking into the adjacent residential gardens and

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dwellings. As such, the provision of landscaping would not make an unacceptable development acceptable.

#### Other matters

16. I note that concerns have been raised about noise issues associated with the traffic on Swale Way. However, no acoustic barriers were required as part of the planning permission for the future occupiers of the residential development within the area of the appeal site.
17. I note that the Environmental Services Manager (ESM) was consulted in relation to the Appeal B planning application. The ESM stated that the removal of the large bund and its replacement with a 1.8m high brick wall built on the back edge of the highway would not benefit the residents of the development in terms of noise attenuation. The ESM states that a 2m high earth bund, properly constructed and landscaped, would be more favourable in terms of noise mitigation, but there is no firm evidence before me which demonstrates that this is the case.
18. However, there is no substantiated evidence that the bund which has been constructed satisfies the ESM in terms of being 'properly constructed'. Moreover, there is no substantiated analysis of the noise attenuation qualities of either the brick wall or the bund in terms. Thus I have no substantiated evidence on which to conclude that the bund would be materially better, in terms of sound attenuation for the adjacent residents, than the approved brick wall. I am therefore unable to weigh the benefits of the bund in terms of sound attenuation against the harms I have identified. In the absence of such evidence, I give little weight to the comments of the ESM.

#### Conclusion

19. Whilst I have found no harm to the character and appearance of the area and considered the possibility that the bund would provide a greater amount of sound mitigation than the approved scheme, this does not outweigh the harm I have found in relation to the living conditions of adjacent residents. For the reasons given above I conclude that the ground a appeal for Appeal A and Appeal B should be dismissed.

#### Appeal A on ground (f)

20. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. In appealing on ground (f) the appellants must detail specific lesser steps which, in their view, would overcome the objections to the appeal development.
21. The appellant considers that there are two lesser steps that would overcome the objections to the appeal development. Firstly, that landscaping of the bund would overcome the issues of overlooking to the residential neighbours by making access onto the bund impractical and improbable. Secondly, that the post and rail fencing allows for the appreciation of the verdant and open character of the residential estate beyond and seeking its replacement with the approved walling would be disproportionate to remedy any injury to amenity.
22. I have dealt with landscaping the bund and whether or not that would overcome the harm I identified in relation to the ground (a) appeal above. In relation to the post and rail fence, whilst this would not result in harm to the

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character and appearance of the area, it is seen as an alternative to the approved wall by the appellant. As I understand it, a vertical barrier of 1.8m high was necessary to achieve acceptable internal noise levels within the permitted residential dwellings. The approved scheme provides that vertical barrier in the form of a wall and I have found that there is no substantiated evidence to show that the bund provides the same, or improved, level of protection. The post and rail fencing would not achieve, in my view, the same result. Therefore on the evidence available, the post and rail fencing would not provide adequate safeguards in terms of noise to the adjacent residential occupiers.

23. I find that, in the absence of cogent evidence to the contrary, the requirements of the Notice in Appeal A are not excessive. Accordingly, the Appeal A on ground (f) fails.

#### **Conclusions**

24. For the reasons given above I conclude that both Appeal A and Appeal B should fail. I shall uphold the enforcement notice to Appeal A and refuse to grant planning permission on the deemed application.

#### **Formal decisions**

##### Appeal A

25. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

##### Appeal B

26. The appeal is dismissed.

*Hilda Higenbottam*

Inspector