

**East Malling &
Larkfield**
East Malling

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TM/13/00551/FL

Proposal: Replacement of self-supporting fence situated behind existing ragstone boundary wall. In addition, replacement of small section of fencing with ragstone walling in keeping with adjoining wall fronting on house

Location: Ivy House Farm 42 Chapel Street East Malling West Malling Kent ME19 6AP

Applicant: Mr Jonathan Colvile

1. Introduction:

- 1.1 Members will recall that this application was withdrawn from the agenda for the Planning Committee meeting of 29 August 2013, to enable further technical appraisal and for the matter to be reported back to Committee in due course. The particular issues that required further investigation included:
- any noise issues associated with the fence; and
 - discrepancies in the submitted plan.
- 1.2 A copy of my report to the 29 August 2013 meeting is attached as an Annex.
- 1.3 The fence has now been subject to acoustic modelling and assessment, carried out by consultants commissioned by the Borough Council, and amended drawings have been submitted to indicate accurately those sections of the fence that have so far been constructed and how it is intended to be completed. The details have been subject to formal consultation and the findings of the acoustic appraisal have been presented to those local residents who live opposite the site at a meeting. Following the discussion that took place at this meeting detailed noise measurements are being carried out. The findings of this will be presented in a supplementary report.

2. Consultees:

- 2.1 The findings of the initial consultations are summarised in the report of the 29 August 2013. A further consultation was carried out with regard to the acoustic modelling undertaken.
- Three letters received querying the results of the acoustic modelling and stating that the results do not represent what actually happens on site. The nature of the data used and the model itself are also considered to be not appropriate or representative.

- The accuracy of the submitted drawings is questioned as the drawing shows it lower than actually constructed.
- 2.2 Following the receipt of revised plans and further information a further additional consultation has been carried out. To date responses have been received from the EMCG and a resident, raising the following points.
- 2.3 EMCG: Consider the fence to be too high and detrimental to the conservation area and a blight on the local community. It has the appearance of a penal establishment.
- 2.4 One private representation received making the following points:
- Computer models only show what should happen but does not allow for factors such as air turbulence from high sided vehicles etc. Any measurement should include an element of personal assessment. Noise increase is intolerable and means that children cannot sleep in front bedrooms now.
 - Fence would result in additional air pollution as it would reflect pollution towards houses rather than allowing it to be absorbed by vegetation.
- 3. Determining Issues:**
- 3.1 The planning policy background to the application and the general issues regarding this application are covered in the body of the main report attached as an annex.
- 3.2 Members will recall that there were concerns about discrepancies that appeared to exist between the information on the submitted plan and in the Design & Access Statement and between both of those and the situation that existed at the site.
- 3.3 The applicant's agent has submitted a revised plan including annotated dimensions of the height of the fence, as it has now been constructed. The dimensions provided indicate the height of the fence in relation to the road, to enable account to be taken of variations in the ground level along the length of the fence. The drawing also provides details of the existing ground level behind the existing low wall that sits between the fence and the road. The fence is built off the ground behind the wall. It therefore is not a boundary structure abutting the highway. Due to variations in ground levels, the fence as constructed is 2.7m high (above the ground where it is sited) at the southern end, reducing to 2.5m in approximately the centre and 2.55m at the northern end where it meets the ragstone wall. Whilst the northern end of the fence does appear taller, this however is due to the road being lower than the ground level of the land upon which the fence is situated at this end.

- 3.4 Class A of Part 2 of Schedule 2 to the Town and Country (General Permitted Development) Order states that fences, walls and other means of enclosure not abutting a highway can be “permitted development” if up to 2m in height when measured from the existing ground level. Given the rights under “permitted development” to construct a fence up to 2m in height, this application can only practically consider the impact of that element of the fence above the “permitted development” “fallback” position. The application is therefore, in effect, seeking approval for the part above 2m, namely the 0.7m at the southern end reducing to 0.5m in the centre and 0.55m at the northern end. The height has to be assessed on its impact on visual amenity and the character of the street scene. Although this is clearly a subjective matter, in this instance, given the design and finish of the fence, I am of the opinion that the additional height, over and above the permitted development level, would not result in a significant additional visual impact, such that the resulting structure would be detrimental to the visual amenity and character of the area. Put simply, if permission were refused for the proposed fence, it could be removed but replaced immediately by a fence between 0.5m and 0.7m lower.
- 3.5 Acoustic modelling was undertaken in September 2013. Following withdrawal of this application from the agenda of the August meeting, it was considered appropriate to commission independent consultants’ advice to corroborate the initial office assessment of the impact of the fence on the noise environment of nearby properties. The consultants’ modelling assessed the effects of replacing the pre-existing fence with another taller fence with enhanced noise attenuating properties along the same alignment. The results of the modelling indicate that there is no difference in the predicted noise levels between the two situations at the three closest noise-sensitive receptors, these being the houses on the opposite side of the road from the application site. In addition, it was concluded that the part of the fence that actually requires to be assessed (that is, the top 0.5m to 0.7m above the permitted development threshold) would not alter the results as it is the lower element (the part that would be permitted development) that would reflect any sound towards the houses opposite. Whilst the comments of the residents regarding the increase in the levels of noise experienced are noted, on the basis of the acoustic assessment that has now been carried out there would appear to be no justified reason for withholding planning permission for the fence on the grounds of its impact on noise and amenity.
- 3.6 The modelling utilised in the latest assessment accords with currently accepted practice and indeed it would not be appropriate to adopt any other such approach, hence the Council’s use of an independent consultant. The computer software that has been used to provide the noise modelling employs internationally recognised principles as set out in ISO:9613 “Acoustics: Attenuation of sound during propagation outdoors”, 1996. Traffic survey data from a survey undertaken by KCC in June 2011 was used; this is the most up-to-date traffic data available.

- 3.7 The comments of the neighbours regarding their concerns about the increased noise levels that they perceive to be reflected from the replacement fence are noted. As stated previously, it is conventionally recognised that the majority of any reflection of noise would take place at a low level and the impact of any structure over 1.4m above the carriageway would be negligible. As a boundary treatment of this height is permitted under the GPDO, in the location of the fence in this application regardless of there being any consideration of noise impact, its removal could not be justified by this Authority under planning legislation.
- 3.8 With regard to the acoustic modelling, the neighbours have expressed concern that the type of model used cannot differentiate between types of wood and their different characteristics of noise reflectiveness. They believe the model alone should not be used to determine the application. The Council's consultant has advised that the conventional model may have limitations but it is the only one available and is the recognised tool, for instance in planning appeals. It is clearly not now possible to take actual "before and after" measurements of the noise levels experienced in the vicinity of the fence, the previous fence having been removed; modelling of the noise environment is therefore the only available option. The status of the modelling approach is explained in 3.6 above. No contrary information or studies have been provided by the neighbours to contradict the findings or indeed suggest a different methodology for assessing the noise impacts. In any event the acoustic modelling is only one part of the *overall* consideration of the application and any determination has to take into account as a baseline those works that could be undertaken under permitted development. Further noise monitoring has taken place, the results of which will be provided in the supplementary report but this can only indicate the current conditions, not previous levels. It does of course provide the context within which the noise modelling must be considered.
- 3.9 As mentioned in the previous report, Ivy House Farm itself is Grade II Listed and lies within the Conservation Area. The associated land extending to the south (where the subject fence is located) falls outside both the village envelope and the Conservation Area. The applicant's agent has advised that this area of land was laid out as a garden in approximately 1918, according to the applicant, by his grandmother in memory of her first husband who died in the last week of the war in 1918. The fence is outside the historic curtilage of the listed building and therefore the applicant does benefit from the permitted development rights for walls, fences and other means of enclosure contained in Class A of Part 2 of the GPDO.
- 3.10 This matter has been the subject of lengthy consideration and a meeting has been held with the neighbours and the Council's independent consultant acoustic advisor in an attempt to better understand the neighbours' concerns. It was agreed that noise level recordings should be carried out close to the application site during dry and still weather conditions. At the time of preparing this report, further measurements were being carried out at a property opposite the fence. It is

important to obtain as accurate results as possible in order that all parties may fully understand the noise environment experienced by the residents opposite, particularly as they have called into question the Borough Council's assessment of the noise levels actually experienced. The results of this survey work will be included in the supplementary report. This, however, will only provide a snapshot of the current position and will not affect the assessment that has been carried out regarding the modelling of the overall impact of the fence that is the subject of this application. Even if this produces results that are significantly different from those that might be expected based on the traffic survey carried out in June 2011, that does not mean that such a change can necessarily be attributed to the fence that is the subject of the current application, and that is only partially erected, for the reasons set out earlier in this report.

4. Recommendation:

- 4.1 **Grant Planning Permission** in accordance with the following submitted details: Design and Access Statement dated 01.05.2013, Letter dated 01.05.2013, Site Plan dated 01.05.2013, Photograph 0345 dated 25.02.2013, Photograph 0343 dated 25.02.2013, Photograph 1960 dated 25.02.2013, Proposed Plans 13/0000/02 dated 01.05.2013 and subject to:

Conditions

1. Within one month of the date of this decision the fence hereby approved shall be finished and maintained in a dark brown coloured finish.

Reason: In the interests of the visual amenities of the area and in accordance with paragraphs 17, 57, 58, 61 of the National Planning Policy Framework 2012.

2. The standard of workmanship achieved in the carrying out of the development shall conform with the best building practice in accordance with the appropriate British Standard Code of Practice (or EU equivalent).

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

3. Prior to the commencement of the construction of the ragstone wall, precise details of its construction shall be submitted to and approved in writing by the Local Planning Authority. Such details as hereby approved shall be carried out concurrently with the development.

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

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