

Alleged Unauthorised Development

East Malling
East Malling

13/00028/WORKM

100061 182852

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

1. Purpose of Report:

- 1.1 To report the unauthorised erection of a ragstone wall and the unauthorised erection of a fence. The works to the wall comprise in part the increase in height of an existing section of wall and in part the erection of a new length of walling.

2. The Site:

- 2.1 No. 42 Chapel Street, known as Ivy House Farm, is positioned on the western side of the road towards the southern end of East Malling village. The property is a Grade II Listed Building which is situated within the Conservation Area and village confines. The land associated with the house extends to the south and falls outside the village confines and Conservation Area. The listing for Ivy House Farm relates to the farm house itself, but the fence is located within a separate piece of land that, whilst in the same ownership and used in connection with the house, does not form part of the curtilage of the Listed Building.

3. Alleged Unauthorised Development:

- 3.1 Without the benefit of planning permission, the construction of a ragstone wall, part of which would be adjacent to the highway used by vehicular traffic, that exceeds one metre in height above ground level. Also without the benefit of planning permission, the erection of a fence the majority of which would exceed two metres in height from ground level.

4. Determining Issues:

- 4.1 At Area 3 Planning Committee on the 6 February 2014, planning permission was refused for:

“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”.

The application was refused planning permission for the following reasons:

1. The fence, by virtue of its particular design and appearance, length, height and siting on land that is higher than the neighbouring road, has a detrimental impact on the character of the street scene and views into the Conservation Area. The fence is

therefore contrary to paragraphs 61, 64, 131 and 133 of the National Planning Policy Framework 2012, Policy CP24 of the Tonbridge and Malling Borough Core Strategy 2007 and Policy SQ1 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document 2010.

2. The fence by virtue of its height, siting and appearance has an unacceptable impact on the residential amenity of the properties on the opposite side of the road, by virtue of its overbearing appearance and position on land higher than the street. The fence is therefore contrary to paragraphs 56, 61 and 64 of the National Planning Policy Framework 2012, Policy CP24 of the Tonbridge and Malling Borough Core Strategy 2007 and Policy SQ1 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document 2010.

- 4.2 Members will recall the discussion at that time regarding the permitted development “fall-back” position for a fence. If the fence were to be reduced to not exceed two metres in height from ground level it would, *in effect*, comply with the provisions of Class A, of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended). Since the planning application was reported to Committee the fence has, for the most part, been reduced in height and subsequently further measurements have been taken. The measurements taken at various points along the length of the fence show that the fence consistently exceeds the two metres in height permitted under Class A, of Part 2, measuring on average about 2.12 metres from ground level with the highest point measuring 2.5 metres at the southern end of the fence.
- 4.3 A new section of ragstone wall has been constructed between the existing wall to the front of the property and the smaller existing ragstone wall which runs adjacent to Chapel Street. Part of this lower wall has also been increased in height. The ragstone wall is, in part, a replacement for a pre-existing 1.7 metre panelled fence which separated the land associated with the property and the grass verge adjacent to the highway.
- 4.4 Measurements were taken, to establish the height of the wall above ground level, at various points along the length of the wall. It measures 1.64 metres in height closest to the dwellinghouse and, due to the slight slope in ground level, adjacent to the highway it measures 2.15 metres at its highest point. The majority of the ragstone wall would not be adjacent to the highway and, as it would not exceed two metres in height, it would fall within the provisions of Class A, of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and therefore benefit from a deemed planning permission. A small section of the ragstone wall closest to the fence described above, due to its location and the absence of any physical separation, is considered to be adjacent to the highway. As there is no legal definition of what is considered “adjacent” to the highway, it is a matter of fact and degree to be assessed in each case. In the present circumstances, officers consider the majority of the ragstone wall is not adjacent to the highway due to the intervening grassed verge area, which is up to 1.2 metres wide at this point.

However, as the extended wall approaches the return with the wall running alongside the highway, this strip reduces to 0.7 metres. Officers have therefore concluded that this small area of wall is, as a finding of fact and degree, adjacent to the highway. The area of wall which would exceed one metre in height and is adjacent to the highway is shown hatched on the annotated photograph taken on the 16 June 2014, and which is annexed to this report.

- 4.5 This development must be considered in relation to the Core Strategy policies CP1 (development should be to a high quality and respect residential amenities) and CP24 (need for high quality design). Policy SQ1 of the MDE DPD states that development should respect and reinforce an area's local distinctive character. Paragraphs 17, 57, 58 and 61 of the NPPF reinforce the above. Paragraphs 126 and 131 of the NPPF concern development in Conservation Areas and affecting historic buildings.
- 4.6 A key consideration in this case is the height of both the fence and the wall relative to the relevant permitted development "fallback" positions. It is also necessary to consider any impact on the area generally, neighbouring properties, the setting of the Listed Building, character of the Conservation Area and any effect on highway safety.
- 4.7 Although there has been some reduction in height of the fence since the decision on the planning application was taken, it still substantially exceeds the height that would be allowed under permitted development rights and, taken overall, I do not consider that the alterations that have taken place sufficiently overcome the stated reasons for refusal. The harm that was identified then still exists.
- 4.8 There are a number of examples of ragstone walls within the vicinity of the site and within the wider area of East Malling. The majority of the wall would fall within the provisions of Class A, of Part 2. The remaining section of the wall would not benefit from any form of permission but it does not have an effect on the character of the Conservation Area and would not have any effect on the residential amenity of the nearby properties. The attached photo (Annex) indicates the area of wall that is not considered to be permitted development. Due to the size of the section of wall it is not considered it has a detrimental impact on the character of the Conservation Area or the street scene in general.
- 4.9 For the above reasons, I believe that it is expedient to take enforcement action to seek the reduction in height of the fence to not exceed 2 metres in height from ground level. Also for the reasons above, I believe that it would not be expedient to take enforcement action to seek the alteration to the area of ragstone wall which does not fall within the provisions of Class A, of Part 2. It should be noted that if an enforcement notice is served and it does not relate to the whole of the unauthorised development, the Council will be unable to take further enforcement action in the future. However, for the reasons stated above I do not believe it would be expedient to take further action with regard to the wall.

5. Recommendation:

An Enforcement Notice **be issued**, the detailed wording of which to be agreed with the Director of Central Services, requiring the reduction in height of the unauthorised fence to not exceed 2 metres in height and no further action taken against the ragstone wall.

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