

**WELWYN HATFIELD BOROUGH COUNCIL
EXECUTIVE DIRECTOR - PLANNING, PUBLIC PROTECTION AND GOVERNANCE**

DELEGATED APPLICATION

Application No: 6/2017/0489/MAJ
Location: Nyn Manor Vineyards Road Northaw Potters Bar EN6 4PQ
Proposal: Erection of 2m high fencing along part boundary to the North
Officer: Mr M Peacock

Recommendation: Granted

6/2017/0489/MAJ

Context			
It is relevant that the fencing proposed would usually fall within permitted development rights outside the control of planning. However in this case, permitted development rights were removed by issuing an "Article 4 direction". The Article 4 requires planning permission for the erection of a fence, or other means of enclosure, to enable the Local Planning Authority to fully consider the effects of these forms of development.			
Constraints (as defined within WHDP 2005)	LBC - Stable on south side of farmyard at Nyn Manor Farm, Handpost Hill/Vineyards Road, Northaw LBC - Nyn Manor Farm, Handpost Hill/Vineyards Road LBC - Barn And Wall On East Side Of Farmyard At Nyn Manor Farm GB - Greenbelt LCA - Landscape Character Area (Northaw Common Parkland) LNR - Listed Buildings Combined (Northaw Great Wood) PAR - PARISH (NORTHAW AND CUFFLEY) Wards - Northaw & Cuffley TPO - TPO 613 (2017) W1		
Relevant planning history	Application Number: S6/2012/2608/MA Decision: Granted Decision Date: 21 March 2013 Proposal: Replacement boundary fence to Nyn Park Estate		
Consultations			
Neighbour representations	Support: 0	Object: 15	Other: 6
Publicity	Site Notice Display Date: 29 March 2017 Site Notice Expiry Date: 19 April 2017 Press Advert Display Date: 5 April 2017 Press Advert Expiry Date: 19 April 2017		
Summary of neighbour responses	The comments and objections may be summarised as follows: <ul style="list-style-type: none"> • Inappropriate development in the Green Belt with no very special circumstances. • Harmful to the openness, character and appearance of the local landscape and countryside. • This proposed development by its industrial design would be obtrusive, detrimental and give an unacceptable visual impact. 		

	<ul style="list-style-type: none"> • The open nature of the mesh would lead to birds flying into it and being injured/killed. • The reason for the Article 4 Direction in 2005 was to prevent this type of development. • Flytipping is not a problem in this area. • A thorny hedge is an effective deterrent to trespass. • There appears to be no reasonable need for new fencing • The fence would make the maintenance of the existing boundary impractical. • The fence would restrict emergency access to the main sewers which run at the bottom of ours and neighbouring gardens. • Impact on views from residential properties
Consultees and responses	<p>Northhaw and Cuffley Parish Council – no objection</p> <p>Councillor Bernard Sarson – no response Councillor George Michaelides – no response Councillor Irene Dean – no response</p>
Relevant Policies	
<input checked="" type="checkbox"/> NPPF <input checked="" type="checkbox"/> D1 <input checked="" type="checkbox"/> D2 <input checked="" type="checkbox"/> GBSP1 <input type="checkbox"/> GBSP2 <input type="checkbox"/> M14 Others	
Main Issues	
<ol style="list-style-type: none"> 1. Whether the proposal is inappropriate development within the Green Belt and the effect of the proposal on the openness of the Green Belt 2. Impact on the residential amenity of neighbouring occupiers 3. Other material planning considerations 	
<p>Planning permission for the fence is only required because an Article 4 Direction is in place to control fences and other means of enclosure. Normally a 2 m fence of any description in such a location would not require express planning permission.</p> <p>1. Whether the proposal is inappropriate development within the Green Belt and the effect of the proposal on the openness of the Green Belt</p> <p>The main issue for consideration is whether the impact of the fencing is acceptable in the Green Belt location. The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. As with previous Green Belt policy, the National Planning Policy Framework (NPPF) states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.</p> <p>The main issues are therefore:</p> <ul style="list-style-type: none"> • Whether the fence and gates should be regarded as a building for the purposes of the NPPF and development plan policy; • If so, whether or not the proposal would amount to inappropriate development in the 	

Green Belt;

- The effect of the development proposed on the openness and the character and appearance of the Green Belt
- Whether there are other considerations which clearly outweigh the harm to the Green Belt and any other harm thereby justifying the development on the basis of very special circumstances.

Whether the fence and gates should be regarded as a building for the purposes of the NPPF and development plan policy:

In seeking to apply the advice in the NPPF and the policies in the development plan, it is important to first establish what type of development is involved and therefore which part of the NPPF is relevant. The term “building” is defined in section 336 of The Town and Country Planning Act 1990 as “*any structure or erection, and any part of a building as so defined*”. This definition has been interpreted by the courts to include structures which would not ordinarily be described as buildings and normally includes any man-made above-ground structures, including fences. The proposal is therefore considered to comprise a building for the purposes of the NPPF and development plan policy.

Whether or not the proposal would amount to inappropriate development in the Green Belt:

The NPPF accepts that within the Green Belt the construction of new buildings should be regarded as inappropriate development. Exceptions to this include buildings for agriculture and forestry; provision of appropriate facilities for outdoor sport and outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.

It is acknowledged that the site is in agricultural use and it is accepted that, a fence used for agricultural purposes (for example a stock proof fence around and field of pasture), would not be inappropriate development, however, that is not claimed to be the case in this instance. The applicant in their letter dated 25 April 2017 explained that the purpose of the fence is for the following reasons:

1. *Prevent Muntjac [deer] causing considerable damage to the Trees.*
2. *Prevent trespass and nuisance. We have experienced both damage to property and various forms of fly tipping at various locations on the farm over the years and this continues to be a problem year on year.*
3. *Prevent access by travellers. In 2009 we spent months evicting ponies with the help of a horse charity and police from the two paddocks on the Ridgeway which subsequently strayed into the main fields. We do not want a repeat of this and late last year someone caused considerable damage to the metal entrance gates into the service road trying to gain access to the poorly fenced paddocks.*
4. *We have been asked by the police to accommodate cameras on the farm over the past few years as there was apparently a spate of Burglaries from houses on the Ridgeway. This fence will be a further added deterrent and the cameras continue to be used.*

None of the reasons above purport to be for agriculture.

Neither does the proposed fence fall within any of the other types of development that are defined as appropriate and therefore, in accordance with paragraph 87 of the NPPF, such development should not be approved, except in very special circumstances.

The effect of the development proposed on the openness and the character and appearance of the Green Belt:

Paragraph 79 of the NPPF highlights “*the essential characteristics of Green Belts are their openness and their permanence*”. There is no definition of openness in the NPPF but, in the context of the Green Belt, it is generally held to refer to freedom from, or the absence of, development. Any above ground development would to some extent diminish the openness of the Green Belt.

The proposal is for an open wire mesh which is 2m high supported by timber posts. The proposed fence would be sited along part of the boundary to the north of the land which comprises Nyn Manor. Beyond the northern boundary are the rear gardens of houses which form a ribbon of development fronting onto The Ridgeway. These houses are set within spacious and well landscaped plots. Existing landscaping, land form and built form would, for the most part, screen the new fence from public viewpoints. However, the fence would be visible from neighbouring residential properties and their gardens.

A close boarded fence or wall would be a solid barrier and a dominant feature within the landscape, the effect of which would be to close down views resulting in harm to the openness and the character of the Green Belt. However, in this case, the open wire fence is lightweight in appearance and such lightweight and see through fences of varying descriptions and heights are a common feature on agricultural land in the countryside. The design is simple and functional and allows views of the wider countryside to be maintained through the fencing and between the posts.

At present, a wide variety of built boundary treatments exist along the length of the proposed fence, presumably erected by the occupiers of the houses which front on to The Ridgeway. These include fences of different types which range in height from approximately 1-2m. There are examples of solid shiplap and close boarded fences as well as other more open types, such as wire fences or post and rail fences. There are also boundaries defined by scrap and waste material, and in some areas garden waste and rubble had been tipped over garden boundaries onto the application site. Several residential outbuildings exist within close proximity to the boundary, some of which are substantial in size and in height. Against this backdrop, the proposed wire fence and timber posts would have minimal visual impact on the openness of the Green Belt and the landscape character of the area.

To conclude, the proposals are aimed at re-establishing a tidy and managed boundary which would maintain the character and visual amenity of the Green Belt. The impact of the proposal on the openness of the Green Belt is considered acceptable, as the fence has been designed to allow views through into the site and are of a height which is functional without being excessive.

Whether there are other considerations which clearly outweigh the harm to the Green Belt and any other harm thereby justifying the development on the basis of very special circumstances:

Substantial weight must be given to the harm to the Green Belt by reason of the inappropriateness of the proposed development. No very special circumstances have been advanced by the applicant, however, there are factors that can reasonably be taken into account as being material considerations.

It is reasonable to expect that the application site would be protected through some form of boundary treatment. Planting is the most favourable solution in this type of location, however, it is accepted that there are practical limitations in terms of the time it takes to establish a hedgerow, its function and maintenance. It is very relevant to note that the

fencing proposed would usually fall within permitted development rights outside the control of planning. However in this case, permitted development rights were removed by issuing an "Article 4 direction". The Article 4 requires planning permission for the erection of a fence, or other means of enclosure, to enable the Local Planning Authority to fully consider the effects of these forms of development.

In this case, the proposal is aimed at re-establishing a tidy and managed boundary. The effect of the development on the openness and the character and appearance of the Green Belt has been discussed under the previous section of this report and is considered to be very limited, therefore, the proposal would not conflict with the reason for removing permitted development rights.

Turning to the benefits of the proposal, deer have been identified by the applicant and the Council's Landscaping Team as a problem when both managing woodland and when trying to establish young planting. Controlling the access of deer would have significant benefits in terms of maintaining and enhancing planting on the application site.

Cumulatively, when the weight is added together for all these points, it is considered that they represent very special circumstances which clearly outweigh the harm by virtue of the developments inappropriateness and minimal impact on openness. The development therefore complies with the National Planning Policy Framework.

2. Impact on the residential amenity of neighbouring occupiers

The impact of the proposed development on the residential amenity of neighbouring occupiers is considered in terms of the impact on access to day/sun/sky light, privacy and overbearing impact. Giving consideration to the type of development proposed, the scale of the proposal and its setting, there would be no impact on light amenity or the level of privacy afforded to the neighbouring residencies and would not appear visually overbearing.

In terms of visual amenity and overbearing impact, a fence 2m in height is considered acceptable given the separation distance from neighbouring properties and the open design of the fence. In particular, it is noted that the rear gardens of houses to the north of the proposed fence are all at least 60m in length and situated on land which rises from the south to the north, which would further minimise the visual prominence of the fence when viewed from neighbouring properties. Overall, it is considered that the amenity of the adjoining occupiers would be maintained to an acceptable level in accordance with Policy D1 of the Welwyn Hatfield District Plan 2005 and Supplementary Design Guidance 2005 (Statement of Council Policy).

3. Other material considerations

Loss of view:

Whilst concerns have been raised with regard to a loss of a view, planning exists within the public interest and not the private interest and therefore this is not a consideration that holds weight.

Protected Species:

The presence of protected species is a material consideration, in accordance with the Framework (paragraphs 118-119), Natural Environment & Rural Communities (NERC) Act 2006 (section 40), Wildlife and Countryside Act 1981, Conservation of Habitats and Species (Amendment) Regulations 2012 as well as Circular 06/05. Furthermore, Policy R11 requires developments to contribute positively to biodiversity.

The site for the proposed fence has already been cleared of trees and shrubbery in

preparation for the new fence. Where there is a requirement to remove any further trees and shrubbery nesting birds need to be taken into account. Birds nest in a wide variety of habitats. Many species nest in trees, in holes and crevices in the trunk, or high up in the canopy. Others nest in the vegetation that grows up trees, such as ivy. Bushes, hedgerows and scrub, such as bramble and tall ruderal vegetation are also used as breeding sites, and several species nest on the ground amongst the tall vegetation. The nesting season covers the period from March to the end of August. However, some species of bird may nest well outside this period and some species of bird may breed in any month of the year, depending on prevailing weather conditions at the time. It is suggested that the decision notice includes an informative in this regard.

Conclusion

The proposed development is considered to be in accordance with the aims and objectives of saved policies of the Welwyn Hatfield District Plan 2005, the adopted Supplementary Design Guidance and the relevant chapters of the National Planning Policy Framework.

DRAWING NUMBERS

The development/works shall not be started and completed other than in accordance with the approved plans and details:

Plan Number	Revision Number	Details	Received Date
007		Proposed Elevations	12 April 2017
SK11		Location Plan	12 April 2017
H1740 06 C	1	Block Plan (Proposed Fencing)	12 April 2017

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

1. POSITIVE AND PROACTIVE STATEMENT

The decision has been made taking into account, where practicable and appropriate the requirements of paragraphs 186-187 of the National Planning Policy Framework and material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be viewed on the Council's website or inspected at these offices).

Informatives:

- Breeding Birds and Protected Species:** It is an offence to take or disturb the breeding or resting location of protected species and precautionary measures should be taken to avoid harm where appropriate. If protected species, or evidence of them, is discovered during the course of any development, works should stop immediately and advice sought as to how to proceed. This may be obtained from Natural England (0300 060 3900) or a suitably qualified ecological consultant.

Determined By: Mrs L Hughes 22 June 2017