

Appeal Decision

Site visit made on 6 September 2016

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 30 September 2016

Appeal Ref: APP/N4205/W/16/3150297

14 Kilmaine Drive, Bolton BL3 4RU

- 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 Mr Zafar Iqbal against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 94843/15, dated 21 August 2015, was refused by notice dated 22 March 2016.
 - The development proposed is described as change of use of garden and temporary 5 year approval granting for retention of boundary fence at side and rear of property with one double and two single gates.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The Council changed the description of Ref: 94843/15 from that provided on the planning application form to 'change of use of land to domestic use and temporary 5 year permission for retention of boundary fence at side and rear of property with one double and two single gates'. This is a more accurate description of the development which I have used in this appeal.
3. The fence has been erected and the change of use of the enclosed land to domestic use has been implemented. I have no evidence to indicate that the position and design of the fence is otherwise than in accordance with the submitted plans. I have therefore dealt with the appeal on the basis of the application as submitted.

Main Issues

4. The main issues are:
 - The effect on the character and appearance of the surrounding area.
 - The effect on the living conditions of the occupiers of No 2 Chesterton Drive with particular regard to outlook.
 - The effect on highway and pedestrian safety.
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Reasons

Character and appearance

5. The appeal property comprises a detached dwelling sited on a prominent corner plot at the head of a cul-de-sac where Kilmaine Drive meets Chesterton Drive. The general character of the estate is open plan with dwellings having open frontages. The lack of frontage enclosure provides the estate with a spacious appearance.
6. The development comprises the erection of a concrete post and timber panel fence, approximately 1.8 m high, along part of the eastern boundary of the appeal property and abutting the western and southern arms of the cul-de-sac turning head. The Council indicate that the original property boundary fence was positioned approximately 'two fence panel widths' from the dwelling with the area now enclosed being open grassland and containing a conifer tree. The Council suggests that the area of open grassland was a design feature of the estate where open land was provided adjacent to 'end of row' properties.
7. Owing to the position of the fence around part of the turning head it is quite visible in the street scene where its appearance is quite strident and markedly contrasts with the open character of the estate. I agree with the Council that, owing to this contrast, it represents an incongruous feature in the street scene.
8. The enclosure of the former grassland area has resulted in the loss of the open appearance of this part of the estate and eroded the spaciousness that is an integral component of its character. In addition, it provides the turning head with a sense of enclosure that also detracts for the general open character of the surrounding area. Although the application seeks to retain the fence for a temporary period of 5 years this would not mitigate the harm that would occur in the interim period to the character and appearance of the area.
9. I therefore conclude that the development causes significant harm to the character and appearance of the area and would be contrary to Policies CG3 and OA4 of Bolton's Core Strategy Development Plan Document (2011) (BCS). These policies, amongst other things, require development to have regard to the overall character of the existing built environment of the surrounding area and be compatible in terms of street enclosure.

Living conditions

10. The fence is positioned approximately 8m from the windows in the front elevation of the bungalow at No 2 Chesterton Drive. This bungalow is sited at a lower level than the appeal property and has a small hedge along the front boundary.
11. The Council suggest that the intervening distance between the fence and the front elevation of the bungalow at No 2 falls short of the recommended interface distance. However, neither the recommended interface distance or the document or policy where such distance may be prescribed has not been defined by the Council.
12. The outlook from the windows in the front elevation of No 2 is directly towards the fence. I agree with the Council that, owing to the difference in ground levels between No 2 and the appeal site, the impact of the fence in terms of its height is compounded. Views from the frontage of the property are dominated

by the fence positioned in such close proximity to the windows. Owing to the position of No 2 being located beyond the head of the cul-de-sac, the outlook from the windows of this property is already limited. In my view, the fence further compromises the outlook to an unacceptable extent and introduces a sense of enclosure to the property. These factors would have a harmful effect on the living conditions of the occupants of the property.

13. Taking the above factors into account, I consider that the fence has an unacceptable effect on the living conditions of the occupiers of No 2 Chesterton Drive as a consequence of the reduction in outlook. As such, the development is contrary to Policy CG4 of the BCS. This policy, amongst other things, seeks to ensure that new development is compatible with surrounding land uses and occupiers and protects amenity.

Highway safety

14. The fence has been erected immediately adjacent to the kerb on the western and southern arms of the turning head. A street lighting column is enclosed within the fenced area.
15. I accept that the position of the fence limits the extent to which vehicles using the turning head can 'overhang' the kerb. Whilst this is an inconvenience, in my view, the function of the turning head is not inhibited to the extent that highway safety is compromised. Although the Council suggest that the fence should be set back a minimum distance of 1.5m from the edge of the carriageway I have no evidence of any policy requirements or highway standards that may refer to such prescribed set back.
16. The Council also refer to the fact that the fence should be set back 2m from the public footpath to avoid a ginnel effect but similarly I have no evidence of any policy requirements or highway standards that may refer to such prescribed set back of a fence positioned in close proximity to a public footpath. Moreover, the position of the appeal fence on the western side of the footpath is aligned with the boundary fence at No 13 Wendover Drive which similarly abuts the footpath. The eastern side of the footpath adjacent to the frontage of No 2 Chesterton Drive remains open. Consequently, the fence does not create an unacceptable ginnel effect.
17. I recognise that the enclosure of the street lighting column is not ideal in terms of future maintenance. However, the function of the street light is not compromised by the fence to the extent that pedestrian or highway safety is harmed. The Council has not identified any planning reasons or policies that would be compromised as a consequence of the enclosure of the street lighting column. In the absence of any such planning reasons or policies, and given my findings regarding the function of the street light, I find that there is no planning evidence to suggest that the enclosure of the lighting column would be reason to dismiss this appeal.
18. Taking the above factors into account, I do not consider that the fence has a significant effect on highway or pedestrian safety. Consequently, there is no conflict with Policies S1 and P5 of the BCS. These policies, amongst other things, require that development should promote road safety in its design and take pedestrian accessibility into account.

Other matters

19. The Council has also raised concern that the double gates provided in the fence at the head of the turning area could provide vehicular access to the garden area with the resultant loss of trees. At my site visit I observed that these gates are locked and that planting has occurred behind them.
20. Whilst I recognise the Council's concerns, I do not consider that there is sufficient demonstrable evidence in this case to suggest that the gates would give access to vehicle parking in the garden, particularly given the extent of vehicle parking to the front of the appeal property. As such I do not consider that presence of the gates would give rise to any demonstrable conflict with Policies CG1, CG3, P5 and OA4 of the BCS. These policies, amongst other things, seek to ensure that development does not adversely affect trees and has regard to the landscape quality of the area and makes adequate provision for parking.
21. The appellant has provided examples of other properties that have timber panel fences around the front and sides of dwellings that abut the highway. However, many of these appear to relate to estates that do not have open plan character and I do not have full details of the nature of the area or the circumstances that led to these fences being considered acceptable by the Council. Consequently, I cannot be sure that these are representative of the circumstance in this appeal and, in any case, I have determined this appeal on its own merits.
22. I have some sympathy with the desires of the appellant to maintain a safe, private and enclosed environment for children to play. However, I agree with the Council that other alternatives to the fence could be considered that would have lesser impact on the character and appearance of area and consequently I have attached limited weight to this matter.
23. The Council has not identified any concerns regarding the use of the enclosed land for domestic purposes nor has it drawn my attention to any planning conditions associated with the original planning permissions for the development of the estate that may prevent the building of walls/fences to maintain an open plan appearance. Whilst use of the enclosed land may be considered acceptable I cannot issue a split decision in this case as, taking the development as a whole, its use is inseparable from, and consequential to, its enclosure by the fence.

Conclusion

24. Notwithstanding my findings regarding the impact of the development on highway and pedestrian safety, it has an unacceptable detrimental effect on the character and appearance of the surrounding area and causes harm to the living conditions of the occupants of No 2 Chesterton Drive. For the above reasons and taking all other matters raised into account, I conclude that the appeal should be dismissed.

Stephen Normington

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