

Appeal Decision

Site visit made on 4 October 2016

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 06 October 2016

Appeal Ref: APP/W4223/W/16/3154362

2 Shaw Hall Close, Greenfield, Oldham OL3 7PG

- 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 Mrs N Markham-Bew against the decision of Oldham Metropolitan Borough Council.
 - The application Ref PA/337949/16, dated 9 December 2015, was refused by notice dated 3 March 2016.
 - The development proposed is the change of use of land to form extension to existing garden area including erection of timber boundary fence.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to form extension to existing garden area including erection of timber boundary fence at 2 Shaw Hall Close, Greenfield, Oldham OL3 7PG in accordance with the terms of the application, Ref PA/337949/16, dated 9 December 2015, and the plans submitted with it.

Procedural matters

2. I saw at my site visit that the timber boundary has already been installed. The appeal is thus retrospective.
3. In their appeal statement, the appellant confirmed that the name used in the banner heading above is the correct one.

Main Issues

4. I consider the main issues in this appeal to be firstly, the effects of the development on the character and appearance of the area; and secondly, whether or not the development constitutes loss without replacement of amenity space for the purposes of the development plan.

Reasons

Character and appearance

5. Situated in a valley floor, with open hillsides visible on either side, the appeal site comprises a semi-detached property and its grounds and a small irregularly shaped open space, which abuts a turning head on the highway. The semi-detached properties on Shaw Hall Close are quite tightly spaced, with modest rear plots and are set-back from the highway with car spaces to the
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- front. The close is accessed from Shaw Hall Bank Road a long, straight road, with terraces of varying lengths hugging it tightly.
6. The development that is the subject of the appeal is the change of use of the small irregularly-shaped parcel of land to the side of the dwelling to domestic garden. A close boarded timber fence has been erected around this portion of the appeal site.
 7. At my site visit, I saw that whilst boundary treatments to the front of properties on Shaw Hall Close are minimal, fences are present at the side boundaries of some of the properties. Moreover, the fencing at the appeal site is immediately next to and inter-visible with similar and more extensive fencing at Holmlea, a neighbouring dwelling. Indeed other rear boundary treatments are also in the immediate environs of the site and offer a clear context for this type of development. Consequently, I consider that the development does not appear incongruous or visually harmful to the open plan character of the estate.
 8. Shaw Hall Close is at a lower level than Shaw Hall Bank Road, and thus it offers visual relief from the intensity of development along that road by providing views through to the moors and hills beyond. Whilst the fencing is visible from the road, due to the change in levels the eye is drawn to the tall mature trees in the environs of the fencing and to the views beyond that. The fencing is neither visually jarring nor intrusive in these views, and thus once more I detect no harm to the character and appearance of the area arising from its installation.
 9. Consequently, the development clearly does not cause significant harm to the character and appearance of the area. Accordingly, it follows that the development does not conflict with Policy 20 of the *Oldham Council-Joint Core Strategy and Development Management Policies Development Plan Document* (adopted November 2011) ('the Joint Core Strategy'). Amongst other things this policy seeks to ensure that developments reflect the character and distinctiveness of local areas.

Amenity Space

10. Policy 23 of the Joint Core Strategy seeks to protect existing open space. Development of a site used for open space will be permitted provided it can be demonstrated that the development brings substantial benefits to the community that would outweigh the harm resulting from the loss of the open space.
11. The open space that this proposal concerns is of a very modest size. It is unallocated within the development plan, with no special planning designations. I have been supplied with historic photographs of the site, which show dense overgrown shrubbery abutting the turning head which was of limited aesthetic appeal and amenity value. Moreover, due to its location and shape, and previous planting regime, the space had extremely limited potential to provide recreation opportunities. Consequently, I consider that the loss of this open space does not constitute a significant harm, and thus I am not persuaded that any public benefits need to be demonstrated to justify the development.
12. I note that Policy 23 also seeks contributions for replacement open space, however, the National Planning Policy Framework ('the Framework') makes it

clear at paragraph 203 that “Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of... planning obligations.” Three tests are given in the Framework, and in the Community Infrastructure Levy Regulations 2010 (‘the CIL Regulations’), one of which is that planning obligations should be “necessary to make the development acceptable in planning terms”.

13. In this case, the appeal scheme causes no significant harm, either through the loss of valuable open space or to the character and appearance of its surroundings. Consequently, I consider the development to be acceptable in planning terms, and I am therefore not persuaded that an obligation to provide additional open space would be necessary.
14. Accordingly, as I can detect no significant harms caused by the development, I consider that the first limb of Policy 23 is complied with. Whilst the development’s failure to provide a planning obligation would conflict with the requirements of Policy 23, I have found that such an obligation would not be necessary in the context of the policy of the Framework and the statutory tests given in the CIL Regulations. The Framework and CIL Regulations are both weighty material considerations that in this instance outweigh the development’s technical conflict with the development plan. Consequently, I consider that the development’s failure to provide a contribution towards public open space does not constitute a reason to dismiss the appeal.

Other matters

15. I noted at my site visit that two cars were parked within the turning head that abutted the appeal site. I thus consider that the development does not interfere with parking or the operation of the highway to any significant degree.
16. My attention has been drawn to matters of ownership of the appeal site and its surroundings. However, these are essentially private matters that have not been determinative in my assessment of the planning merits of the case.
17. I am conscious of the appellant’s frustrations regarding the planning process. However, this is essentially a procedural matter that has not carried substantial weight in my determination of the appeal.

Conclusion

18. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR