

Appeal Decision

Site visit made on 8 November 2016

by Andrew Owen BA(Hons) MA MRTPI

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

Decision date: 22 November 2016

Appeal Ref: APP/C3240/W/16/3156988

The Homelands, Mossey Green, Ketley Bank, Telford TF2 0DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the 'Act') against a grant of planning permission subject to conditions.
 - The appeal is made by Mr C Nedic against the decision of Telford & Wrekin Council.
 - The application Ref TWC/2015/0937, dated 13 October 2015, was approved on 10 June 2016 and planning permission was granted subject to conditions.
 - The development subject of the Council's decision was removal of conditions 1, 3, 5 and 6 on planning permission TWC/2011/0769 to remove the need for retaining walls, a layout plan, a close boarded fence and the rebuilding and realignment of a retaining wall.
 - The condition in dispute is No 4 which states that: "*The replacement close boarded timber fencing between plot 26 Homelands and No 21 Shrubbery Road, shown on the elevation fence plan Reference FD1, shall be erected within 2 months of the date of this planning permission and thereafter retained to provide a continuous privacy screen*".
 - The reason given for the condition is: "*To protect the privacy and amenities of the occupiers of 21 Shrubbery Road.*"
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Decision

1. The appeal is allowed and the planning permission Ref TWC/2015/0937 for removal of conditions 1, 3, 5 and 6 on planning permission TWC/2011/0769 to remove the need for retaining walls, a layout plan, a close boarded fence and the rebuilding and realignment of a retaining wall at The Homelands, Mossey Green, Ketley Bank, Telford TF2 0DN granted on 10 June 2016 by Telford & Wrekin Council, is varied by:
 - i) deleting condition 4; and
 - ii) amending the description of the development to 'retrospective provision of bases for additional park homes and retention of existing park homes & bases (28 park homes in total), re-alignment of access road, alterations to site boundaries and installation of 2no. meter boxes without compliance with conditions 3 and 7 previously imposed on planning permission Ref TWC/2011/0769, dated 30 July 2013'.

Procedural matters

2. The Council's decision letter on application Ref TWC/2015/0937 is entitled as a refusal of planning permission. However as it is a document which effectively facilitates the retention of the park subject to the conditions listed, I have treated it as a planning permission.
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3. Also the Council's decision appears to have been a determination made under s73a of the Act. This section provides for a new planning permission to be created, separate from the pre-existing planning permission, and the list of conditions on the Council's decision effectively does this. However, the description of the development on the decision notice does not properly describe a form of development. From the information before me it appears that permission was sought for the retrospective provision of bases for additional park homes and retention of existing park homes & bases (28 park homes in total), re-alignment of access road, alterations to site boundaries and installation of 2no. meter boxes without compliance with conditions 1, 3, 5 and 6 previously imposed on planning permission TWC/2011/0769, and permission was effectively granted for the same form of development but without compliance with conditions 3 and 7 previously imposed on planning permission TWC/2011/0769.
4. Therefore I will vary the planning permission to accurately describe the development and encompass the effect of the Council's decision. The small alteration to the wording of condition 4 of TWC/2011/0769, reflected in condition 3 of TWC/2015/0937, is unaffected by this change. There can be no injustice to either party in making these changes since the ability to carry out the development without compliance with conditions 3 and 7 as originally drafted is the essence of what was granted by the Council and is unchanged by my decision.

Main Issue

5. The main issue is whether condition 4 of planning permission TWC/2015/0937 is reasonable and necessary with regard to the living conditions of the occupiers of No 21 Shrubbery Road in respect of their privacy.

Reasons

6. No 26 Homelands and No 21 Shrubbery Road are both single storey dwellings. The local topography is such that the property at The Homelands is higher than that on Shrubbery Road.
7. On the common boundary there is a fence around 1.8 metres in height. In addition to this, within the garden of No 21, there is a brief section of fencing around half a metre taller than the boundary fence and a row of trees substantially higher than the boundary fence which provide a dense visual barrier. Due to these trees and the section of taller fence, the only view from Homelands of No 21 is of the roof of the bungalow. Therefore, from the evidence before me, I conclude there is no overlooking to No 21 that results in a loss of the occupier's privacy. Consequently, it is not necessary for the fence shown on drawing No FD1 to be provided.
8. I recognise the comments from the occupier of No 21 that they would like the fence shown on drawing FD1 to be provided. Nonetheless, when taking account of the current boundary treatments within their own garden, I do not consider the provision of the fence would provide any additional benefit in terms of their privacy.
9. I also acknowledge the comments regarding the stability of a small section of the fence adjacent to the parking space at No 26 Homelands, and site stability at Homelands generally. However that section of fencing has no effect on the

visibility between the two properties, and site stability generally is not a matter before me.

10. Consequently, it is unnecessary for the fence shown on drawing No FD1 to be provided, in accordance with condition 4, in order to protect the privacy of the occupiers of 21 Shrubbery Road. Without the condition the development would not conflict with Policy SC15 of the Core Strategy and Policy UD2 of the Wrekin Local Plan which both support development which responds to its context.

Conclusion

11. For the reasons given above, and taking account of all other considerations, I conclude that the appeal should be allowed and I vary the planning permission by deleting the disputed condition.

Andrew Owen

INSPECTOR