
Appeal Decision

Site visit made on 12 December 2016

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 19th December 2016

Appeal Ref: APP/C3105/W/16/3157479

25 Eden Way, Bicester, Oxfordshire OX26 2RP

- 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 Roger Dunford against the decision of Cherwell District Council.
 - The application Ref 16/00291/F, dated 31 January 2016, was refused by notice dated 3 June 2016.
 - The development proposed is erection of new fencing incorporating unused land on the plot.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but nevertheless, a different wording has been entered. Neither of the parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. There is dispute between the parties over whether the appeal site forms part of the appeal property's curtilage and thus whether the proposal represents a change of use of the land. Whilst there is no authoritative definition of the term "Curtilage", it defines an area of land in relation to a building and not a use of land. Thus, to fall within the curtilage of a building, it is enough that land serves the purpose of a building in some reasonably necessary or useful manner even though it need not be marked off or enclosed in any way. However, this is not a determinative matter in light of what I consider to be the main issue.

Main Issue

4. The main issue in this appeal is the effect of the proposal on the character and appearance of the area.

Reasons

5. The appeal site forms part of the property's garden at the side of its part walled and part fenced boundary. Eden Way is a cul-de-sac with spurs off it that has resulted in a development pattern whereby dwellings are laid out in curved
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form around the various vehicle turning heads. Whilst many dwellings face the street, they are set back behind well planted front gardens. However, there are other dwellings, including that which is the subject of this appeal, that are positioned side-on with open areas between their flank walls, formal garden boundaries and the pavement. In combination with the surrounding areas of public open space, the effect is one of a distinctive spacious and verdant residential scene.

6. Although the land at the side of the dwelling does not, in ownership terms, form part of the wider area of public open space to the rear of the property, it is nonetheless physically contiguous with it. The proposal would subsume the land into the rear garden by the erection of timber fencing positioned close to the back of the pavement edge. This physical enclosure would have a small but nonetheless pronounced adverse effect by diminishing the overall spaciousness that is characteristic of the street scene.
7. Furthermore, whilst I note that such fencing appears elsewhere nearby, it would nonetheless project out from the side of the dwelling towards the street and be obtrusive in views along Eden Way.
8. The appellant has drawn my attention to a number of other schemes nearby that he considers give credence to his case. However, I do not have full details of what led to these developments being considered acceptable and cannot therefore draw any useful comparisons between them and the appeal proposal. In any case, I have determined the appeal on its individual merits.
9. For the above reasons, the proposal would harm the character and appearance of the area contrary to saved Policy C28 of the Cherwell Local Plan (1996) that requires development to be sympathetic to its context. It would also conflict with Policy ESD 15 of the Cherwell Local Plan (2015), which states that new development should, amongst other things, contribute positively to an area's local distinctiveness and integrate with existing streets and public spaces.

Other matter

10. I have considered the Council's argument that the grant of planning permission would set a precedent for similar developments in the surrounding area. Whilst each application and appeal must be treated on its individual merits, I can appreciate the Council's concern that approval of this proposal could be used in support of such similar schemes. I consider that this is not a generalised fear of precedent, but a realistic and specific concern given that there are other properties nearby with areas of land within their grounds but outside of their physically contained garden areas. Allowing this appeal would make it more difficult to resist further planning applications for similar developments and I consider that their cumulative effect would exacerbate the harm which I have described above.

Conclusion

11. For the above reasons and having had regard to all other matters raised, the appeal does not succeed.

Hayden Baugh-Jones

Inspector