

Appeal Decision

Site visit made on 20 February 2017

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 7 April 2017

Appeal Ref: APP/N2535/D/17/3166706

Orchard House, 9 Waterford Lane, Cherry Willingham, Lincoln LN3 4AL

- 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 Robin Proctor against the decision of West Lindsey District Council.
 - The application Ref 134859, dated 17 August 2016, was refused by notice dated 28 October 2016.
 - The development proposed was originally described as *'removal of existing hedgerow to No's 9 and 11 Waterford Lane, Cherry Willingham, Lincoln LN3 4AL and replace with brick built wall with railings. The hedgerow consists of mixed species contaminated with ivy with 5 walkthrough sized and other gaps and is of poor appearance. Removal of existing wall to the area to the west of No 11 and replace with a new wall matching the wall replacing the hedgerow'*.
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Decision

1. The appeal is allowed and planning permission is granted for the removal of the existing hedgerow and replace with brick built wall with railings at Orchard House, 9 Waterford Lane, Cherry Willingham, Lincoln LN3 4AL in accordance with the terms of the application, Ref 134859, dated 17 August 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: SP022-01 Rev A Sheet 1 of 1; SP019-01 Rev A Sheet 2 of 3 and SP19-02 Rev B Sheet 1 of 1.

Application for costs

2. An application for costs was made by Mr Robin Proctor against West Lindsey District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application was initially submitted with the development description set out in the banner heading, above. Details of a replacement wall at No. 11 are shown on drawing reference SP019-01 Rev A Sheet 1 of 3 and SP012-01 Rev A Sheet 3 of 3, and are also referred to on the applicant's application form and subsequent appeal form. However, the extent of the application site, and therefore the extent of the proposal before me, is defined by the application site boundary set out on drawing reference SP022-01 Rev A Sheet 1 of 1. Therefore, having regard to the above, I have the description of the
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development set out in my decision above is, with slight amendment to remove superfluous wording, taken from the Council's decision notice.

4. Whether or not the length of replacement wall at No 11, shown as being beyond the application site boundary on drawing SP022-01 Rev A Sheet 1 of 1, requires planning permission is not a matter for me to determine in the context of an appeal made under Section 78 of the Town and Country Planning Act 1990 (the Act). It is open to the appellant to apply to have the matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.
5. In the course of requesting clarification and confirmation on a number of points, and after I had visited the site, it was stated and subsequently confirmed, that one of the existing trees at the front of the adjacent property, 7 Waterford Lane, and close to the line of the proposed wall had been removed. Both parties were invited to submit further comments in response to the removal of the tree, and I have considered the appeal on the basis of these further comments.

Main Issues

6. The main issues are the effect of the proposed development upon:
 - Mature trees; and
 - The character and appearance of the surrounding area.

Reasons

Mature Trees

7. At the time of my visit to the site there were two reasonably large, mature trees prominently situated in the front garden area of 7 Waterford Lane. Due to their location, surrounding land form and the alignment of Waterford Lane, they have a significant visual presence within the street scene. These trees are located close boundary with the appeal property, where the end of the proposed brick wall with railings would project into the area shown as forming the root protection area (RPA) for the northern-most of the two trees.
8. Whilst I note that it was not the appellant's intention to cause harm to the tree, or to otherwise create an unstable situation, I had not been presented with compelling evidence to adequately demonstrate that excavations for the wall's foundations, in the location proposed, would not cause such harm to the tree in question. However, since the submission of the appeal and my subsequent visit to the site, it has been confirmed that the northern-most tree within the adjoining garden plot at No. 7, the RPA for which extends onto the appeal site and the one that the proposed wall would extend closest to, has been removed by the neighbour.
9. It is now agreed between the parties that, the occupier of the neighbouring property having now removed the northernmost tree, the circumstances of the proposal have materially changed between application and appeal. Whilst no evidence has been submitted to support the view that there is an absence of roots within the alignment of the proposed wall, and the stated absence of roots in the post holes for the fence between Nos. 7 and 9 is not compelling

evidence in respect of the likely presence of roots, it was the northern-most tree for which there were specific concerns.

10. As that tree has now been removed, I give the Council's concerns regarding the incursion of the wall's foundations into this tree's RPA and its longer term viability limited weight. Whilst there remains a second tree a short distance to the south of the now removed tree, neither party has submitted compelling or clear evidence regarding the potential impact of the proposed wall upon that tree. Moreover, it has not been suggested by either party that the line of the proposed wall would encroach into that tree's RPA.
11. The proposed wall would run along the roadside boundary at the front of No. 9 to the boundary with No. 7. It would be some distance from the base of the southern-most of the two trees in question, in an area heavily dominated by the presence, until recently, of the northern-most tree. In my judgement, having regard to the evidence before me and to the further comments of the main parties following the removal of the northern-most tree, I conclude that the proposal would be unlikely to harm the remaining mature trees within the adjacent property as shown on the submitted plans.
12. Thus, for the reasons set out, I conclude that the proposal would not be in conflict with West Lindsey Local Plan First Review 2006 (LP) policies STRAT1 or RES11 (RES11(iv)). LP policy STRAT1 requires, amongst other matters, all development to be satisfactory with regard to the retention and safeguarding of existing trees. Whilst the proposal is not an extension to an existing property, LP policy RES11 (RES11 (iv)) nonetheless supports the aims of LP policy STRAT1 in seeking to ensure that proposals do not prejudice the retention of any significant trees.

Character and Appearance

13. The appeal site lies close to the edge of Cherry Willingham, where Waterford Lane runs around the south western edge of the village forming something of a perimeter road. More recent residential development on the western side of Waterford Lane closer to Fiskerton Road was noted at my site visit, whilst the appellant has also referred me to a recent proposal, allowed at appeal¹, for residential development on the north side of Waterford Lane as evidence of the character of the surrounding area.
14. The appeal property and the adjacent dwelling at No. 11 are a pair of modern detached dwellings which, notwithstanding the open fields opposite, lie within an established residential area. Whilst there is housing on both sides of Waterford Lane further the east of the site, and on High Street beyond that, Nos 9 and 11 follow the pattern of development further to the south and west where housing is limited to only the one side of Waterford Lane.
15. The proposed boundary wall would replace an existing, patchy and ivy-covered hedge along the roadside boundary of No 9. However, the proposed wall would provide a visual continuation of the low wall that runs along the inside of the junction between Elm Avenue and the plot of land next to No 11. A similar length of wall on the opposite side of Elm Avenue provides a visual balance to the entrance into Elm Avenue.

¹ APP/N2535/W/16/3150309

16. Whilst the proposed wall would differ from these existing lengths of nearby walling, I am satisfied that, in terms of its general character, it would not appear out of place. Nor would the height of the wall, articulated by regularly spaced pillars with railings between, appear out of place or character with the varied form and style of enclosures in the surrounding area.
17. The Council describe the appeal site's setting as being semi-rural. That may be so, but such a subjective categorisation does not, to my mind, preclude the form of development proposed in this instance. In any event, from my observations of the site and its surroundings, the pair of substantial dwellings at Nos 9 and 11 and the surrounding residential development defines the character of the area as much as the open field on the opposite side of Waterford Lane or the variety of front garden enclosures along both Waterford Lane and High Street define it.
18. I do not therefore share the Council's view that the proposed wall would introduce an alien or urban form, or have an otherwise incongruous presence within the street scene. Rather, the proposal would form an appropriate means of enclosure at the front of No. 9 in a manner broadly reflective of the style and character of that property, and of nearby boundary walls. I find no conflict with LP policies RES11 (particularly RES11(ii)) or STRAT1.

Conditions

19. I have considered the Council's suggested conditions in light of the National Planning Policy Framework (the Framework) and Planning Practice Guidance. I agree that in addition to a time limit condition, a condition specifying the approved plans is necessary in order to provide certainty. As I have already imposed a condition specifying the approved plans, I do not consider it necessary to add a condition requiring the materials to be used to match those shown on the approved drawings, as that is implicit in light of the plans condition.

Conclusion

20. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be allowed.

Graeme Robbie

INSPECTOR