
Appeal Decision

Site visit made on 10 March 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 11 April 2017

Appeal Ref: APP/J1860/D/16/3164485

8 The Moorlands, Malvern Wells, Malvern, Worcestershire WR14 4PS

- 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 Stuart Heslop and Mrs Hilary Heslop against the decision of Malvern Hills District Council.
 - The application Ref 16/00815/HOU, dated 16 June 2016, was refused by notice dated 12 October 2016.
 - The development proposed is described as 'to erect a boundary fence at the rear of 8 The Moorlands WR14 4PS. The proposed fence is 1.95 metres high. To provide pedestrian access from 8 The Moorlands onto Hanley Road, Malvern Wells (Hanley Road runs along the rear boundary of this address). A pedestrian gate will be included and match the style of the proposed fence. The fence (including gate) will be 29 metres long. The proposed fence will replace the existing hedge, which is typically 2 metres high.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The declaration in section 13 of the planning application form is dated 16 June 2016. However, the date of application referred to in the Council's decision notice is 17 May 2016. The appellants also refer to 17 May 2016 on their appeal form and in their grounds for appeal. They say that though they submitted their application on that date, the Council advised that they had used the wrong application form, which presumably led to the submission of the form dated 16 June 2016. As that is the planning application form submitted with the appeal documentation, I have used that date in the banner heading above.
 3. The description of the development in the heading above has also been taken from the planning application form. However, in part E of the appeal form it is stated that the description of the development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the planning application form.
 4. In their appeal documentation, the appellants propose amending the original scheme by planting a new hedge in front of the proposed fence, a suggestion which they say they put to the Council prior to its determination of the application, though the Council's refusal was based on the original scheme. No
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amended plans have been submitted with the appeal. In any event the '*Procedural Guide – Planning Appeals – England*'¹ advises that if an applicant thinks that amending the proposal will overcome the Council's reasons for refusal they should normally make a fresh planning application. It also cautions that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

5. A new hedge planted in front and for the full length of the proposed fence would be materially different from the original application. The appellants suggest that the amendment could be dealt with by means of a condition. However, the Planning Practice Guidance advises that a condition that modifies the development in such a way as to make it substantially different from that set out in the application should not be used.² The rationale is that such an amendment would be more than a minor alteration to the proposal and third parties who have not been consulted on the new scheme could be prejudiced. Therefore, as I consider the amended proposal to be materially different, I will determine the appeal on the basis of the original proposal and plans considered by the Council.
6. The appellants appear to question whether the proposed development requires planning permission. However, that 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 appellants to apply to have that matter determined under sections 191 or 192 of the Act by the local planning authority. Any such application would be unaffected by my determination of this appeal.
7. The appellants state that the public notices published by the Council suggested that the appeal property was in a Conservation Area (CA), whereas it is adjacent to one. I do not consider that it affected the responses received to the application that I have seen. Neither the Council Officer's report nor its decision notice suggest that it is within a CA. Rather the effect on the setting of the CA is considered. Therefore, I do not see that the appellant's interests were prejudiced.
8. The Council has advised that in its decision notice, it intended to refer to Policy SWDP 24 (Management of the Historic Environment) of the South Worcestershire Development Plan³ (SWDP) rather than Policy SWDP 26 (Telecommunications and Broadband). As Policy SWDP 24 is largely supplementary to Policy SWDP 6 (Historic Environment), which is referred to in the decision notice, I do not consider that the error is significant or prejudices the appellants or any third party. Policy SWDP 24 is also referred to in the 'conclusion' paragraph of the Council Officer's report.

Main Issue

9. The main issue is the effect of the proposed development on the character and appearance of the area, given that it lies within the Malvern Hills Area of

¹ Annexe M.1.1 and Annexe M.2.1

² Paragraph: 012 Reference ID: 21a-012-20140306

³ Adopted February 2016

Outstanding Natural Beauty and is adjacent to the Malvern Wells Conservation Area.

Reasons

10. The appeal site comprises a two-storey detached dwelling in a cul-de-sac. Its rear garden backs onto Hanley Road (B4209). It lies within a residential area which is part of the Malvern Hills Area of Outstanding Natural Beauty (AONB) and is adjacent to the boundary of the Malvern Wells Conservation Area (CA).
11. The house, rear garden and patio area lie at a lower level than Hanley Road and are separated from it by a mature mixed species hedgerow which stretches the length of the rear boundary. The proposal is to replace the hedgerow with a 1.95 metre high fence stretching about 29 metres and incorporating a pedestrian gate.
12. Looking from opposite the junction with Wood Farm Road, south east along and down Hanley Road, the view is characterised predominantly by long stretches of hedgerow on both sides of the road, including the existing hedge to the rear of the appeal site. Further along, towards the turning into The Moorlands, the hedge is interspersed with mature trees and other vegetation.
13. The appellants point out that proceeding downhill along Hanley Road, southeast of the appeal site, there are some houses with rear fences. There are also some pedestrian gates giving access onto Hanley Road. However, many of the fences, beyond the turning into The Moorlands, are set back from the road and pavement behind a border populated with flowers, shrubs, trees and other vegetation which screen much of that fencing. Further along again, there is more hedgerow. Therefore, despite the existence of some fencing the main view and perception is one of hedges and greenery.
14. Other parts of Hanley Road to the northwest display a different character and appearance with low red-brick walls on one side of the road and higher stone walls opposite, though many also have pleasing foliage and planting growing behind and above.
15. Though there are different roadside treatments on parts of Hanley Road and in other parts of the area, including within the CA to the west, the appeal site section is characterised by hedgerow immediately abutting the pavement. It stretches from the corner of Wood Farm Road and continues towards the access to The Moorlands with further greenery beyond. There is also hedgerow on the opposite side of the road though set back slightly behind a grass verge. Therefore, removing a stretch of mature hedgerow of about 29 metres, and replacing it with a 1.95 metre high close boarded fence, albeit of a similar height to the existing hedge, would appear incongruous in the street scene.
16. Policy SWDP 21 of the SWDP states that all development will be expected to integrate effectively with its surroundings, in terms of form and function, reinforce local distinctiveness and conserve, and where appropriate, enhance cultural and heritage assets and their settings.
17. I recognise that one of the appellants' aims in installing a fence is to try to reduce traffic noise from the road, which affects their enjoyment of their garden. However, though I appreciate that the appellants take a different view, a long, stark, high fence, inserted between the two stretches of hedgerow to the rear of the properties on either side, would appear discordant and draw

the eye. It would, therefore, not integrate with its surroundings and would be in conflict with Policy SWDP 21. It would also fail to accord with the high quality design requirement for all development referred to in paragraph 57 of the National Planning Policy Framework (the Framework).⁴

18. As the appeal site is within the AONB, Policy SWDP 23 of the SWDP is relevant. It states that development that would have a detrimental impact on the natural beauty of an AONB will not be permitted. The definition of natural beauty includes flora and settlement character. SWDP 23 also states that development proposals should have regard to AONB Management Plans. The Malvern Hills AONB Partnership, consulted by the Council on the application, stated that the relevant Management Plan indicates that AONB 'Guidance on Building Design' should be followed. It advises, amongst other things, against removing characteristic boundaries and that fencing is not generally characteristic in the landscape. The AONB Partnership expressed concern about the use of close board fencing eroding the character of the area.
19. The level of protection given to the AONB in the SWDP is in accord with national policy, as expressed in paragraph 115 of the Framework, which states that great weight should be given to conserving landscape and scenic beauty in AONBs. Therefore, whilst there may be examples of fencing in the area, I do not consider that it is generally prominent and the thrust of local and national policy is that development should be sensitive to the character and appearance of such designated areas. The loss of the boundary hedge typical of the immediate area and its replacement with a modern close boarded fence would have a detrimental impact on the AONB.
20. The Council is also concerned that the replacement of a characteristic hedgerow with fencing could set an unhelpful precedent leading to further harm to the distinctive boundary along Hanley Road. Though there are fences in the area, I do not know when they were erected, on what basis they were approved, assuming that they were, or whether those proposals involved the replacement of an existing hedgerow. Therefore, I share the Council's view and am conscious that, whilst each application and appeal must be treated on its individual merits, approving the proposal could be used in support of other similar schemes in the area. Allowing the appeal would make it more difficult to resist such applications and I consider that their cumulative effect would potentially exacerbate the harm that I have identified. Therefore, I give the precedent argument some weight in reaching my decision.
21. Whilst the appeal site is not within the CA, it is adjacent to its boundary which runs along that part of Hanley Road. Statute requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a CA.⁵ Paragraphs 132 and 137 of the Framework indicate that the protection of such designated heritage assets should be given great weight and that their setting also needs to be considered. The Framework explains in its glossary that the setting includes the surroundings in which a heritage asset is experienced. It can also encompass views from the heritage asset which contribute to its significance. Therefore, though the appeal site is just outside the CA, development on it could still affect the setting of the CA.

⁴ Published 2012

⁵ s.72(1) Planning (Listed Buildings and Conservation Areas) Act 1990

22. The other side of the road to the appeal site is within the CA. The hedges and greenery are part of the character of the area and setting of the CA, which contributes to its significance. Therefore, the removal of the hedge and its replacement with fencing, which I have already identified as prominent, incongruous and harmful to the street scene, would detract from the setting.
23. However, the harm caused to the setting of the CA would be less than substantial, as the appeal site is outside the CA and the proposal relates to one length or hedge and a section of fencing. Paragraph 134 of the Framework indicates that where a proposal would cause less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against any public benefits. In this case, whilst there are private benefits to the appellants, I do not consider that there are any clear public benefits to the proposal. Consequently, I find that the proposal fails to preserve the character and appearance of the CA.
24. It is the combination of the factors above that leads me to conclude that the proposed development would harm the character and appearance of the area, including the AONB, and fail to preserve the character and appearance of the adjacent CA. Consequently, it would be contrary to Policies SWDP 6, SWDP 21, SWDP 23 and SWDP 24 of the SWDP, which, amongst other things, seek to ensure that development is well designed to integrate effectively with its surroundings and re-inforce local distinctiveness. It would also conflict with their further aims of safeguarding the natural beauty of AONBs and conserving or enhancing the significance of heritage assets, such as CAs, including their settings. The proposal would also fail to accord with similar considerations expressed in paragraphs 57, 115, 132, 134 and 137 of the Framework.

Other Matters

25. The appellants refer to the time taken by the Council to issue a decision. That is not a matter for me to consider or a relevant ground for appeal, unless the Council had failed to issue a decision. I do note, however, that the appellants advise that there were ongoing discussions with the Council about possible amendments to the scheme stretching into August 2016 and a further site visit in September 2016.
26. It is submitted by the appellants that the proposed pedestrian gate would conform with SWDP 21 B ix, but that is just one of a list of matters that need to be addressed in proposals to show how the objectives outlined in criterion A of the policy have been met. In any case, links, connectivity and access normally refer to public access connections rather than entrances to private properties.
27. I appreciate that the appellants wish to erect a fence to reduce traffic noise from the road, whilst maintaining privacy and security and install a gate for easier access onto Hanley Road. However, the planning system is more generally focussed on the wider public interest rather than personal circumstances, unless they are truly exceptional. Therefore, such personal interests do not outweigh the harm that I have identified.
28. The appellants say that the alternative solution suggested by the Council of a fence behind the existing hedge is not practical for health and safety reasons. I cannot comment on those aspects as it is a matter for the appellants and their contractor.

29. The appellants also state that if their appeal fails, they would still seek permission for a pedestrian gate. They also refer to the possibility of a split decision. Whilst I have the power to issue a split decision, that relies on the parts of a scheme being clearly severable, both physically and functionally, and capable of being implemented. In the appeal proposal and associated plans, the gate is integral to the proposed fence. Therefore, I do not consider that it would be appropriate or possible to issue a split decision on this appeal, even if I concluded that a stand-alone gate was acceptable.
30. It is submitted by the appellants that they have permitted development rights to erect a one metre high fence. I do not see that it would satisfy their stated objectives and also note that they have suggested seeking permission for a gate in the hedge as a fallback. Therefore, I have no substantive evidence before me to indicate that there is a significant probability of the one metre high fence option being pursued, which limits the weight that I can attach to it as a fallback position.

Conclusion

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

Jonathan Tudor

INSPECTOR