
Appeal Decision

Site visit made on 24 April 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 22 May 2017

Appeal Ref: APP/M4320/W/16/3161514

4 Conifer Court, Phillips Lane, Formby L37 4BQ

- 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 Donald Henwood against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2016/00990, dated 20 May 2016, was refused by notice dated 18 August 2016.
 - The development proposed is *'erection of a fence to the top of the existing boundary wall facing Liverpool Road, Formby'*.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A Local Plan for Sefton (LP) was adopted on 20 April 2017. All parties have had the opportunity to comment on the change in status of this document in terms of the relevance to their case. The Council confirmed that upon adoption of the LP, Policies AD2, DQ1 and H10 of the Sefton Unitary Development Plan (UDP), adopted June 2006, have been replaced and are no longer part of the development plan. I, therefore, give no weight to those UDP policies in determining this appeal.
 3. The description of development provided by the application form has been updated by subsequent documents. Part of the fence has been constructed, but a section of the fence adjacent to No 10 Liverpool Road as proposed was not in place at the time of my visit. In that regard, 'retention' as referred to in the decision notice and appeal form is not an accurate description of the proposal before me and does not constitute an act of development in any case. I have, therefore, amended the respective descriptions of development provided by the appeal form and decision notice accordingly in the interest of certainty. Given that the application was submitted in retrospect and the amended description accurately describes what is being applied for, I do not consider that any parties will be prejudiced.
 4. With regard to the above, I determine this appeal on the basis of the submitted plans upon which the Council made its decision, rather than the fence in-situ at the time of my visit.
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Main Issues

5. The main issues of this appeal are:

- the effect on the character and appearance of the site and the surrounding area, and;
- the effect on highway and pedestrian safety, with particular regard to visibility from the existing access serving No 10 Liverpool Road.

Reasons

Character and appearance

6. The appeal site comprises Conifer Court, which consists of 4 two-storey blocks of apartments which are accessed from Phillips Lane and are located in a primarily residential area. The properties within two blocks, addressed as Nos 1-4 and 5-8 Conifer Court respectively, have rear elevations and communal gardens which face towards Liverpool Road.
7. The orientation and massing of the apartment blocks and arrangement of gardens in Conifer Court contrasts with surrounding properties which face onto Liverpool Road. The surrounding properties comprise a mix of detached and semi-detached properties of different scale and design, including bungalows. The mixed character of Liverpool Road extends to the boundary treatments that front the road, which include low brick walls of varying styles, heights and colours. There are numerous examples of additional hedging of varying heights and some properties with supplementary timber fencing.
8. The boundary of the appeal property facing Liverpool Road consists of a low brick wall of around 1m in height, with the appeal proposal consisting of an additional boundary fence up to a height of approaching 2m. The evidence before me indicates that the fence replaces previous trees and shrubs which provided a supplementary boundary treatment to the low brick wall. The fence as indicated on the submitted plans has a total length of close to 55m with brief trellis sections forming part of its length.
9. The proposed fencing, although of a considerable length, would not look out of place along Liverpool Road where the uniformity and rhythm of boundary treatments is interrupted by different plot widths of properties, the presence of intermittent supplementary hedging and other timber fencing nearby. Although fencing alters the appearance of the site boundary when viewed from Liverpool Road, it would not be unduly prominent or incongruous in a street scene where a range of different boundary treatments exist. The assimilation of fencing would be assisted by staining in a dark colour where it faces Liverpool Road providing some harmony with nearby hedging. Furthermore, the inclusion of trellis sections would provide visual interest and an opportunity for supplementary vegetation that would further soften the appearance of the fence. Consequently, I am satisfied that timber fencing as proposed assimilates appropriately with, and would not detract from, the character and appearance of the site and the surrounding area.
10. In reaching the above findings, I observed that in the wider setting along Liverpool Road and neighbouring streets that it is a common feature for properties to have taller boundary treatments enclosing side and rear gardens to achieve privacy for those areas. This includes examples of timber fencing of comparable height close to the junctions of Liverpool Road with Cross Green,

Lytles Close and Birkey Lane nearby. The site is not located on a corner plot, where tall boundary treatments are more predominant. Nevertheless, I take account of the particular circumstances of the site and its surroundings, including the uncommon arrangement of communal rear gardens adjoining the pedestrian footway of Liverpool Road. In such circumstances, the boundary screening afforded by timber fencing reflects an appropriate approach to achieve secure, private and functional amenity space for residents in accordance with Secured by Design principles. The fence would also have some noise attenuation benefits. In those respects, constraints on alternative landscaping arising from the position of existing drains are noted.

11. The appellant has offered to reduce the height of the fence to 1.8m and to provide an additional trellis section. However, revised plans have not been submitted to reflect material changes in those respects. In any case, I do not consider that such changes would be necessary to make the development acceptable with respect to matters of character and appearance.
12. I conclude that the development would not harm the character and appearance of the site or the surrounding area. The proposal, therefore, would not conflict with Policies EQ2 and HC3 of the LP, together with the associated guidance in the Sefton House Extensions Supplementary Planning Document (SPD), adopted March 2016. When taken together, the policies seek to ensure that proposals respond positively to the character, local distinctiveness and form of its surroundings, including in terms of scale, height, style, detailing, landscaping and materials. The policies are consistent with the design objectives of the National Planning Policy Framework (the Framework).

Highway safety

13. Liverpool Road is a busy, classified road which carries a high volume of traffic. It is subject to a 30mph speed limit in the vicinity of the appeal site. There are double yellow marked parking restrictions along the majority of the site frontage due to the presence of a junction with Lytles Close and a pedestrian refuge within the carriageway. On-street parking did not appear to be a common feature, despite a section of the site frontage adjoining No 10 Liverpool Road (No 10) and other sections of the road to the south not being subject to parking restrictions. At the time of my visit, traffic was free flowing, with average vehicle speeds close to the speed limit due to the width and alignment of the road. Although my observations reflect only a brief snapshot of local road conditions, there is no evidence before me that it is not representative of the characteristic use of the road at other times of the day and in evenings.
14. Policy EQ3 of the LP, amongst other things, requires that development must ensure the safety of pedestrians, cyclists and all road users are not affected. As previously mentioned, the proposed fence would be approaching 2m high and as indicated on the submitted plans would adjoin an existing access that serves No 10. The depth of the pedestrian footway between the fence and the carriageway would enable suitable and unobscured visibility of vehicles and cyclists' travelling along Liverpool Road in either direction once a vehicle had emerged onto the footway from No 10.
15. Notwithstanding the above, the height, design and position of the timber fence would obscure the view of the driver of a vehicle exiting the driveway of No 10 and pedestrians using the footway. The evidence before me indicates

that some trees and shrubs were previously present along the boundary. However, based on examples of other similar accesses nearby, pedestrians would previously have been able to see a vehicle approaching over the top of the low brick wall and glimpsed through taller trees and shrubs adjoining the wall even if the driver could not necessarily see them.

16. In contrast, the position of the fence proposed would restrict drivers from having views of pedestrians until the windscreen of the vehicle leaving the driveway of No 10 would be level with the fence line. At such a time, the front of the vehicle would have emerged onto the footway with pedestrians unable to see a vehicle emerging from the site in time to react to its presence. The inclusion of a trellis section as proposed in the submitted plans could improve the potential inter-visibility between vehicles and pedestrians. However, I am not satisfied that it would prevent an increased risk of accidents within the footway. The proposal would, therefore, have a harmful effect on highway and pedestrian safety.
17. In reaching the above findings, I have taken into account that the omission of a 2m section of fence adjacent to the driveway of No 10 as suggested by the Council could mitigate the harm identified by providing adequate views for drivers and pedestrians above the low brick wall. However, that would necessitate a material change to the proposal, in circumstances where revised plans have not been provided to indicate an alternative design, length or position of the fence.
18. The Planning Inspectorate's guidance¹ makes it clear that the appeal process should not be used to evolve a scheme and 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. Based on the evidence before me, imposing a condition to reduce the length of the fence by 2m would permit development that is in substance not that which was applied for and indicated in the submitted plans. To my mind, a condition requiring such a material change to the development cannot reasonably be imposed to mitigate the harm identified.
19. I conclude that the development would harm highway and pedestrian safety. The proposal, therefore, would conflict with Policy EQ3 of the LP and the Framework in so far as it seeks safe and suitable access to sites.

Conclusion

20. I have found no harm to the character and appearance of the site and the surrounding area. However, the absence of harm in that respect and the benefits of the proposal to the privacy, security, function and enjoyment of communal gardens do not justify the harmful effect upon highway and pedestrian safety which would be significant and overriding.
21. For the reasons given above and taking all other matters into consideration, I conclude that this appeal should be dismissed.

Gareth Wildgoose

INSPECTOR

¹ Procedural Guide – Planning appeals – England (published 23 March 2016)