



Appeal Decision

Site visit made on 23 May 2017

by R C Kirby BA(Hons) DipTP MRTPI

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

Decision date: 29th June 2017

Appeal Ref: APP/V4630/W/17/3166895

12 Holman Way, Willenhall, Walsall WV13 3AT

- 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 Mrs Jane Benton against the decision of Walsall Metropolitan Borough Council.
 - The application Ref 16/0420, dated 21 March 2016, was refused by notice dated 10 August 2016.
 - The development proposed is described as change of use to garden land. (Land is situated on right of property). Permission to replace existing fencing to back of land and erect new fence to front and left of land.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are the effect of the proposal on the character and appearance of the area having particular regard to the new fencing, and the effect on the living conditions of nearby occupiers.

Reasons

Character and Appearance

3. Amongst other matters, saved Policy GP2 of the Walsall Unitary Development Plan (UDP) requires development to make a positive contribution to the quality of the environment. Policy ENV32 of the UDP has a similar purpose and states that considerations that will be taken into account in the assessment of development proposals include its visual appearance and its effect upon open spaces and outdoor recreation facilities.
 4. The appeal site is triangular in shape and adjoins the side elevation of No 12 Holman Road, and the rear boundary fencing to the gardens of Nos 5, 7 and 9 Holman Road. The open space is accessed via locked gates which lead to a number of nearby dwellings. It is not visible in the street scene and being substantially enclosed makes a limited contribution to the character and appearance of the area.
 5. The appellant wishes to include the area of land within their garden area. It is proposed to replace the existing fence along the south eastern boundary of the site and provide a new fence which would adjoin the access path to the rear of Nos 5-9. The submitted image indicates that the fencing would be a solid
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structure with a corrugated appearance. There are no details of the height of the fencing on the image. However, the planning application form indicates that the fence to 'the front and left' would be 1.8 metres in height and would be of a green V mesh security design. This does not reflect the details submitted with the planning application. Furthermore, whilst the application form indicates that the fencing along the rear boundary would be 2 metres in height, the description of fencing as 'palistade fencing' does not reflect the submitted image either.

6. I note the appellant's submissions that the V mesh fencing would allow the new garden area to be seen through the fencing. However, as I have no details of the fencing to be erected, I am unable to assess the impact of the proposal on the character and appearance of the area. I therefore cannot be satisfied that there would be no conflict with the development plan in this regard.

Living Conditions

7. UDP Policy LC1 relates to urban open spaces, which the Council consider the appeal site to comprise. This is not disputed. This policy seeks to protect such spaces and it only permits the loss of such areas where it can be demonstrated that a number of functions would not be prejudiced, including visual amenity, children's play, informal and formal sport and recreation, redressing or avoiding deficiency and achieving local community aspirations.
8. The appellant submits that the proposal has limited value as open space as it can only be accessed through locked gates, is poorly maintained and small in size. The area is indeed small and is only accessible to those occupiers who can gain access to it through the locked gates.
9. However, I have been unable to conclude on whether or not the proposal would be harmful to the character and appearance of the area for the reasons set out above. Furthermore, having regard to the comments of nearby occupiers who say that their children and grandchildren play on the open space, I am not satisfied that there is alternative provision in the area for such activity or for informal sport and recreation which may justify the loss of this area of open space. Moreover, I have not been provided with convincing evidence that there is no deficiency of open space in the area. I therefore cannot be satisfied that the proposal would not conflict with the aims of UDP Policy LC1.

Conclusion

10. On the basis of the evidence before me I cannot be satisfied that the appeal proposal would not conflict with the aims of the development plan to protect the character and appearance of the area and the supply of public open space. It is however open to the appellant to make a new planning application to the Council and address these matters.
11. For the above reasons and having regard to all other matters raised, the appeal is dismissed.

R C Kirby

INSPECTOR