



Appeal Decision

Site visit made on 3 September 2019

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th October 2019

Appeal Ref: APP/X2410/W/19/3233778
57 Main Street, Newtown Linford LE6 0AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Miss Emma Gaskell against Charnwood Borough Council.
- The application Ref P/19/0533/2, is dated 9 March 2019.
- The development proposed is described as:-
"Tidying up of land adjacent to 57 Main Street by removing overgrown hedges, rebuilding the brick wall along the service road at the back (to the same height, 1 m), building stone wall along the boundary with Grey Crescent (approx 1-1.2m high, the same as the opposite side of Grey Crescent), and creating access to the plot via steps to our existing back garden. Hedging will be planted along the boundary with Grey Crescent but will require fencing until hedges are established. Note that height of land is higher than pavement height and so fencing will be at height of land and approx 6 feet high (again the same as the opposite side of Grey Crescent). Fencing will also be required along the boundary with the service road, hedging probably won't be planted here but other plants. Fencing also required along the edge of the plot that borders our existing driveway due to the large drop (approx 6 feet), but will be lower, likely approx. 3 feet to meet height of existing garage. note that the fencing at the corner of Grey Crescent and the service road to the garages will not go all the way to the corner (i.e. the corner will be cut off by approx 1 metre). New trees (mostly fruit trees) being planted and general planting of the plot as wild garden / orchard. We may need to have a shed or other garden storage on the plot. NB: The work is being done to the land adjacent to 57 Main Street, not to 57 Main Street (which is a separate plot / title - the two titles are not being joined) but it is not possible to enter "Land adjacent to 57 Main Street" as the site location on the online form. Work started 01/02/19 – land previously overgrown."

Decision

1. The appeal is dismissed insofar as it relates to the erection of fences to the boundaries to Grey Crescent and between the land and the existing driveway serving 57 Main Street and planning permission is refused for erection of fences to the boundaries to Grey Crescent and between the land and the existing driveway serving 57 Main Street. The appeal is allowed insofar as it relates to the change of use of land to residential use associated with 57 Main Street with erection of steps into existing garden and the erection of boundary walls to Grey Crescent and planning permission is granted for the change of use of land to residential use associated with 57 Main Street with erection of steps into existing garden and the erection of boundary walls to Grey Crescent at 57 Main Street, Newtown Linford LE6 0AE in accordance with the terms of the application, Ref P/19/0533/2, dated 9 March and the plans submitted with

it so far as relevant to that part of the development hereby permitted and subject to the conditions in the attached schedule.

Procedural Matters

2. Despite the description of development set out above, in order to provide clarity to the individual parts of the appellant's appeal scheme, I have agreed an alternative description with the main parties, as this better reflects the scheme that is before me. The development proposed is therefore for "change of use of land to residential use associated with 57 Main Street with erection of steps into existing garden; erection of boundary walls to Grey Crescent; and erection of fences to the boundaries to Grey Crescent and between the land and the existing driveway serving 57 Main Street". I have therefore dealt with the appeal on this basis.
3. The appeal is against the Council's failure to determine an application for planning permission. The Council has provided a report which states that in its opinion all of the elements of the appeal scheme are acceptable apart from the proposed fence to the eastern boundary with Grey Crescent, which is unacceptable. However, this is not a formal determination of the Council as the jurisdiction to determine the application transferred from the Council upon valid receipt of this appeal. I have therefore undertaken my own assessment of the effect of each element of the appeal scheme. Nonetheless, from the evidence before me, it appears that the Council would have refused the application in respect of that matter had it been empowered to do so.
4. As the proposed plans do not illustrate the proposed steps or the coursing of the brick or stone walls that have been erected, I have determined these proposals on the basis of what has been erected within the site. However, I have dealt with the remainder of the appeal scheme on the basis of the development shown on the site location plan and the plans referenced: 'wall and fence along boundary with Grey Crescent'; 'wall and fence along service road at rear of plot'; 'existing wall and fence (new) alongside our existing driveway'; and 'location of hedge'.
5. At the time of my visit, it was evident that the site has recently been cleared of vegetation, which the main parties do not dispute. However, the land did not appear to be in residential use. The steps from the appeal property to the land have been constructed, along with the stone wall to the eastern boundary and the brick wall and fence to the northern boundary. Some fence posts were also evident along the eastern boundary, but these have not been shortened nor the fence panels erected. Accordingly, I have therefore considered the effect of the proposals within the appeal scheme having regard to whether they have or have not been carried out or put in place. Moreover, those elements of the appeal scheme that have been carried out or are in place 'will' have an effect and those that are yet to be carried out or put in place 'would' have an effect.

Main Issue

6. Notwithstanding the Council's lack of objection to most elements of the appeal scheme, the main issue is the effect of the proposals on the setting of 51 and 57 Main Street, which are both Grade II listed buildings, and the character and appearance of the Newtown Linford Conservation Area, with particular regard to the proposed boundary fences.

Reasons

7. The appeal property is situated within a residential area and lies at the corner of Main Street and Grey Crescent. The site forms an area of land adjacent to the property's private garden area and adjoins Grey Crescent. The street bends its way uphill alongside the site and forks to the west along the northern boundary of the site, where it serves Nos 43-47. The property to the opposite corner of the street is 51 Main Street.
8. The frontages of properties within the area are described in the Council's Newtown Linford Conservation Area Character Appraisal (Adopted April 2009) (NLCACA) and are generally enclosed by hedges, other planting or by low-level walls. These general characteristics contribute to the open and verdant feel of the surrounding area. There are occasional examples of more prominent and imposing boundary treatments in the surrounding area. However, such examples do not define the prevailing character of the area.
9. The Council has suggested that they would not have objected to the proposals for the land to be used for residential purposes in conjunction with the appeal property, nor would they have objected to the steps between the appellant's rear yard area and their existing garden or the walls proposed to the north and eastern boundaries with Grey Crescent. In addition, the Council would not have objected to the proposed fence to the northern boundary of the site.
10. The solid boundary fences proposed within the site will/would appear unduly visually prominent and jar with the softer form of local boundary treatments, particularly given the openness of the area, their extent and relationship with Grey Crescent and 51 and 57 Main Street. The proposed design will/would not assist in softening the effect of the appearance of the fences, which are compounded by their height and the space in front to accommodate planting. Moreover, there will be no space to the northern boundary and there would only be a very narrow area to the eastern boundary. The appellant has suggested that the proposed fences could be removed when planting has matured but planting would be unlikely to have a meaningful effect in softening the appearance of the proposed fence to the eastern boundary for some time and would be unlikely to be visible behind the fence to the northern boundary. The visual harm that would therefore be caused whilst planting established could not be justified.
11. I have not arrived at the same conclusion as the Council in respect of the fence to the northern boundary of the site. The harm to the setting of Nos 51 and 57 as listed buildings and the significance of the conservation area that will/would result from both proposed fences will/would be less than substantial. Paragraph 196 of the National Planning Policy Framework (the Framework) requires such harm to be weighed against the public benefits of the proposal.
12. The appellant has suggested that the proposals will tidy the site, particularly through planting as a wild garden or orchard. Whilst this could be perceived as a benefit to the setting of the listed buildings and the conservation area, I am not aware of the previous appearance of the site prior to the clearance of vegetation. Nonetheless, it could be argued that this could be undertaken without the need to erect the proposed fences.

13. The appellant has also suggested that the fences are necessary to protect the appellant's privacy and provide security and safety elsewhere given the raised land levels within the site. Whilst there would be some benefit from the provision of the fences to the occupants of the property, these would not extend to the public and the fences will/would be unlikely to protect occupants from overlooking from neighbouring properties due to their elevated position.
14. I recognise that near neighbours have not objected to the proposals and that the appellant is not proposing housing within the site. However, the absence of harm to the occupants of neighbouring properties and not developing alternative proposals for the site would not amount to benefit, as there would be a neutral impact in both respects.
15. The statutory duties in Sections 66(1) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 are a matter of considerable importance and weight. The proposed boundary fences will/would have a negative effect on the significance of the appeal property and the conservation area as designated heritage assets and will/would result in less than substantial harm. The public benefits put forward by the appellant do not outweigh this harm.
16. In light of the above, I conclude that the aspects of the proposed development comprising the proposed boundary fences will/would have an unacceptably harmful effect on the setting of the listed buildings and the character and appearance of the conservation area. Hence, these proposals would not therefore accord with Policies CS2 and CS14 of the Charnwood Local Plan 2011 to 2028 Core Strategy (adopted 9 November 2015) (CS) and Saved Policy ENV/1 of the Borough of Charnwood Local Plan 1991-2006 (adopted January 2004) (LP). Together these policies seek to ensure a high standard of design in all new developments, which respects and enhances the local environment and character, including heritage assets and their setting, through positive and attractive built frontages to footpaths and roads, using Charnwood's distinctive local building materials and landform in the site as the focus around which new development is designed.
17. The appellant has referred to the boundary fence in situ to the western boundary of 51 Main Street as a precedent. Whilst I am not aware of the circumstances behind that fence, it is situated to the inside of the bend of Grey Crescent and would be less prominent within the street. The appellant has suggested that the fence and planting has been in place for some time. However, the planting is not sufficiently deep or established to entirely mitigate against the appearance of that fence. I therefore consider that the presence of that fence in the street would not be a compelling reason to allow other similar development that will/would appear discordant within their immediate surroundings.
18. The appellant has suggested that the NLCACA is not prescriptive in its approach to boundary fences in the village and considers that the elevated height of the site is a slightly unusual situation which would justify a height over 1 metre. A similar height is also referenced in the Council's Newtown Linford Village Design Statement 2008. However, the topography within the village varies significantly so the proposals could not be said to be unusual and could be repeated too often to the overall detriment of the character and appearance of the area.

19. I agree with the Council that the proposed change of use of land to residential use associated with the appeal property, the steps into the garden and the boundary walls to Grey Crescent, will or would not be harmful to the setting of the listed buildings or the character and appearance of the conservation area. Moreover, the resultant larger garden to the appeal property would neither be harmful nor uncommon in size when compared with other gardens nearby. Similarly, the steps constructed to access the land and the wall to the northern boundary of the site are modest and would also not appear as harmful features within the site. The wall to the northern boundary is also similar to those opposite in Grey Crescent. Furthermore, the wall to the eastern boundary of the site has been erected in a similar manner to other walls nearby and therefore positively contribute to the setting of the listed buildings and enhance the character and appearance of the conservation area. All these elements of the appeal scheme will/would be in conformity with Policies CS2 and CS14 of the CS and Saved Policy ENV/1 of the LP and have therefore been excluded from the analysis of public benefits referred to above.

Other Matters

20. As the proposed change of use of land to residential use, steps and boundary walls would be physically and functionally severable and capable of being carried out without the proposed boundary fences, a split decision would be a logical outcome.
21. I have had regard to the desire of the appellant to provide private garden space away from the front of their property and which could benefit from the sun in the late afternoon or early evening. However, I am mindful that the harm identified would be permanent and is not outweighed by the appellants' particular circumstances.
22. The appellant has referred to other proposals that were discussed by the main parties prior to the appeal, including a reduction in the height of the proposed fences and alternative locations. However, these are not part of the appeal scheme before me, so I am not able to give these alternative proposals any weight.
23. The appellant has also referred to the conduct of the Council in the determination of the planning application, including delays and the nature of the advice given. However, these are not matters for me to consider as part of this appeal. Similarly, the appellant has suggested that a previous scheme for the development of the site was accepted by the Council's officers but subsequently refused permission and dismissed by an Inspector. However, as those proposals are not for comparable development, I have not afforded them any weight in my consideration of this appeal.

Conditions

24. I have given consideration to the conditions suggested by the Council. In the interests of the character and appearance of the conservation area and the setting of the listed buildings, the details of the scheme of landscaping for the site is required with three months of this decision and details of its implementation and replacement of damaged plants or trees.

25. I have also proposed an additional planning condition which would remove the appellant's permitted development rights for fences, gates and walls within the extended area of the property's curtilage. As I have identified that harm would result from the fences within the appeal scheme, it would be reasonable and necessary to ensure that future fences, gates and walls are considered by application through the Council. This would be relevant to planning and to the development permitted as it would address the potential for harm to the character and appearance of the conservation area, or the setting of the listed buildings at 51 and 57 Main Street from other fences, gates and walls. The planning condition would also be precise in terms of its expectations and enforceable as a result. It would therefore meet the tests required by Paragraph 55 of the Framework.

Conclusion

26. For the reasons given above I conclude that the appeal should be allowed insofar as it relates to the change of use of land to residential use associated with 57 Main Street with erection of steps into existing garden; erection of boundary walls to Grey Crescent but dismissed insofar as it relates to the erection of fences to the boundaries to Grey Crescent and between the land and the existing driveway serving 57 Main Street.

Paul Thompson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Within 3 months of the date of this planning permission, a scheme of landscaping shall be submitted to and approved in writing by the local planning authority.
- 3) The landscaping scheme shall be fully completed, in accordance with the details agreed under the terms of the above condition, in the first planting and seeding seasons following the land first being brought into use or in accordance with a programme previously agreed in writing by the local planning authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.
- 4) Notwithstanding the provisions of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls, other than those hereby approved, shall be erected within the land outlined in red on the site location plan.