



Appeal Decision

Site visit made on 22 October 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2019

Appeal Ref: APP/C1055/W/19/3234965

Shelton Junior School, Carlton Avenue, Derby DE24 9EJ

- 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 Shelton Junior School against the decision of Derby City Council.
 - The application Ref 05/18/00760, dated 18 May 2018, was refused by notice dated 19 February 2019.
 - The development proposed is the installation of a 2400mm height, welded mesh fencing in RAL 6005 (Moss Green) to a number of school field perimeters. The installation of new 4000mm width, double gate to allow access to the field for mowers and maintenance.
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Decision

1. The appeal is allowed and planning permission is granted for the installation of a 2400mm height, welded mesh fencing in RAL 6005 (Moss Green) to a number of school field perimeters. The installation of new 4000mm width, double gate to allow access to the field for mowers and maintenance at Shelton Junior School, Carlton Avenue, Derby DE24 9EJ in accordance with the terms of the application Ref 05/18/00760, dated 18 May 2018, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan EKV02016-P001 O; Block Plan EKV02016-P002 O; Existing Plan EKV02016-P101 O; Proposed Plan EKV02016-P102 O; Fencing Detail Plan 2499mm high 868-Twin-Mesh-Fencing.

Application for costs

2. An application for costs was made by Shelton Junior School against Derby City Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this appeal are the effects of the development on:
 - The living conditions of adjoining residential occupiers;
 - The character and appearance of the area.

Reasons

Living conditions

4. Shelton Junior School lies within the residential area of Shelton Lock. The main building is set back from Carlton Avenue behind a playground and parking area. To the south and south-west of these is a grassed area/playing field, which adjoin the gardens of the houses that surround the site. They are presently enclosed by a perimeter that includes a mix of fence panels and hedgerow/shrubs of various styles and sizes. Along the front of the school, on Carlton Avenue and to Weston Park Gardens, are existing stretches of fencing.
5. Except for a section along Weston Park Gardens where a fence is already in situ, the appeal proposal seeks to install green wire mesh fencing to a height of 2.4m so that the school playing field would be securely enclosed. It would include a 'c' shaped section of fencing adjacent to the side boundary with 65 Carlton Avenue and to the rear of houses on Weston Park Gardens. There would also be a gate to allow maintenance/mowing of the field, sited between the school buildings and 23 Weston Park Gardens. The appellant's evidence confirms that the fence would be installed as close as possible to the existing boundary on the school's land.
6. I appreciate that the fencing would immediately adjoin the rear and side boundaries of houses and properties that surround the field. However, whilst it would extend to 2.4m in height, the spacing between the wires of the fencing would be relatively wide at approximately 50mm between the vertical wires and 200mm horizontally. It would therefore comprise a relatively open mesh rather than solid panels and consequently, it would let light through. I am therefore not persuaded that it would result in the overshadowing of adjoining properties. Moreover, its mesh design would also allow views through it and diminish the sense of enclosure as a result.
7. Furthermore, the Council's Officer Report acknowledges that permitted development rights (PD) would enable the appellant to erect a fence of up to 2m in height around the school without the need for planning permission. On my site visit I observed that in places, the existing boundary has gaps within it, making it vulnerable to unauthorised access. It would not be unreasonable to expect a school to provide a secure form of enclosure, which the fencing/hedging is presently unable to provide. I also understand that the proposal followed a Council directive to improve the safeguarding of the children, by delivering a secure site. There is therefore a greater than theoretical possibility that improvements to the boundary would be implemented. Consequently, I consider that the 2m PD boundary represents a fallback position against which to assess the current scheme.
8. The appeal proposal would be 0.4m higher than the fallback. However, on the evidence before me and my observations on site, I am not persuaded that this small additional height would have an overbearing effect on the gardens of adjoining properties given the mesh design, which is not tightly woven. It would not be unduly oppressive or prison like as a result.
9. I therefore conclude that the proposal would not be harmful to the living conditions of adjoining residential occupiers. I therefore find no conflict with Policy CP3 of the Derby City Local Plan - Part 1: Core Strategy (January 2017) (DCLPCS) or Saved Policy GD5 of the City of Derby Local Plan Review (January

2006) (CDLPR). These policies seek to ensure, amongst other matters, that development provides good standards of security and would not be harmful to the living conditions of nearby occupants.

Character and appearance

10. The school is located within a residential area where I observed a variety of boundary treatments, in terms of both heights and materials. These included low brick enclosures, hedges and fences as well as some taller brick walls, particularly to the side boundaries of gardens adjoining the street. Nonetheless, I observed no determinative boundary type that singularly contributed to the character of the area.
11. Moreover, along the front of the school on Carlton Avenue and also to Weston Park Gardens to part of the playing field, I saw existing stretches of fencing to the school perimeter. These comprised a green 'palisade' type fence that appeared to be over 2m in height.
12. Within this context, the enclosure of the remainder of the school field with a similarly tall fence that would also be green in colour would not appear incongruous. Furthermore, I concur with the Council's assessment in the Committee Report that this type of fencing, in both its height and form, is not uncommon to school boundaries in providing a suitably secure and robust perimeter.
13. On the evidence before me and my observations on site, I am therefore not persuaded that the proposal would be harmful to the character and appearance of the area. I therefore conclude that it would not conflict with Policies CP2 and CP3 of the DCLPCS (2017). When read together, these policies, amongst other matters, promote high-quality design and development that provides a good standard of safety and security and responds positively to its context, as well as integrating into its setting.

Other Matters

14. I have had regard to the issues raised by third parties. I acknowledge the comments that a 2m fence would be more suitable. However, I am required to consider only the proposal before me. In respect of its impact on property values, there is no evidence that it would influence them, and, in any event, this is not a material consideration in determining planning applications and proposals.
15. I appreciate that concerns have been raised about the position of the fence in relation to the existing hedge. I understand that it stems from the installation of part of the existing fence through the middle of a hedge and the fact that its maintenance appears to have fallen to neighbouring occupiers. However, matters about ownership and responsibility for maintenance of the existing boundary is a civil matter that does not alter the planning merits of the proposal. It is not a reason to withhold planning permission in the absence of any significant planning harm.
16. I have also given very careful consideration to the effect of the proposal on the occupier of a neighbouring residential property, having particular regard to their medical condition. I am mindful that this is likely to be a person who shares a protected characteristic for the purposes of the Public Sector Equality Duty (PSED). Consequently, since there is the potential for my decision to

affect persons with a protected characteristic, I have had due regard to the three equality principles established by the Act, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.

17. The negative impact of allowing this appeal would arise from the fact that it would provide a higher boundary than presently exists. However, for the reasons that I have already stated, I am not persuaded that it would create an undue sense of enclosure, principally as a consequence of its wide mesh design, so that it would not be solid in appearance. I sympathise with the neighbouring occupier and appreciate that the boundary to their garden might be secure. However, the planning system operates in the wider public interest and the National Planning Policy Framework acknowledges that planning decisions should, amongst other matters, promote public safety. Consequently, I consider that the adverse impacts of allowing the scheme on those with protected characteristics would be proportionate, having regard to the safety needs of the wider school site.

Conditions

18. With regard to paragraph 55 of the Framework, I have considered the planning conditions suggested by the Council. In addition to the standard time limit condition and, in the interests of certainty, it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
19. I appreciate the Council's suggestion that the plans condition include wording that any variations required in order to discharge any other conditions be agreed in writing by the Council. In this case, however, apart from the standard time limit, there are no other conditions. Furthermore, any changes to the plans would need to be considered through the planning process, rather than simply by agreement in writing. As written, it would therefore fail to meet the tests of precision, as set out in the Framework. I have therefore omitted this wording from the approved plan condition. I have also, for clarity, included reference to the development being carried out in accordance with the approved plans rather than conforming with them.

Conclusion

20. For the reasons set out above, I conclude that the appeal should be allowed.

Kate Mansell

INSPECTOR