



Appeal Decision

Site visit made on 3 December 2019

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 8 January 2020

Appeal Ref: APP/Z4718/W/19/3237464

Adj 1 Spring Lane, Holmfirth HD9 2LN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Cruickshank against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2018/61/93508/W, dated 19 October 2018, was approved on 29 March 2019 and planning permission was granted subject to conditions.
- The development permitted is reserved matters application pursuant to outline permission 2016/91502 for erection of one detached dwelling.
- The condition in dispute is No 2 which states that: "Notwithstanding the details shown on approved drawing no. 138/2-001H, the approval of landscape as a reserved matter does not extend to the erection of a 1.8m high timber fence or the proposed siting of such fencing as shown on the aforementioned plan. Before the dwelling is first occupied details of an alternative boundary treatment shall be submitted to and approved in writing by the local planning authority and the boundary treatment completed in accordance with the approved details. For the avoidance of doubt the revised boundary treatment shall comprise the erection of a stone wall, constructed in stone to match that of the host building, along the full length of the south western boundary of the site, to accord with the red line boundary of the outline planning permission no. 2016/91502 which is deemed to represent the shared boundary between the application site and the property named 'Somerton'. The scheme shall include details of tree root protection. The overall height of the boundary wall shall extend to 1.5m above the finished floor level of the approved dwelling's ground floor, other than the first five meters measured from the boundary to Liphill Bank Road, which shall extend 1.0m above the finished floor level of the approved dwelling. The boundary treatment along the south western boundary shall thereafter be retained in accordance with the approved details."
- The reason given for the condition is: "To ensure this landscape detail respects and enhances the character of the site and the wider townscape, where stone walls are the predominant feature. To ensure the layout and appearance of the dwelling, in particular the lounge window, do not result in an undue loss of privacy to the occupiers of Somerton. This would accord with Policy PLP24 (a) and (b) of the Kirklees Local Plan (as modified) and Policies within Chapter 12 of the National Planning Policy Framework."

Decision

1. The appeal is allowed and the planning permission ref: 2018/61/93508/W for the reserved matters application pursuant to outline permission 2016/91502 for erection of one detached dwelling at Adj 1 Spring Lane, Holmfirth HD9 2LN approved on 29 March 2019 by Kirklees Metropolitan Borough Council, is varied by deleting condition (2) and substituting for it the following condition:

2) Prior to the hereby approved development being brought into use, the 1.8m high close boarded timber fence, as shown on plan Ref 138/2-001 Rev. H.

along the full length of the site's west boundary shall be erected. Thereafter the approved boundary fencing shall be retained.

Application for Costs

2. An application for costs was made by Mr Cruickshank against Kirklees Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Kirklees Local Plan (KLP) was adopted on 27 February 2019 after the refusal of the application at Committee on 13 December 2018 but prior to the issue of the decision notice on 29 March 2019. The Council refers to the now adopted KLP in its Statement of Case and the relevant adopted policies have been submitted as part of the appeal. Therefore, the parties have had the opportunity to comment upon the KLP and relevant policies as part of the appeal and I have determined the appeal on that basis. I am satisfied that no interested party has been prejudiced by this approach.
4. The Council amended the development description from 'application for single dwelling dealing with layout, scale, appearance and landscaping at land adj 1 Spring Lane, Holmfirth' to 'reserved matters application pursuant to outline permission 2016/91502 for erection of one detached dwelling.' This is also the description used by the appellant on the planning appeal form. I consider this to be a more accurate description of the proposed development and have therefore considered the appeal on this basis and used it in the formal decision.

Background and Main Issue

5. The appeal site has permission for the erection of a single dwelling¹ and permission was previously granted for reserved matters². Following this, development commenced on site but not in accordance with the approved plans, the principal difference being the layout with the locations of the garage and lounge being swapped. A further application for reserved matters was submitted³ to reflect this change to the layout and was granted subject to conditions.
6. This approval of reserved matters includes condition 2, which requires the erection of boundary treatment along the full length of the south western boundary of the appeal site comprising a stone wall, constructed in stone to match that of the host building. The reason given for this is to ensure that the landscaping respects and enhances the character of the site and wider area, and that the layout and appearance of the dwelling do not result in an undue loss of privacy to the occupiers of the adjacent property of Somerton. The appellant objects to condition 2 and seeks its removal or its removal and replacement with a modified condition to permit a boundary fence.
7. There is some dispute between the parties as to whether it was valid to consider the proposed boundary treatment on the appeal site as part of the application for reserved matters, and whether it was appropriate for a condition to be imposed regarding its form, dimensions and material. One of the

¹ Ref: 2016/91502

² Ref: 2017/93648

³ Ref: 2018/61/93508/W

reserved matters applied for is landscaping which, as stated within the National Planning Practice Guidance (PPG)⁴, includes, amongst other things, 'screening by fences, walls or other means.' In this respect, I am of the opinion that boundary treatment can be considered as an element of landscaping. Therefore, given the reserved matters applied for and the proposed revision to the layout, I am satisfied that, in considering the planning merits of the detailed scheme, it was relevant and valid to assess and condition the boundary treatment on the appeal site as part of the application.

8. Taking the above into account, I consider the main issue to be, whether condition 2 is necessary and reasonable in the interests of (i) the character and appearance of the area; and (ii) the living conditions of the occupiers of Somerton, with regard to overlooking and privacy.

Reasons

9. The appeal site is a triangular shaped plot on a prominent corner at the junction of Spring Lane and Liphill Bank Road. It sits in an elevated position above the private garden and outdoor seating area of the adjacent detached property of Somerton. It is bounded by a stone wall to the east and a close boarded timber fence to the north. A temporary timber fence has been erected along part of the south western boundary. Holly trees are present along the rest of this boundary which provide some natural screening.
10. The boundary treatment to properties in the surrounding residential area is varied in terms of form and materials. I acknowledge that stone is a predominant building material in the area and that there are stone walls between the houses on an adjacent short terrace on Liphill Bank Road. However, from what I saw on my site visit, although substantial stone walls are the main boundary treatment enclosing the curtilages of dwellings along the back of pavements and roads, it is close boarded timber fences that are the primary boundary treatment which define and separate private garden areas between dwellings.
11. Furthermore, I appreciate that, given the location of the appeal site and the topography of the area, any boundary treatment along its south western boundary would be readily visible and prominent in the townscape, particularly in views looking west at the junction of Spring Lane and Liphill Bank Road. However, I consider that a high, substantial stone wall separating the garden areas of the appeal site and Somerton would be an unduly dominant structure on the boundary of the appeal site and in the street scene.
12. In these respects, with regard to the character and appearance of the area, I consider that the imposition of condition 2 is neither necessary nor reasonable, and that a plain, slim, close boarded, timber fence in this location would not appear wholly incongruous in the street scene and would be less visually dominant than a substantial stone wall.
13. I recognise that the level differences between the garden areas of the appeal site and Somerton, in conjunction with the revised layout, results in the full height windows of the habitable room of the lounge to be above, and in close proximity to, the private garden and outdoor seating area of Somerton. On this basis, I consider that some form of boundary treatment and screening is

⁴ PPG Paragraph: 006 Reference ID: 14-006-20140306

necessary to prevent any harmful overlooking and undue loss of privacy of the occupiers of Somerton. However, this can be adequately achieved by other means, and I am of the opinion that it does not have to be a substantial stone wall to the details specified in condition 2.

14. Therefore, with regard to any harm to the living conditions of the occupiers of Somerton due to overlooking and loss of privacy, I consider that the imposition of condition 2 is neither necessary nor reasonable, and that any overlooking and loss of privacy would be satisfactorily mitigated by a close boarded timber fence to the height of 1.8m as proposed.
15. Paragraph 55 of the Framework is clear in stating that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
16. I consider that the imposition of condition 2 is not necessary nor reasonable in the interests of the character and appearance of the area. In addition, although I consider that boundary treatment can be considered as part of the reserved matter of landscaping and that some form of boundary treatment along the full length of the south western boundary of the appeal site is necessary in the interests of the living conditions of the occupiers of Somerton with regard to overlooking and privacy, it is not necessary nor reasonable to require it to be of a solid stone construction to the details specified in condition 2.
17. For the reasons above, I consider substituting condition 2 for one which requires the erection and retention of a timber fence to be necessary and would be reasonable in all other respects. This would not be out of keeping with the character and appearance of the surrounding area and would ensure that the living conditions of the occupiers of Somerton, with regard to overlooking and privacy, would be protected. Thus, the new condition would ensure that the proposed development complies with the objectives of Policy LP24 (a) and (b) of the KLP which state that proposals should promote good design by ensuring that the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape; and that they provide a high standard of amenity for future and neighbouring occupiers. It would also be consistent with the objectives of Paragraph 127 of the Framework, which requires development to be sympathetic to local character and with a high standard of amenity for existing and future users.

Other Matters

18. I have given careful consideration to the representations made by the occupiers of Somerton. They consider that the removal of condition 2 or its removal and replacement with a modified condition to permit a boundary fence would breach Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998. Article 1 of the First Protocol is the right to the peaceful enjoyment of possessions including property, and Article 8 is the right to respect for private and family life, home and correspondence.
19. I have concluded that a 1.8m high, close boarded, timber fence would acceptably mitigate any harmful overlooking into the private garden and outdoor seating area of Somerton. On this basis, I consider that the replacement of condition 2, with one which requires the boundary treatment to

be a timber fence rather than a stone wall, would mean that their human rights would not be prejudiced, and so, it would not constitute a breach of Article 1 of the First Protocol or Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998.

20. I note the comments made by the occupiers of Somerton regarding the inaccuracy of the boundary as drawn on the plans. However, in terms of planning, the Council is satisfied that the red line boundary of the original outline planning permission represents the shared boundary between the appeal site and Somerton and I have no reason to disagree.
21. I have had regard to the landscape value of the existing mature elm trees that are within the garden of Somerton but which overhang the appeal site; the assessment which concludes that the trees are in good physiological and structural condition; the recommendation that they should have a Tree Preservation Order (TPO) placed on them; and the concerns regarding works that have already been carried out which may have impacted on their roots. I agree that the trees make a positive contribution to the character and appearance of the area. However, any TPO would be issued by the Council and this, and any works that have already been carried out, are not for me to consider in the context of an appeal under Section 78 of the Act.
22. I am aware of the offer made by the occupiers of Somerton to co-operate with the appellant and to allow the appellant access onto their land to undertake any work that complies with condition 2. However, this is a private matter and not for me to consider in the context of an appeal under Section 78 of the Act.
23. I have had regard to the comments of the occupiers of Somerton highlighting the local significance of Somerton and that it should share some of the protection afforded to listed buildings. Although the building may be of local architectural and historic interest, as it is not statutorily listed, no additional protection can be afforded to the building or its setting in the consideration of this appeal. As such, this does not alter or outweigh my conclusion on the main issue.
24. I note Holme Valley Parish Council's objection to the application and concerns about the loss of off-road parking and turning area for vehicles which could have implications for highway safety. Nevertheless, the Council has stated that the access has been implemented in accordance with the outline permission and it is satisfied that it is acceptable in highway terms, and there is no evidence before me which would cause me to disagree with this conclusion.
25. I acknowledge the concerns of the occupiers of Somerton and those of Holme Valley Parish Council regarding the issue of unauthorised works carried out by the appellant and the decision of the Council to not proceed with any enforcement action. However, it is not within the remit of the appeals process to comment on the internal procedures of the Council, and so, I do not consider this to be determinative in the appeal.
26. The occupiers of Somerton have stressed that all of the concerns could be addressed by reverting to the original proposal. Be that as it may, that is not what is before me. I have determined the appeal on its own planning merits with regard to the specific location and context of the appeal site.

27. None of the other matters raised alter or outweigh my overall conclusion on the main issue.

Conclusion

28. For the reasons given above, I conclude that the appeal should be allowed and that the planning permission should be varied as set out in the formal decision.

F Cullen

INSPECTOR