



Appeal Decision

Site visit made on 14 May 2020 by Andreea Spataru BA (Hons) MA

Decision by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 1st June 2020

Appeal Ref: APP/H1033/D/20/3244201

1 Winhill Road, New Mills SK22 4DY

- 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 Simon Gahan against the decision of High Peak Borough Council.
 - The application Ref HPK/2019/0341, dated 30 July 2019, was refused by notice dated 20 November 2019.
 - The development proposed is described as "replacing boundary hedge and old fencing (1.5m-2.0m) with fence (approx. 1.8m-2.0m)".
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary matters

3. An application for costs was made by Mr Simon Gahan against High Peak Borough Council. This application is subject of a separate decision.
4. Whilst the development description indicates that the proposed fence would have a height between 1.8m and 2m, the submitted plans show a 2m high fence to the front, side and rear, thus I have referred to this dimension in my assessment.

Main Issue

5. The main issue is the effect of the proposal on the character and appearance of the street scene.

Reasons for the Recommendation

6. The appeal site accommodates a detached dwelling, located on a corner plot, on the southern side of Winhill Road, within a predominantly residential area. The appeal property has a dense hedgerow of an approximate height of 3m that wraps around part of the front of the property, the whole western side and partly around the rear of the appeal site. The land levels increase significantly towards the west, which increases the prominence of the boundary treatment within the street scene.
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7. The street scene has a generally open and verdant character; some of the neighbouring properties have either low boundary treatments or hedgerows/vegetation of various heights. The openness of the street scene given by the lack of hard, high boundary treatments makes a positive contribution to the character and appearance of the area.
8. The proposal seeks to replace the existing hedgerow with a 2m softwood closeboard fencing. The proposal also includes the replacement of an old fence (1.5m–2m); the submitted plans do not include details of this fence and at the time of my visit this fence was not visible from Winhill Road or Fernilee Close.
9. Given the location of the proposed fence and its height, the development would have a prominent position within the street scene. The fence would have a hard appearance mainly due to its materials, which would be in contrast with the open and verdant character of the street scene. Whilst the fence would have a height lower than the existing hedgerow, its rigid appearance would not be in keeping with those of the boundary treatments in this area. Thus, the fence would appear as an incongruous addition which would harmfully affect the character and appearance of the street scene.
10. It is possible that alterations to the boundary treatment could be done without the need for planning permission. It is argued that the existing hedgerow is not protected and that the difference between the existing fence, which could be retained and maintained, and the proposed fence is not significant. As stated above, I do not have full details of the existing fence and it was not visible from the street scene. From the information before me, the proposed fence would be 0.2-0.5m higher than the existing fence, and therefore I find that this would be more prominent within the street scene particularly because of the corner plot location and the differences in the land levels.
11. Moreover, there is a substantial difference between a 1m permissible under the General Permitted Development Order and a 2m high fence, as the latter would have a significantly greater impact on the openness of street scene.
12. I acknowledge the benefits outlined by the appellant, including the increase in the level of privacy, however these do not outweigh the harm that I have identified.
13. Accordingly, I conclude that through a combination of its siting, height and materials, the proposal would result in significant harm to the character and appearance of the street scene. Therefore, the development would be contrary to Policies S1 and EQ6 of the High Peak Local Plan which together require, amongst other things, that developments contribute positively to an area's character in terms of height, appearance and materials. These policies are consistent with paragraph 127 of the National Planning Policy Framework, which requires, amongst other things, that developments are sympathetic to the local character.

Other matters

14. The appellant considers that a 1m high boundary fence of any materials could be erected adjacent to the highway together with a 2m screen fence positioned directly behind the 1m fence under the General Permitted Development Order. However, this is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open

to the appellant to apply to have such matters determined under sections 191 or 192 of the Town and Country Planning Act.

15. I note that there were no objections from the Highway Authority and neighbours. However, a lack of objections is not a determinative factor.

16. I acknowledge the appellant's concerns regarding the service provided by the Council. However, this is a matter between the appellant and the Council. I have limited my consideration to the planning matters before me.

Recommendation

17. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

Andreea Spataru

APPEAL PLANNING OFFICER

Inspector's Decision

18. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

C Searson

INSPECTOR

Costs Decision

Site visit made on 14 May 2020 by Andreea Spataru BA (Hons) MA

Decision by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date:

**Costs application in relation to Appeal Ref: APP/H1033/D/20/3244201
1 Winhill Road, New Mills SK22 4DY**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Simon Gahan for a full award of costs against High Peak Borough Council.
 - The appeal was against the refusal of planning permission for the proposed development described as "replacing boundary hedge and old fencing (1.5m-2.0m) with fence (approx. 1.8m-2.0m)".
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Decision

1. The application for an award of costs is refused.

Procedure

2. An Appeal Planning Officer has set out the recommendation below, to which the Inspector has had regard before deciding the application.

Reasons

3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and, thereby, caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 4. The Guidance also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
 5. The key arguments are that the Council's decision notice has not stated clearly and precisely the reason for refusal, the Council used a subjective reason for refusal and did not consider the proposal against permitted development rights, thus the Council failed to assess the proposal properly by not taking into account the fallback position.
 6. The planning decision is one which is a matter of judgement and having regard to the Council's evidence in the case officer report it is sufficiently clear to me that their objectives centre around the effect of the proposed development on
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the character and appearance of the street scene. Notwithstanding the minor spelling and punctuation errors, the decision notice provides sufficient detail as to explain why the proposal was unacceptable in planning terms. In addition, the Council determined the application against the relevant policy and successfully defended their decision through the assessment outlined within the case officer report. The Council's refusal reason was precise.

7. The Council acknowledges that the fallback position was not explicitly considered in the assessment and determination of the application because the 1m high fence that could be erected under the General Permitted Development Order is materially different from the proposed 2m high fence. I have reached a similar conclusion on this matter, as set out in the appeal decision.
8. The appellant outlined within the appeal statement several alterations to the boundary treatment which he considers that could be done without formal consent. Notwithstanding these, the application sought full planning permission. I am satisfied that the Council's decision was clearly supported with a substantive reason based on the assessment of the site and interpretation of relevant policy. Consequently, I cannot find this as unreasonable behaviour on the Council's part.

Conclusion

9. With the above in mind, I find that the Council has not acted unreasonably and thereby caused the applicant to incur unnecessary or wasted expense. A claim for costs, either in whole or in part, is not therefore justified and accordingly it is hereby recommended for refusal.

Andreea Spataru

APPEAL PLANNING OFFICER

Inspector's Decision

10. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the application for an award of costs is refused.

C Searson

INSPECTOR