



Appeal Decision

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2020

Appeal Ref: APP/V4630/W/20/3245869

14 Newquay Close, Walsall WS5 3EP

- 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 Mr Ravinder Samra against Walsall Metropolitan Borough Council.
 - The application Ref 19/0566, is dated 26 April 2019.
 - The development proposed is the change of use from open space to residential garden land and the erection of 2.1m high boundary fence.
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Decision

1. The appeal is dismissed and planning permission is refused for the change of use from open space to residential garden land and the erection of 2.1m high boundary fence.

Procedural Matters

2. The description of development is taken from the appeal form as this provides a more accurate description of the proposed development. It does not change the development for which planning is sought. The Council advertised the proposed development using the revised description; consequently, I am satisfied that no party will be prejudiced by my use of it. I have proceeded on this basis.
3. The appeal relates to a planning application that was not determined by the Council within the prescribed period. The Council have subsequently issued a statement for the purposes of this appeal highlighting that it would have refused the application for planning permission. I have had regard to this statement in framing the main issues.

Main Issues

4. The main issues are the effect of the development on the character and appearance of the locality, and, the value and function of public open space with particular regard to promoting healthy lifestyles.

Reasons

5. The appeal site lies within a planned residential estate consisting of winding estate roads and branching cul-de-sacs. Newquay Close is a cul-de-sac of detached dwellings set behind predominantly open frontages. Within the estate layout provision for pedestrian access is enhanced through a network of dedicated footpaths providing access between different parts of the estate and to green spaces within and about it.

6. The site forms part of a roughly triangular grassed area of accessible public open space (POS) featuring pathways and trees. The pathways directly link the residential cul-de-sacs of Newquay Close, Bude Road and St Austell Road, and areas beyond. The pathway along the southern edge of the POS (Public Right of Way ref. WAL105), which runs to the rear of the appeal site, also provides linkages to open countryside areas to the east of the estate and is the main east-west pedestrian way through the estate. This links with other key footpaths and public open spaces to the west, enhancing the permeability of the locality.
7. According to the submitted plans, that part of the land to be incorporated and lying behind the front elevation of 14 Newquay Close, would be delineated by a concrete post and close-board timber fence to a height of about 2.1m. This would be positioned about 1m from the edge of the nearest footway. The area forward of the elevation is shown to be free from enclosure.
8. Policy OS1 of the Walsall Site Allocations Document 2019 (SAD) states that development proposals that result in the loss of, or would otherwise adversely affect, open space will be assessed against the National Planning Policy Framework (the Framework), Policy ENV6 of the Black Country Core Strategy (2011) (CS) and saved Policy LC1 of the Walsall Unitary Development Plan (2005) (UDP) to determine the impact on the network of open spaces. Policy ENV6 states that development that reduces the overall value of the open space or prejudice any of its functions will be resisted.
9. Section 8 of the Framework seeks to achieve healthy, inclusive and safe places including, amongst other things, layouts of development that allow for easy pedestrian and cycle connections, legible pedestrian routes and high-quality public space that encourage active and continual use of public areas. It also seeks safe and accessible green infrastructure and layouts to encourage walking and support healthy lifestyles. Paragraph 97 of the Framework applies a presumption against built development on open space unless it is demonstrated the land is surplus to requirements or replaced by alternative provision.
10. The POS is particularly prominent within the Newquay Close streetscape due to the consequential large gap between built development and its siting on the outside of a bend in the road. Here, it contributes a positive greening effect within the road frontage.
11. Although the front of the site would remain open consistent with the prevailing character of the streetscene, the erection of the screen fence across the majority of the width of the existing POS would be clearly visible in the street context. The tall fence would be prominent on Newquay Close on account of its height, position and hard appearance. This would undermine the existing sense of openness of the area and contrast sharply with the open and landscaped frontages characteristic of the locality.
12. Although there are other high fences in the vicinity, these are mainly limited to side and rear boundaries where they have a restricted impact on the streetscene. The erection of the high fence would subsequently appear incongruous and would not be sympathetic to the local open character of the Newquay Close streetscene.

13. The effect of the change of use of the land would be to reduce the area of publicly accessible land and remove much of the space alongside the path closest to 14 Newquay Close. Whilst the nature of the land is such that it is unlikely to have significant recreational value, its scale and open nature serves as an important visual enhancement and focal point within the local streetscene. It duly facilitates the legibility of the local pedestrian routes.
14. The effect of the narrowing of the entrance onto the remaining open space from Newquay Close and creation of a pinch-point by the existing and proposed high defensible boundaries either side would reduce visual interpretation of the pedestrian linkages. Furthermore, the closing down of clear views into the area from Newquay Close and loss of openness would reduce levels of natural surveillance about the remaining POS and prevent inter-visibility between the Newquay Close and St Austell Road access points. This would increase the likelihood of antisocial behaviour on account of the increased seclusion of the remaining land.
15. The loss of natural surveillance, reduced space and visibility would decrease user confidence, sense of security and increase the fear of crime for both users passing through the land and nearby property owners. This would be particularly so for users during darker hours, despite nearby lighting columns. The installation of privately-owned CCTV cameras adjacent to the remaining land would not, to my mind, provide sufficient security assurance to third-party users.
16. In support of the appeal the appellant draws my attention to the condition of the land and propensity for the build-up of litter and dog waste in conjunction with ongoing maintenance liabilities. At the time of my site inspection the vegetation and pathways appeared in a tidy condition and generally free of litter or fouling. The condition of the appeal site was consistent with the remainder of the land and was witnessed to have been maintained to a reasonable standard. Whilst I acknowledge that this is only a snapshot in time, there is little evidence before me to demonstrate that significant problems persist in this regard or from the inappropriate use of the land. Although the incorporation of the land would relinquish any maintenance responsibility by public or other bodies, this would not be the case for the remainder of the land and therefore is a limited benefit in favour of the scheme.
17. The appellant also draws my attention to other cases of incorporation of land into residential gardens and the large scale of other gardens in the vicinity. Whilst I acknowledge the variation in scale of plots in the area, such that the resultant garden serving No14 would not appear out of keeping with the grain of development locally, I consider this a neutral factor in the determination of this case. Furthermore, in the absence of detailed evidence of other instances of land incorporation, I am unable to compare the circumstances of the cases and have proceeded to consider the proposal on its own merits.
18. I acknowledge third party representations in support of the development with particular reference to the absence of active public use of the appeal site, however, there is little evidence provided by the main parties as to the absence or extent of use of the POS or to establish whether it can be regarded as surplus to requirements. Notwithstanding that fact, I do not find that the level of active use of the appeal element of the land to be determinative in relation to the main issues.

19. For the above reasons, and in the absence of any compensatory open space, I conclude that the loss of part of the POS and its partial enclosure by high fencing would cause harm to the quality of the Newquay Close streetscene. It would also undermine the functional and visual qualities of the open space such that it would discourage users and fail to promote inclusion and accessibility. It would therefore conflict with Policy OS1 of the SAD, Policy ENV6 of the CS, saved Policy LC1 of the UDP and the Framework as they seek long term protection of the visual and functional qualities of public open spaces for the promotion of healthy lifestyles and contribution to the quality of the built environment.

Other Matters

20. The availability of additional land forward of the front elevation of No14 would facilitate further parking to serve the site. No14 benefits from existing forecourt parking for two vehicles and an integral garage that would provide parking facilities commensurate with other properties in the area. Although the site lies close to a bend in the road where safe on-street parking may be more difficult, there is little evidence before me to demonstrate that on-street parking competition is saturated to the point that harm to living conditions of nearby residents or highway safety and the free flow of traffic would arise. Accordingly, the provision of additional on-site parking is a matter to which I attach limited weight.
21. I note that the development would maintain highway sightlines and would not adversely affect other residential properties, utilise hazardous materials or have adverse impacts on biodiversity. It would also allow continued access to a nearby substation from St Austell Road.
22. The appellant advises that the development would give rise to improvements to the family living conditions through the enhancement of private amenity space available to them. However, whilst acknowledging the benefits that would result in this respect, these are not sufficient to outweigh the harm that I have identified.
23. I further note the frustrations expressed by the appellant in respect to the level of communication from the Council, the alleged degree of fairness applied in the planning system and delays leading up to this appeal. I also acknowledge the claims of fraudulent submissions of some third-party objections and possible causes. However, these are not matters for this appeal, an appeal which I have determined on its own planning merits.
24. The ownership of the land and any agreements or otherwise as to the acceptability of the purchase of the land, and the absence of objections from the Highway Authority, are not matters that weigh in favour of the proposed development.

Conclusion

25. For the above reasons, the appeal should be dismissed.

R Hitchcock

INSPECTOR