



Appeal Decision

Site visit made on 26 August 2020

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th August 2020

Appeal Ref: APP/T3725/D/20/3253085

6 Phillippes Road, Warwick, Warwickshire, CV34 5TR

- 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 Laki Singh against the decision of Warwick District Council.
 - The application Ref: W/19/0860 dated 10 May 2019, was refused by notice dated 4 March 2020.
 - The development proposed is described as erection of 1.95m pressure treated wooden posts and superior wooden feather edge fence board panels (Retrospective).
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application form indicates the works were complete on 5 August 2018. At my visit the development had taken place, therefore I am considering this appeal as a retrospective proposal.
3. The description of the development in the Council's decision notice differs from the planning application form, as amongst other things, it refers to a change of use to garden land. The appellant has stated that they did not agree to the change in description. Based upon my visit, it is not clear whether a change of use has occurred. Therefore, I have considered the development on the basis of the appellant's description in the application form and confined my assessment to the merits of the operational development.
4. The appellant's Design and Access Statement states the application is made under section 73A of the Town & Country Planning Act 1990. However, the application form and appeal form do not indicate it is a proposal to vary one or more planning conditions. The appeal form confirms the proposal relates to development that has been refused planning permission. Therefore, I have considered the appeal on this basis.

Main Issues

5. The main issues are the effect of the development upon:
 - the character and appearance of the area; and,
 - the living conditions of the occupiers of No. 29 Brese Avenue with particular reference to daylight and outlook.

Reasons

Character and appearance

6. The appeal site is in a residential area with dwellings of a similar vernacular and age forming part of a comprehensively planned development. Characteristics of the area include setting the side of some plots well back from the highway boundary leaving generous verdant verge features. These are frequently visible including opposite the appeal site on Brese Avenue and nearby on Hayle Avenue. These features positively contribute to the character and appearance of the area by creating open verdant vistas complementing a network of green spaces.
7. Based upon the appellant's photographs, the appeal site land in question was a grassland verge feature with some sizeable conifer trees adjacent to the dwelling. The development encloses most of the length of the verge feature on three sides giving the impression it forms part of No. 6 Phillippes Road. It encloses the majority of the green space save for a small proportion on the corner of Phillippes Road and a very thin strip along its length of the footway on Brese Avenue. Due to its length, height and positioning, the fence is visually prominent from significant stretches of Brese Avenue and nearby junctions with it.
8. The development results in a considerable sense of enclosure when walking alongside it on Brese Avenue. Whilst it may formalise the space, it also intrudes upon and disrupts the linear open green space, replacing it with a substantial hard stark boundary feature close to the footway. It is significantly at odds with and harmful to the character and appearance of the area. The landscaped floral area along a short elevation of the fence was pleasant and well maintained. However, due to its limited height and extent along only one elevation it does not mitigate the harm. Furthermore, I have not been provided with a means to secure its long term retention by the appellant.
9. The full details and circumstances that lead to the approval of the other fences referred to by the appellant are not clear, such as site plans, the pre-existing situation, and the details of planning policies and other relevant material considerations. Those I was able to view were different in context, in areas where long linear verges did not form part of the strong positive characteristic of that area. Whereas linear verge features are a prominent positive characteristic in the vicinity of the appeal site, so the examples provided are not directly comparable to the development before me. In any event, I must determine the appeal development upon its own merits and impacts.
10. I have considered the Council's suggestion that the development would set a precedent for similar developments nearby. Whilst each development must be treated on its individual merits, given the characteristics of the area, this is a realistic concern, due to the number of similar verge features nearby. Allowing this appeal would make it more difficult to resist further proposals for similar developments. Their cumulative effect would result in further significant harm to the character and appearance of the area.
11. Therefore, for the reasons set out above, the development is harmful to the character and appearance of the area. It would conflict with Policy BE1 of the Warwick District Local Plan (September 2017) (the Local Plan), which requires that development positively contributes to the character and quality of the

environment through good layout and design through relating well to landscape features and enhancing and incorporating important existing features into a development.

Living conditions

12. There is a habitable room window in the front elevation of No. 29 Brese Avenue in proximity to the fence. The development results in a technical breach of the 45-degree line from window of No. 29 as explained in the Council's Residential Design Guide Supplementary Planning Document (2018) (the SPD). However, there is an approximately 1m gap between the flank elevation of No. 29 and the fence. The fence is limited in depth along this elevation and it is of a height and positional relationship that is similar to boundary fences that might typically separate rear gardens.
13. The fence reduces daylight received by the habitable room window at No. 29. However, the effect is small due to the height, length and position of the fence and because the sizeable window retains a largely unobstructed south western and western aspect. Therefore, the development is not considered to result in an unacceptable loss of daylight or result in harmful living conditions in this regard. Whilst the fence might reduce the outlook from the window, its height and position allows a reasonable outlook over the fence. Furthermore, notwithstanding two mature trees in the front garden of No. 29, there is a good open outlook to the south west and west. Therefore, the development does not result in harmful living conditions in respect of outlook.
14. For the reasons set out above, the development does not result in harmful living conditions to the occupiers of No. 29 with reference to daylight and outlook. Consequently, it does not conflict with Policy BE3 of the Local Plan, which requires that development does not have an unacceptable adverse impact upon the amenity of nearby occupiers. Whilst the development results in a breach of the 45-degree line, for the reasons set out above, there is no significant or unacceptable harm from the breach.

Other Matters

15. I have noted the photographs and references to maintenance, large trees, crime, anti-social behaviour, dog fouling, dog grooming, safety concerns for pedestrians and parked vehicles, and litter and fly-tipping. I also take note of the high number of supporting representations and the view the aforementioned issues are addressed by the development. However, the frequency and magnitude of such incidents it is suggested took place are not explained. For example, the nature and frequency of criminal offences or antisocial behaviour, or the magnitude of the burden or necessity to maintain the area.
16. It is not demonstrated there is a material or overriding benefit either in terms of highway safety or crime prevention through the consequential enclosure and reduction in the visibility and surveillance of the adjacent footway. Whilst the development may reduce offences on that area of land, it may not reduce them overall in the wider area. There is also no substantive detail of what other less intrusive solutions (either types of enclosure or other solutions) have been investigated or why they have been discounted. Overall, the suggested benefits of the development attract limited weight, which does not outweigh the significant harm to the character and appearance of the area.

17. The appellant sets out points in relation to the Council's handling of the application. This is a matter that would need to be pursued with the Council in the first instance, and in determining the appeal I have only had regard to the planning merits of the case.

Conclusion

18. Whilst I find no significant harm to the living conditions of neighbouring occupiers, the development is significantly harmful to the character and appearance of the area. There are no considerations advanced that outweigh this finding. Accordingly, for the reasons set out above, the appeal should not succeed.

Dan Szymanski

INSPECTOR