



Appeal Decision

Site Visit made on 25 May 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 June 2021

Appeal Ref: APP/V4250/W/21/3268368

9 Higher Green Lane, Astley, Tyldesley M29 7HQ

- 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 David Williams against the decision of Wigan Metropolitan Borough Council.
 - The application Ref A/20/88942/RET, dated 13 July 2020, was refused by notice dated 22 September 2020.
 - The development proposed is the change of use of land to garden and erection of 2.26m high fencing.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to garden and erection of 2.26m high fencing at 9 Higher Green Lane, Astley, Tyldesley M29 7HQ in accordance with the terms of the application, Ref A/20/88942/RET, dated 13 July 2020.

Procedural Matter

2. I have used the description of development given on the decision notice, as that stated on the application form is unclear and contains elements that do not refer to development. I have also omitted reference to the development being retrospective, as that is not in itself development. However, I was able to see on my site visit that the appeal fence has been erected and therefore I have determined this appeal on that basis.

Main Issue

3. The main issue is the effect of the loss of the area of open space.

Reasons

4. The area of open space of which the appeal site forms part is described in the reason for refusal as being valuable and whilst it does make a positive contribution in views taken from along Clifton Avenue, it is not overly prominent within the public domain. Furthermore, it does not appear to have a particular function as useable and attractive recreational open space, due to its relatively small size, its proximity to existing dwellings and its irregular shape.
5. The enclosed area of land is of a limited size, and its enclosure has not compromised the visual benefit that the open space brings to the area, nor has it materially affected its potential usability in terms of reducing its size. It has therefore caused no harm in either of these respects. Whilst concern has been raised regarding precedent, I must consider the proposal that is before me primarily upon its own merits. Likewise, any future proposals put before the Council would need to be considered on the same basis.

6. Policy CP2 of the Wigan Local Plan Core Strategy 2013 (CS) and Saved Policy C1C of the Wigan Replacement Unitary Development Plan 2006 (UDP) collectively seek to safeguard areas of open space. Paragraph 97 of the National Planning Policy Framework (The Framework) also seeks to provide protection in this respect. For the reasons I have identified, there is no visual harm and therefore no conflict with Policy CP10 of the CS which refers to design considerations.
7. Based on the information before me and my own observations during my site visit, I am not persuaded by the credentials of the open space in providing for recreational use by the public. However even if it does serve this function, the amount of reduction in area that has taken place has not affected its useability. Furthermore, there has also been no visual harm to the open space itself or to the surrounding area.
8. Therefore, whilst there is a degree of conflict with Policy CP2 and Saved Policy C1C and The Framework which seek to prevent the loss of open space, in the absence of any harm to useability or character and appearance and due to the small size of the enclosure that has occurred, it would not be proportionate to insist upon the further assessments that are required by these policies. The failure of the proposal to accord with the development plan is therefore in this instance outweighed by these considerations.

Other Matters

9. Land ownership is a private matter which is unaffected by the granting of planning permission.

Conditions

10. The Council makes reference to permitted development rights and to their view that the enclosed area of land would not benefit from these. That is not a matter that is before me to determine, but nonetheless it is prudent to consider whether permitted development rights should be removed by way of a planning condition, for the avoidance of any doubt.
11. On this matter, given the small size of the area of land and its close relationship to the existing garden of the appeal dwelling and those adjacent to it, there would be no visual or other harm if permitted development rights were to prevail and to be utilised. Their removal by condition is therefore not justified.
12. As the development has already been undertaken, there are no other conditions required to be imposed. The appellant has referred to the planting of wildflower seeds around the area of the fence, however this is not needed to make the development acceptable in planning terms.

Conclusion

13. For the reasons given above, I conclude that the appeal should be allowed.

Graham Wraight

INSPECTOR