



Appeal Decision

Site visit made on 2 June 2021

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2021

Appeal Ref: APP/D1265/D/21/3272221

164 Springdale Road, Corfe Mullen BH21 3QN

- 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 and Mrs D Snook against the decision of Dorset Council.
 - The application Ref 3/20/1510/HOU, dated 28 August 2020, was refused by notice dated 7 January 2021.
 - The development proposed is a boundary fence with associated landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for a boundary fence with associated landscaping at 164 Springdale Road, Corfe Mullen BH21 3QN in accordance with the terms of the application, Ref: 3/20/1510/HOU, dated 28 August 2020, subject to the attached schedule of conditions.

Background

2. The existing fence was constructed at the appeal property in March 2019 and comprises of close boarded panels approximately 1.85m high set between substantial posts, which are about 2.15m high. Following its construction, the appellant submitted a retrospective application¹ for planning permission to the Council. The application was refused by the Council in November 2019 and a subsequent appeal² was dismissed in May 2020.
3. The current proposal seeks to retain the existing fence panels and to lower the height of the fence posts by approximately 0.3m so they align with the height of the fence panels. In addition, the metal infill panels within the fence posts would be painted brown to match the wood. Given that the works have been partially completed, I am considering this appeal as a part-retrospective development.

Main Issues

4. The main issues are:
 - the effect of the development upon the character and appearance of the area; and
 - if harm arises, whether this is outweighed by other material considerations.

¹ Council Ref: 3/19/1279/HOU

² Appeal Ref: APP/D1265/D/20/3246940

Reasons

Character and appearance

5. Springdale Road is a long road, which runs between Wareham Road and Higher Blandford Road. The appeal property is located on the northern side of Springdale Road near to the junction with Wareham Road. On this section of the road there are residential properties sited on the northern side of the street with an extensive area of open space to the south.
6. The existing dwellings are typically set back from the highway behind moderately sized front gardens, many of which feature areas of hardstanding to provide off-street parking. Many of the front boundaries within the immediate vicinity of the appeal site are defined by soft landscaping, such as high hedges or low walls/fences with substantial planting behind. The extent of soft landscaping, in addition to the extensive area of open space to the south side of the road, creates an attractive verdant character which contributes positively to the local distinctiveness of this section of Springdale Road.
7. In determining the previous appeal, the Inspector concluded that "in combination, the height, extent, solidity, design and positioning of the fence is harmful to the character and appearance of the section of Springdale Road in which the appeal site is located".
8. In reaching this conclusion, he found the fence to be a "substantial hard structure that appears as an incongruous feature in the street scene, at odds with the prevailing character and appearance of this section of Springdale Road." In addition, he found that the posts were "particularly incongruous, being tall, projecting significantly forward of the panels and of an unusual formal design with grill infill panels and prominent fastenings."
9. On my site visit I observed that the existing fence is a prominent feature within the street, which is out of keeping with the other front boundaries within the immediate vicinity and the area's attractive verdant character. Therefore, I share the previous Inspector's position that the fencing causes harm to the character and appearance of the area.
10. The proposed reduction to the height of the fence posts and their colour change to brown would offer some visual improvement, but it would not overcome the fact that the provision of tall fencing to the front boundary of the appeal site is at odds with the local distinctiveness of the area.
11. The submitted plans also show that Cypress trees and Thuja Cedar would be planted on a strip of land between the front of the fence and the back edge of the pavement. However, on my site visit, I noted that the strip of land was very narrow, and, thus, I am not satisfied that established planting could be achieved at the site to mitigate the harm caused by the timber fencing.
12. For the reasons given, I conclude that the fencing is harmful to the character and appearance of the area. Therefore, the development does not accord with Policy HE2 of the Christchurch and East Dorset Local Plan: Part 1 – Core Strategy (the 'CS'), which requires development to be of a high quality, reflecting and enhancing areas of recognised local distinctiveness. Accordingly, I find that the development would be inconsistent with Paragraph 127(c) of the National Planning Policy Framework (the 'Framework'), which requires development to be sympathetic to the local character.

Other considerations

13. Planning law³, as noted by Paragraph 12 of the Framework, requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
14. In this instance, it has been brought to my attention that the former East Dorset District Council, granted planning permission⁴ in April 2000 for the construction of a dormer window, conservatory, detached garage and front boundary wall at the appeal property.
15. The approved plans⁵ show that the main section of the front wall would be comprised of brickwork panels between brick piers. The brickwork panels are shown to be 1237.5mm high with closed boarded timber infill panels to be constructed above. In combination, the brick and timber section of the wall would extend to a height of about 1.8m.
16. The appellant's agent explains that the planning permission was implemented when the approved garage and dormer window were constructed at the appeal property. Therefore, he argues that the planning permission remains extant and that the approved brick wall could be erected at the appeal site, which represents a material fallback position for the appellant.
17. The Courts have set out a two-stage approach where a determination must first be made concerning whether the fallback position is a material consideration, before weight is ascribed. The first stage is to determine whether there is a greater than a theoretical possibility that the development might take place. The second stage is that if it is found that there is a greater than theoretical possibility, then the decision-maker should exercise their planning judgement to determine what weight should be ascribed to the fallback position.
18. The appellant has not put forward a certificate pursuant to Section 191/192 of the Town and Country Planning Act 1990 to demonstrate that this is the case. However, written correspondence⁶ from the Council confirms that the previous planning permission has been implemented at the appeal site and that the wall could be lawfully erected at any time.
19. Based on the evidence before me, I agree with the appellant's position that the planning permission was implemented and remains extant at the appeal site. Given that the erection of a front boundary wall forms part of this extant planning permission, and, given the appellant's desire to enclose their front garden, as evidenced by the erection of the existing fence, I am satisfied that there is a greater than theoretical possibility of this fallback option being implemented. For these reasons, I afford significant weight to this fallback position as a material consideration.
20. If built, the approved wall with its brickwork panels and closed boarded timber infill panels above would be of a comparable height to the existing fence and the reduced posts, which forms part of the current proposal.

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004

⁴ Council Ref: 3/00/0463

⁵ Drawing No: 00.13.2

⁶ Email from Christine Harvey, Planning Enforcement Officer dated 5 February 2021

21. The brickwork panels sited between the tall brickwork piers of the approved wall would appear as a solid and permanent structure, which would be out of keeping with the local distinctiveness of the area. Whereas the existing fence would likely weather over time, which would soften its existing appearance. Moreover, the fence and the existing posts could be painted brown or dark green which would partially mitigate its stark appearance. Overall, I conclude that the construction of the approved wall would be more harmful to the character and appearance of the area than the appeal proposal.
22. For these reasons, I afford significant weight to the appellant's fallback position as a material consideration. I have found that the implementation of the approved development would have a more harmful effect on the character and appearance of the area when compared to the appeal development. Therefore, notwithstanding the conflict with Policy HE2 of the CS and Paragraph 127(c) of the Framework, the material considerations in this case indicate that planning permission should be granted.

Other Matters

23. I am cognisant that my decision is different to the previous Inspector. However, based on the evidence before me, it is apparent that the previous Inspector was not aware of the appellant's fallback position which forms an important material consideration in this case.

Conditions

24. The Council have suggested four conditions which I have considered against the tests as laid out in Paragraph 55 of the Framework. In the interests of consistency and precision, I have amended the wording of some of the conditions. Given that the development pursuant to this appeal has already commenced, it is not necessary to impose the standard three-year time limit condition.
25. It is necessary that the development is carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty.
26. In the interests of the character and appearance of the area, it is necessary to impose a condition which requires the fence posts to be reduced to the height shown on the approved plans. Similarly, it is necessary to impose a condition requiring the fencing to be painted with a brown or dark green wood stain and retained as such thereafter. To prevent the fence from being painted other colours, which could cause significant harm to the character and appearance of the area, I have amended the wording of the Council's condition and removed permitted development rights in relation to the exterior painting of the fence.
27. The Council have suggested a landscaping condition. Given the narrowness of the planting area, I have found that established planting is unlikely to be achieved at the site. Moreover, I have concluded that the implementation of the appellant's fallback position would have a more harmful effect on the character and appearance of the area when compared to the appeal development. For these reasons, the imposition of such a condition would be unreasonable and unnecessary. However, this does not prevent the appellant from planting some form of soft landscaping in front of the existing fence, which may soften its overall appearance.

Conclusion

28. For the reasons given above, I conclude that the appeal should succeed.

Christopher Miell

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans drawing no: 00.13.6.C.
2. Within 3 months of the date of this decision, the fence posts shall be reduced in height as shown on approved plan drawing no: 00.13.6.C.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

3. Within 3 months of the date of this decision, the fencing, which includes the fence posts and the metal infill panels, shall be painted with a brown or dark green wood stain. Upon implementation of the works specified in this condition, the works shall thereafter be retained.

Notwithstanding the provisions of Schedule 2, Part 2, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), upon implementation of the works specified in this condition, the fencing shall not be painted any other colour than those specified within the first part of this condition.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

***** END *****