



Appeal Decisions

Site visit made on 15 March 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 25th March 2022

Appeal A Ref: APP/K0235/C/21/3283588

Appeal B Ref: APP/K0235/C/21/3283589

Land known as 8 Springfield Drive, Bromham, Bedford MK43 8LE

- Appeal A and Appeal B are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Robert Turvey and Appeal B by Mrs Hayley Turvey against an enforcement notice issued by Bedford Borough Council.
 - The notice, numbered 20/00327/UNDEV, was issued on 9 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a 2m high close boarded timber fence to the Southern boundary of the land, adjacent to the highway and shown in orange on the attached plan.
 - The requirement of the notice is to reduce the height of the fence along the Southern boundary of the land shown orange on the attached plan, to no more than 1 metre in height.
 - The period for compliance with the requirement is four weeks.
 - The appeals are proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
-

Appeal C Ref: APP/K0235/W/21/3282657

8 Springfield Drive, Bromham, Bedford MK43 8LE

- 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 Scott De Vinny against the decision of Bedford Borough Council.
 - The application Ref 21/01430/S73A, dated 18 May 2021, was refused by notice dated 13 August 2021.
 - The development is retention of 2m high close boarded timber fence on southern boundary.
-

Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by the deletion of the words 'and design codes E1, E2 and E3 of the Councils adopted design guide Residential extensions, New Dwellings and Small Infill Developments 2020' from paragraph 4(ii).
2. Subject to the correction Appeal A and Appeal B are dismissed, and the enforcement notice is upheld.

Appeal C

3. Appeal C is dismissed.

Preliminary Matters

4. The appellants for Appeal A and Appeal B explain that they moved into 8 Springfield Drive in June 2021 after the planning application which is the subject of Appeal C was submitted by the previous owner of the property.

The Notice (Appeals A and B)

5. The appellants consider that the notice is invalid because it was served under section 172(2) of the Act and not paragraph (a) section 171A(1) as quoted in the notice and because the explanatory notes were not attached. The Council considers that the correct parts of the Act were referenced and that it served the explanatory notes with the notice.
6. Section 172 of the Act refers to the issue of an enforcement notice and 172(2) relates specifically to who the notice should be served on. The appellants have not raised any matters in relation to the parties who were served, which would be an appeal under ground (e). Section 171A(1) identifies that the notice relates to development or failure to comply with a condition or limitation which constitutes a breach of planning control. To that extent the notice is correct.
7. The copy of the notice which the appellants have provided contains explanatory notes which meet the requirements of the Act and the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 which refers to copies of relevant sections of the Act or a summary of the relevant sections being provided. Any omission in the explanatory notes would not render the notice null in this case as the appellants have been able to make a valid appeal and thereby suffered no injustice or prejudice.
8. The Council request that the reference to its document 'Residential extensions, New Dwellings and Small Infill Developments 2020' be removed from the reasons for serving the notice. This alteration is necessary to correct an error on the notice and it would not cause any injustice to the appellant. I shall make the correction and determine the appeals on the basis of the notice as corrected.

Appeal C

Main Issue

9. The main issue is the effect of the fence on the character and appearance of the surrounding area.

Reasons

Character and appearance

10. 8 Springfield Drive (No. 8) occupies a corner plot within an established residential area comprising a mix of housing types including bungalows and two storey houses. A key feature of the housing estate are the open grassed areas around road junctions and between groups of buildings.
11. No. 8 faces the main part of Springfield Drive, and it is set back from the road behind an area of mown grass. Along this part of Springfield Drive there is a mix of boundary treatments including fencing, walls, and hedges. The fence which is the subject of the appeal is in line with the front elevation of No. 8 and

does not affect the character and appearance of the road frontage when viewed from the direction of Molivers Lane.

12. However, as a result of its position and height the fence is prominent in views along Springfield Drive from its junction with Mowbray Close. There is a degree of enclosure to front gardens and a variety of boundary treatments within this vista. However, the fence is a dominant and incongruous form of development, and it detracts from the openness around the junction with a cul-de-sac.
13. The corner on which No. 8 is positioned lies at the junction of Springfield Road and a cul-de-sac which is not separately named. The dwellings in the cul-de-sac are all bungalows and have a common design. These buildings are set back from the carriageway, and all have open frontages. The fence which has been erected, as a consequence of its height, solid nature, and position on the edge of the pavement, is at odds with the open character of the cul-de-sac.
14. The appellant argues that there was a hedge along the boundary of No. 8 in the same location as the fence. The photographs which he has provided show a poorly maintained hedge, parts of which appear to be at least two metres high. However, the tallest parts are at the apex of the corner site, and the density of the hedge planting is less clear along the line of the new fence. On this basis and bearing in mind the natural appearance of a hedge, the effect of the previous hedge is not comparable with the existing fence.
15. The appellant states that he has been unable to access the details of the planning permission for the housing estate to verify the views of the Council that the fence is out of keeping with its design. He is concerned that it has not been shown that the characteristics identified as important by the Council are requirements of the original planning permission.
16. It might have been helpful for the appellant to be able to understand the design ethos of the housing scheme and to view conditions attached to the original planning permission. However, given the passage of time, it is more relevant to consider the impact of the fence on the established character of the area as it appears now. In that regard the fence is detrimental to the character and appearance of the area.
17. The appellant refers to other fences in the area and I have acknowledged that there is a variety of boundary treatment including fencing. In particular he refers to the fencing which has been erected at the bungalow on the opposite corner of the entrance to the cul-de-sac (No. 30). This property has a high fence separating the rear garden from the driveway. However, the fence at No. 30 is set in line with the side elevation of the bungalow well away from the edge of the pavement. The boundary treatment which is adjacent to the pavement is in the form of a well-maintained low hedge which makes a positive contribution to the area.
18. The fence which is shown on the appellant's photograph at 32/30A Springfield Drive, runs at right angles to the road and reduces in height as it nears the pavement edge. Thus, it does not have a visual impact which is directly comparable with the appeal fence.
19. The appellant has also provided details and photographs of other fences and walls in the area, and he refers to an appeal decision in respect of 65 Springfield Drive. However, these are not visible within the views of the appeal

site which I have identified and in relation to some of the fences there is limited information regarding their planning status. Consequently, these examples are not analogous to the appeal scheme, and they do not dissuade me from my view that the fence has an adverse visual impact on the street scene.

20. A fence of a similar height and design to the fence which is the subject of this appeal has been constructed along the rear boundary of No. 8 which it shares with No. 10. The Council has not included the rear boundary fence in its enforcement notices which are the subject of appeals A and B.
21. The appellant points out that the rear boundary fence would become more visible if the appeal fence were to be removed. Whilst this would be the case in some views, the rear boundary fence runs perpendicular to the road and its impact would be reduced to a satisfactory degree by the screening effect of the dwelling on the plot. For that reason, the retention of the appeal fence is not justified by the effect its removal would have on exposing the rear fence to wider view.
22. Drawing all of these points together, I conclude that the fence has a harmful effect on the character and appearance of the surrounding area. The development is therefore contrary to policies 28S, 29 and 30 of the Bedford Borough Local Plan 2030 (the Local Plan). These policies, amongst other things, require development to have a positive relationship with the surrounding area, to complement and positively contribute to the character of the area and to respect the site context. Furthermore, the development is contrary to the National Planning Policy Framework as it relates to achieving well-designed places.

Other Matters

23. Reference is made by the appellant to the Bedford BC v SSCLG [2012] EWHC 4344 (Admin) judgement. However, this case related to designated heritage assets such as conservation areas and it is not relevant to the appeal scheme which does not affect a heritage asset.
24. The appellant argues that the fence is supported by some policies in the Local Plan, for instance it provides a clear definition of private space and security for the occupiers of No. 8. Nevertheless, the Local Plan must be read as a whole and support from some policies does not automatically override policy objections for other reasons.
25. The safety and privacy of the occupiers of No. 8 is an important consideration. However, there is very limited evidence before me to demonstrate that the retention of the appeal fence is the only means by which this can be maintained.
26. The appellant has not raised the issue of fall-back in his submissions but the associated enforcement notice, which is the subject of appeals A and B allows for the reduction in height of the fence as opposed to its complete removal. A fence no more than 1 metre in height would have been permitted development and this is addressed by the requirements of the notice. Whilst a reduction in the height of the fence would not result in its removal, a lower fence would be compatible with the character of the street scene and would maintain openness to a greater degree than the appeal fence. Thus, the potential fall-back position

provided by compliance with the enforcement notice does not set a precedent for the retention of the appeal fence.

Conclusion

27. For the reasons set out above the development is contrary to the development plan and there are no material considerations which lead me to conclude other than that Appeal C should be dismissed.

Appeal A and Appeal B – Ground (g)

28. An appeal on ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellants argue that the compliance period should be changed so that it is a period of four weeks after the date of the determination of Appeal C. The appellants point to their request that the Council withdrew the notice pending the outcome of Appeal C, which relates to the same development as is the subject of the notice. The Council declined to do so.
29. The Council say that as a consequence of the appeal the period for compliance will be four weeks after the date of the appeal decision in any event if the notice is upheld. On that basis the Council considers that the appeal under ground (g) did not need to be made, as the appellants are not seeking any change to the notice. The Council is correct in as much as it is not necessary to vary the compliance period to address the appellants reasons for their appeals.
30. However, the appeal which is referred to in part 7 of the notice is an enforcement notice appeal not the appeal against the Council's decision to refuse planning permission for the fence (Appeal C). Consequently, notwithstanding the likelihood that the Council would have delayed any further action pending the outcome of Appeal C, the notice would have taken effect on 14 October 2021 had appeals A and B not been made.
31. The fact that Appeals A, B and C are now the subject of a single decision means that the compliance period as stated in the notice will commence on the date of the determination of Appeal C which addresses the appellants' point.
32. For the reasons set out above the compliance period does not fall short of what should reasonably be allowed and the appeals under ground (g) fail.

Sarah Dyer

Inspector