
Appeal Decision

Site visit made on 12 April 2022

by M Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th May 2022

Appeal Ref: APP/T3725/D/22/3290873

2 Elizabeth Way, Kenilworth CV8 1QP

- 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 Paul Homer against the decision of Warwick District Council.
 - The application Ref W/21/0657, dated 9 March 2021, was refused by notice dated 10 November 2021.
 - The development is new fence to boundary.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The fence is already in situ, and I have therefore considered the appeal on this basis.

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area.

Reasons

4. Elizabeth Way is a residential cul-de-sac. It is made up of houses with mainly spacious frontages, which include lawns, soft planting, and occasional trees, which contributes to the pleasant suburban character of the area. The appeal property is a triangular plot with a large proportion of the garden occupying space to the side of the dwelling (No 2). The fence mainly runs alongside the street.
5. The erected fence replaces a hedge and on the opposite side of the street is a large concrete post and timber panel fence which screens the rear gardens of properties on Castle Hill. As a result, this part of the street is, and was, more enclosed than the spacious and open plan layout exhibited further along Elizabeth Way.
6. Notwithstanding this, due to a combination of the fence's length and height, and its position adjacent to the highway, it is an incongruous addition to the street. Whilst the fencing on the opposite side of the road is also clearly visible, its scale is more in keeping with the dwelling it serves, unlike the appeal scheme where the prominence of the fencing is exacerbated by the slope of the street relative to the height and position of No 2. This is particularly apparent when approaching the site from the junction with Castle Hill, where the street facing length of fencing screens much of No 2 and an

outbuilding in the garden, and appears visually dominant and obtrusive in the street, diminishing its verdant suburban character.

7. Furthermore, whilst visibility of the fence on the opposite side of Elizabeth Way is softened by mature planting located within the associated garden, no detailed landscaping scheme has been submitted for me to consider as part of this appeal. Whilst I saw on my site visit that vegetation had been planted in the gap between the retaining wall and fence within the garden of No 2, this does little to reduce the prominence of the fence in the street, and there is no evidence to suggest that this planting will mature to provide sufficient visual relief to reduce the fence's impact. I am aware that the appellant would be willing to stain or paint the fence, and this could be conditioned, but this alone would not be sufficient to mitigate the harm I have identified.
8. I accept that, given the generally lower level of the garden space relative to Elizabeth Way, there are legitimate concerns that a lack of boundary screening would leave the private amenity space of No 2 overlooked, particularly as a result of pedestrians walking along the footpaths adjacent to the garden. However, it is not the enclosure of the garden I find objectionable *per se* but, rather, it is the combination of the fence's overall length and height, and its resultant monotonous and oppressive appearance in the street.
9. Despite the parking of several vehicles in front of the fence on my site visit, it was still readily visible. Consequently, even if I was to accept the appellant's assertion that this is a common occurrence, it does not significantly reduce the prominence of the fence in the street.
10. Overall, I find that the development harms the character and appearance of the area. It conflicts with Policy BE1 of the Warwick District Local Plan 2011-2029 (2017) and Policy KP13 of the Kenilworth Neighbourhood Plan 2017-2029 (2018) which require, amongst other matters, that development responds positively to the site characteristics and surroundings having regard to height, proportions, materials and landscape and reinforces the urban character of streets adopting appropriate materials and details. The development also conflicts with paragraph 130 of the National Planning Policy Framework (the Framework) as it fails to add to the overall quality of the area.

Other Matters

11. As already stated, the fencing ensures that adequate privacy is retained for occupiers of No 2 as a result of screening of the garden area and buildings. Moreover, the fencing adjacent to Elizabeth Way appears to reduce the risk of injury from pedestrians inadvertently falling into the lower lying garden. There are various development plan and Framework policies which lend support to ensuring satisfactory living conditions for existing occupiers. However, I find in this case that there may be other ways to provide sufficient privacy and security which address the shortcomings of this scheme without harming the character and appearance of the area. Alternative fencing designs and/or appropriate planting schemes do not appear to have been explored in detail. As a result, these considerations do not outweigh the harm I have identified.
12. Therefore, whilst dismissing the appeal would engage the rights of the appellant under *Article 8: The Right to Respect for Private and Family Life and for the Home* of the Human Rights Act 1998, these are qualified rights and Article 8(2) provides that interference may be justified where it is in the

interests of, amongst other things, the economic well-being of the country which has been held to include the protection of the environment and upholding planning policies. Therefore, the degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 8.

13. It is put to me by the appellant that part of the previous hedge died and was obstructing access to the footway, supported by anecdotal evidence from third parties. However, there is nothing before me to suggest that this was not as a result of lack of maintenance, and that the hedge could not have been replaced with another hedge, alternative planting, or a boundary treatment which is less intrusive in the street.
14. The appellant has submitted drawings purportedly relating to an approval to extend the bungalow¹. Whilst the drawings show details of a close boarded fence, it is proposed in between the dwelling and the street, thus it is not indicative of approval for a fence running the length of the road side boundary of the side garden space, as is the case with the appeal scheme.
15. In terms of a potential fallback position, the erection of a 1m high boundary fence may be permitted development². However, the appellant states that a fence of this lesser height would not address their concerns relating to a need to maintain privacy at their property. Therefore, it is unlikely to be implemented and the fallback position carries limited weight in favour of the appeal. In any event, the fence in situ is considerably taller than 1m in height, which is a factor contributing to its prominence in the street.
16. The appellant has provided examples of other similar fences in the local area. However, I do not know the circumstances of each individual case such that it warrants me reaching a decision otherwise than in accordance with the development plan. In any event, I have determined this appeal based on the individual character and appearance of the appeal site and its surroundings.

Conclusion

17. For the reasons given, the appeal is dismissed.

M Woodward

INSPECTOR

¹ Appendix A of appellant appeal statement – approved plans for planning permission W/18/2215

² The Town and Country Planning (General Permitted Development) (England) Order 2015