



Appeal Decision

Site visit made on 9 June 2022

by R Jones BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4TH July 2022

Appeal Ref: APP/J1535/W/21/3282370

198 Westfield, Harlow CM18 6AW

- 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 Mohammad Shahrzad against the decision of Harlow Council.
 - The application Ref HW/FUL/21/00350, dated 15 June 2021, was refused by notice dated 25 August 2021.
 - The development proposed is change of use from public landscape space/verge to private front garden with low fencing.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use from public landscape space/verge to private front garden with low fencing at 198 Westfield, Harlow CM18 6AW in accordance with the terms of the application, HW/FUL/21/00350, dated 15 June 2021, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: MDP.MR/01 – Existing Site Plan; MDP.MR/02 – Proposed Site Plan; MDP/MR.03 – Existing & Proposed Elevations.
 - 3) Any boundary treatment should be no more than 0.6m in height in accordance with the approved drawings.
 - 4) The site shall not be used for any parking purpose at all times.

Main Issues

2. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

3. No.198 Westfield (No.198) is a detached two-storey dwelling located on a corner plot. To the side is an area of public landscape grass verge that wraps around the dwelling extending up to the neighbours drive at No.197 Westfield. It is proposed to change the use of this verge from public to private, enclosing it with low fencing and essentially extending the plot width of No.198.

4. Westfield is a densely built residential area with houses set only slightly off the back edge of the pavement with small open front gardens. As is characteristic of most housing estates, Westfield has areas of public open space or landscape verges, including adjacent corner plots, that are integral to the design of the original layout. The Council identify the site as 'other open space,' namely land outside the curtilage of an existing building that is not a 'green finger' or 'green wedge.' The preservation of all open spaces it considered fundamental to ensuring that the original design of Sir Frederick Gibberd's master plan for Harlow is respected and I recognise that incidental open spaces and 'open fronts' formed an integral part of the original new town development of housing estates. In the context of Westfield, these open spaces and green verges create an important sense of openness and provide some visual relief to the dense built form.
5. However, I disagree with the Council's assertion that the appeal site is a '*fairly large grassed area*,' particularly relative to the public open space on the opposite corner of Westfield and adjoining No.198 to the west. It is a modest grass verge that is very closely related to the dwelling (the kitchen window directly overlooks it) and because of this, its change of use to private land would not compromise the hierarchy of green spaces, with the characteristic open space on the corner remaining largely unchanged. Importantly, the 'open front' to No.198 would also be unaltered. The change of use would not therefore compromise the original new town design principles or the landscape character of Westfield.
6. The proposal is to enclose the site with a new timber post and rail fence. This is described as 'low fencing' in the planning application submission but no further details are provided notably in terms of its height. Timber post and rail fencing are however a characteristic of the area and already part encloses the public open space on the opposite side of the corner of Westfield. The Council have suggested a condition that any boundary treatment should be no more than 0.6m in height, which I consider is consistent with the fencing opposite. Although the fence would project forward of the existing side building line, it would not result in an uncharacteristic sense of enclosure or cause any harm to the character and appearance of Westfield.
7. It was evident from my site visit that parking is particularly constrained in Westfield and although there was no parking on the appeal site at the time of my visit, deep tyre marks and the photographs submitted by the appellant in evidence show it is frequently used for this purpose. I also saw that other areas of public open space, including those in corner locations, have been enclosed by low fences, bollards or hedges. I found that this in fact protects the areas for their intended open function and amenity, rather than being used for off street parking.
8. My attention is drawn by the Council to a recent appeal decision at No.22 Bowhill Way, Harlow (APP/N1540/D/21/3275836) (No.22). Whilst I have not been provided with full details of the planning application, I note from the Inspector's decision that the circumstances in that case are different to those before me. Although also on a corner plot, No.22 directly fronted a pedestrian/cycle route and it was proposed to erect a close boarded wooden fence right on the back edge of this. In the appeal before me, only a low timber post and rail fence is proposed and I am not therefore persuaded that the appeal referred to by the Council adds any weight to their argument. In any

event, I am mindful each case should be considered on its own merits and site characteristics.

9. Consequently, I find that the proposed change of use and low fencing would accord with Policy PL1 of the Harlow Local Development Plan (December 2020) (LP) because it protects local distinctiveness, landscape character and responds to front boundary treatments of the area. It would further accord with LP Policy PL6 because the proposal would not compromise the openness or urban design principles of the area, nor would it remove access to an area of open space that has a particular recreation value.

Conditions

10. The Council has suggested 5 conditions. I have considered these in light of the Planning Practice Guidance (PPG) and the tests of the National Planning Policy Framework (the Framework). In addition to the standard implementation condition, it is necessary, for the avoidance of doubt, to define the plans with which the scheme should accord.
11. In the interests of the character and appearance of the area, it is also necessary to impose conditions that any boundary treatment should be no more than 0.6m in height and the site not used for car parking.
12. The Council has suggested a condition that would remove the permitted development rights associated with the construction of outbuildings, hard surfaces, gates, fences, walls or other means of enclosure. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The PPG also advises that conditions restricting the future exercise of permitted development rights may not pass the test of reasonableness or necessity. The Council have provided limited explanation of the reason for this suggested condition, save to protect local amenity and the living conditions of neighbouring residents.
13. Given my conclusion above regarding the absence of harm to the character and appearance of the area and the modest extension to the plot of No.198, I do not find a condition restricting permitted development rights to be necessary and I do not have sufficient justification before me for its imposition.

Conclusions

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

R. Jones

INSPECTOR