The Planning Inspectorate

Appeal Decision

Site visit made on 20 July 2022

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2022

Appeal Ref: APP/N4720/C/22/3298703
Land at 76A High Ash Drive, Alwoodley, Leeds, LS17 8RB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- The appeal is made by Ms J Ourique against an enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 12 April 2022.
- The breach of planning control as alleged in the notice is without planning permission the erection of a fence, posts and associated gates which exceeds 1 metre in height adjacent to a highway used by vehicular traffic which exceeds the height under Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The requirements of the notice are either a) dismantle the fence, posts and associated gates; or b) reduce the height of the fence, posts and associated gates so that no part exceeds one metre in height when measured from ground level including the first panel between Linton Road and 76A High Ash Drive/46 Linton Road so that the development accords with the provisions of Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 as amended.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a)of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be varied by deleting all of the wording in requirement b) and replacing it with *'b) reduce the height of the fence, posts and associated gates so that no part exceeds one metre in height when measured from ground level including the first panel between Linton Road and 76A High Ash Drive/46 Linton Road so that the development accords with the provisions of Class A, Part 2 of Schedule 2 of Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)'*. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Notice

2. The requirements of the notice do not match the breach of planning control in so far that they do not correctly refer to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). I shall vary the wording of the requirements so that the wording in requirement b) is deleted and replaced with *'b) reduce the height of the fence, posts and associated gates so that no part exceeds one metre in height when*

measured from ground level including the first panel between Linton Road and 76A High Ash Drive/46 Linton Road so that the development accords with the provisions of Class A, Part 2 of Schedule 2 of Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)'. I am satisfied that no injustice would be caused to any interested party as a result of this variation.

Appeal on ground (a) and the deemed planning application

3. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice.

4. I have considered the reasons for issuing the enforcement notice and the main issues are the effect of the unauthorised development on (i) the character and appearance of the area and (ii) highway safety. It is of note that an appeal made under s.78 of the Act has been considered for the same development and by a different Inspector[1]. The Inspector dismissed such an appeal on the basis of harm to the character and appearance of the area and owing to unacceptable highway safety impacts. I have taken the s.78 appeal decision into account as a material planning consideration.

Character and appearance

5. As part of my site visit, I was able to appreciate the appeal site in its wider context. I acknowledge that there is a wooden boundary fence opposite the appeal site: it is long and relatively high. The undisputed evidence is that this is lawful due to the passage of time. While I acknowledge that it lawfully exists, it nevertheless detracts unacceptably from the prevailing boundary treatment to the front/side of properties in Linton Road and High Ash Drive which comprise either low fences and/or hedges. Overall, the area is appreciated as one where most of the properties can be seen from main roads and with an emphasis on open and green spaces to frontage areas. These attributes add positively and distinctively to the character and appearance of the locality.

6. Owing to the position, height and length of the fence, coupled with its solid wooden appearance, I agree with the previous Inspector that when it is seen in the street-scene it represents a stark, dominant and out of keeping form of development. I do not find that the existence of the fence on the opposite side of the road justifies granting planning permission for the breach of planning control. This does not contribute positively to the aforementioned positive and distinctive characteristics of the area. Furthermore, while the appeal development is positioned alongside a hedge that is similar in height, the latter is appreciated as being a softer form of boundary treatment in-keeping with other boundary vegetation that is prevalent and noticeable in the immediate locality.

7. For the above reasons, I therefore conclude that the breach of planning control has caused significant harm to the character and appearance of the area. Therefore it does not accord with the design, character and appearance requirements of policy P10 of the Leeds Core Strategy (as amended by the Core Strategy Selective Review 2019) (CS), saved policies N25 and GP5 of the Leeds Unitary Development Plan 2006 (UDP) and chapter 12 of the National Planning Policy Framework 2021 (the Framework).

[1] Appeal Reference APP/N4720/D/21/3284090 dismissed on 15 December 2021

Highway safety

8. Like the previous Inspector, I find that the access arrangement associated with the breach of planning control is such that it unacceptably restricts visibility for drivers of vehicles existing the driveway of No 76A High Ash Drive. Motorists leaving the driveway in a forward direction do not have a full view of the highway until the front of the vehicle has left the driveway and is over the footpath. This is not a safe arrangement in so far that it has the potential to lead to conflict with users of the footpath. This level of unacceptable visibility and conflict would be worse if reversing out of the driveway.

9. The appellant says that there have been no accidents arising from the breach of planning control in the last sixteen months. While that may be the case, it does not mean that there is no potential at all for accidents in the future. While a similar arrangement exists opposite the appeal site, that is only lawful due to the passage of time. Its existence does not justify allowing development that causes unacceptable harm to highway safety.

10. I therefore conclude that the breach of planning control is harmful to highway safety and therefore does not accord with the safety requirements of policy P10 of the CS, saved policy GP5 of the UDP and paragraph 111 of the Framework.

Other Matters

11. I do not doubt the appellant's desire to make use of a more private front garden area. I accept that the solid fencing does make the space more private and that to some extent it provides a barrier from the effects of pollution from motorised vehicles using the main road.

12. Notwithstanding the above, the notice includes the option of reducing the fence in height given the GDPO fallback position. I consider that the provision of a hedge in conjunction with a lowered fence/gates would have the potential to provide a secure and private front amenity space without the same level of harm being caused to the character and appearance of the area. In any event, the evidence is that there is some amenity space to the rear of the property and where children and other residents could enjoy relative improved privacy and reduced levels of air pollution for some periods of time.

13. In any event, the collective harm caused by the breach of planning control to the character and appearance of the area and the safe use of the highway is significant. These are matters that carry considerable weight in decision making terms and outweigh the other matters raised by the appellant.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR