



Appeal Decision

Site visit made on 3 August 2022

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th August 2022

Appeal Ref: APP/F1040/W/22/3291427

42 Alma Road, Newhall, Swadlingcote, South Derbyshire DE11 0SD

- 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 Martin Boyle against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2021/1389, dated 7 September 2021, was refused by notice dated 7 January 2022.
 - The development proposed is change of use from Public open Space to residential garden space & to erect a mesh metal fence to the eastern elevation @ 2.4m and match existing wooden fence/concrete posts to south east elevation with gravel boards (concrete) and to match existing neighbours rear fence on northern elevation with matching posts & timber fence @ circa 2.2m high in a straight line per privacy.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Although described in the reason for refusal as informal green space, the Open Space, Sport, and Community Facilities Strategy (OSSCFS) refers to this type of space as amenity green space (AGS). I have used that phrase in this decision.

Main Issue

3. The main issue is the effect on the provision of open space.

Reasons

4. The appeal site is part of an area of land identified as AGS which was provided as part of an adjacent housing development that was granted consent¹. The comments of the Council, the appellant and a neighbour set out that this area of land is used for informal recreation.
5. South Derbyshire Local Plan Part 1 June 2016 (SDLP) Policy INF9(D) seeks to prevent the loss of open space. Given the wording of the policy and the supporting text, in so far as it relates to this appeal (and notwithstanding the use of the word 'built' in the supporting text), I consider the policy to mean that the loss of open space will only be allowed where there is an excess of provision or that the loss is compensated for. I do not interpret the policy as requiring further exceptional circumstances to be identified.

¹ 9/0399/0999

6. Nevertheless, the OSSCFS identifies a shortfall of AGS in Newhall and I consider this to be the most appropriate figure to use, given the types of open space identified and the localised nature of the appeal of AGS. I acknowledge that an area of AGS would remain. However, the loss of even this relatively small area would exacerbate the existing shortfall. This is due to the acknowledged value of the site to the surrounding community, the identified concentration of deprivation in Newhall and the deficit in overall open space by 2028 as planned development comes forward.
7. The appellant has highlighted that there is an oversupply of open space in the Central area. While the OSSCFS does identify this, it was in the context of establishing a baseline and target for future provision within the authority based on the then current levels of open space. It is also heavily reliant on a different part of the sub-area. However, these factors are neutral and do not change my conclusion that there is a shortfall in AGS.
8. I note that the appellant has offered a financial contribution of £1500 and 20t of topsoil to compensate for this loss. There is no substantive evidence before me as to whether this contribution would allow for equivalent or better provision to be made elsewhere. Even if I were to consider that this contribution was sufficient, there is no mechanism before me to secure it. I therefore attach no weight to this consideration.
9. In relation to this main issue, I conclude that the appeal proposal would result in the loss of AGS in an area of identified shortfall. No equivalent or better provision has been offered. I therefore find the appeal proposal would be harmful to the provision of open space contrary to SDLP Policy INF9 and paragraph 93 of the Framework which seeks to protect valued facilities.

Other Matters

10. I acknowledge that the fence would provide privacy and security for the appellant, that there is a large park nearby, and there is no impact to the character and appearance of the street scene, living conditions of nearby occupiers, landscape and biodiversity, but these matters do not outweigh the harm I have identified in the loss of this public open space. Furthermore, I have no substantive evidence that there is any anti-social behaviour in the area with people congregating and paraphernalia being left within the appeal site. These would be matters for the relevant authorities and are not within my jurisdiction. In any event, the appeal is determined on the basis of the evidence before me and site observations.
11. I note the offer to move the fence however that would be a different proposal to that before me. The suggested hedge would be outside of the appeal site and therefore does not form part of my consideration.

Conclusion

12. For the reasons given, the appeal scheme would conflict with the development plan as a whole and there are no material considerations of sufficient weight to indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal is dismissed.

J Downs
INSPECTOR