



Appeal Decision

Site visit made on 14 January 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2023

Appeal Ref: APP/H0724/C/22/3308520

56 Rosthwaite Close, Hartlepool TS24 8RE

- 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 appeal is made by Miss Laura Nicholls against an enforcement notice issued by Hartlepool Borough Council.
 - The enforcement notice was issued on 2 September 2022.
 - The breach of planning control as alleged in the notice is *'without planning permission, the erection of a boundary fence to enclose additional land to the side'*.
 - The requirements of the notice are *'(i) remove the 2m high timber fence enclosing the land at the side of 56 Rosthwaite Close, (i) restore the boundary treatment to its original location (as indicated by a dashed black line on the plan) and (ii) remove any debris associated steps (i) and (ii)'*.
 - The period for compliance with the requirements is 3 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.
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Decision

1. It is directed that the enforcement notice be varied by deleting all of the words in section 5 and replacing them with *'(i) remove the 2 metre high timber fence enclosing the land at the side of 56 Rosthwaite Close, (ii) restore the boundary treatment to its original location (as indicated by a dashed line on the plan) and (iii) remove any debris associated with steps (i) and (ii)'*. Subject to these variations, 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 include some typographical and grammatical errors. Indeed, the numbering of the various steps is incorrect and the word *'with'* is needed before *'steps'* in the last sentence of section 5. I shall vary the notice, without injustice being caused to interested parties, by deleting all of the words in section 5 and replacing them with *'(i) remove the 2 metre high timber fence enclosing the land at the side of 56 Rosthwaite Close, (ii) restore the boundary treatment to its original location (as indicated by a dashed line on the plan) and (iii) remove any debris associated with steps (i) and (ii)'*.

Main Issue

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.

I have considered the reasons for issuing the notice and the main issue is the effect of the fence on the character and appearance of the area.

Reasons

4. The appeal property is an end of terrace dwelling on a corner plot falling within a modern housing estate. The evidence indicates that when planning permission was approved for the estate, permitted development rights were removed in respect of the erection of means of enclosure fronting a highway. It is understood that such rights were removed to protect the mainly spacious character that existed in terms of amenity spaces and front gardens in the wider environment.
5. I recognise that within the wider estate some fences have been erected in close proximity to highways. The evidence suggests that some of these were either built as part of the original housing estate, are immune from enforcement action due to the passage of time, or have been granted retrospective planning permission. Notwithstanding the above, and noting that a similar fence at No 15 Rosthwaite Close exists albeit that it is unauthorised and was refused planning permission at the same Planning Committee meeting, the immediate lawful site context is one which is characterised by predominantly open/green land around dwellings. Where lawful fences do exist, they are generally set back from the highway and principal elevations of dwellings and hence undeveloped garden and amenity spaces are experienced by passers-by as softening the effects of what is otherwise built form. This adds positively and distinctively to the character and appearance of this part of the housing estate.
6. In the context of the above, the unauthorised fence appears dominant and prominent in the street-scene. It is positioned in very close proximity to the highway and owing to its height, length and light colour, it is seen as an incongruous addition in the street-scene detracting from the former sense of green and open space that previously characterised the area of land to the side of the appeal property. I acknowledge that there was historically a picket fence enclosing the land. The evidence indicates that this was likely immune from enforcement action, but, in any event, it was very low in height and so cannot reasonably be compared with what is on the site now.
7. I note that the Council has approved some fencing in the locality on a retrospective basis, including at Nos 10, 12 and 52 Rosthwaite Close. These fences are not identical to the one under consideration of part of this appeal and, furthermore, the grant of planning permission for such fences does not alter my overall assessment about the prevailing character and appearance of this part of the estate. I do, however, acknowledge that it would be possible to soften the effects of the harmful appeal fence by painting or staining it in a dark colour as was the case for the aforementioned fences. However, this would not overcome my primary concern which relates to the loss of green and undeveloped land between the highway and the appeal dwelling and the dominating and enclosing impact that has been caused by the appeal fence.
8. The appellant claims that the land was previously used by residents as a cut through and meant that they walked close to the front dining room window. That may have been the case, but the appeal fence is set back from the front elevation of the house and so it would not fully prohibit people from walking past the front dining room window. In any event, there would be less intrusive and dominant solutions to address privacy concerns such as the erection of a

low lying hedge. The appellant has not provided any reasonable justification for discounting such an option. Similarly, such an option would be possible to the side of the property thereby addressing concerns raised by the appellant about dog fouling in this area.

9. While some planting has occurred to the part of the fence adjacent to the front of the house, no such planting has taking place along the long section of fencing to the side of the dwelling. At this point, the amount of land between the pavement and the fence is about 0.2 of a metre. I do not consider that there would be enough land to plant anything of any substance in this area. Furthermore, and despite the planting to the front elevation of the fence, such planting would not endure forever and indeed it is noteworthy that what has been planted does not fully screen that part of the fence.
10. For the above reasons, and notwithstanding the examples of other fences referred to me by the appellant, I find that the appeal fence has caused material harm to the character and appearance of the area. The Google Maps Images do not indicate that the land was difficult to maintain in the past and the space contributed positively to the pattern of development in the area. I therefore conclude that the appeal development does not accord with the open space, design, character and appearance requirements of policies NE6 and QP4 of the Hartlepool Local Plan 2018 (LP) and chapter 12 of the National Planning Policy Framework 2021. The Council has referred to policy QP5 of the LP, but I do not consider that this is directly relevant to the character and appearance main issue as it concerns safety and security.

Conclusion

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

D Hartley

INSPECTOR