



Appeal Decision

Site visit made on 31 January 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2023

Appeal Ref: APP/U4610/W/22/3305707

37 Keswick Walk, Coventry CV2 5BX

- 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 Mrs Paula Maguire against the decision of Coventry City Council.
 - The application Ref FUL/2022/0893, dated 6 April 2022, was refused by notice dated 8 June 2022.
 - The development proposed is the retention of 2m high rear garden fence and installation of 1m high front garden fence, Change of Use of former estate landscape area to residential land and retention of existing shack outbuilding as permitted development'.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of open space to domestic garden area, erection of a 2m side and 1m side and front boundary fence and erection of outbuilding at 37 Keswick Walk, Coventry, CV2 5BX in accordance with the terms of application Ref FUL/2022/0893, dated 8 April 2022, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, Block Plan 2204.2.01 Rev A, and Shack Plan and Elevations 2204/2.02.
 - 2) The boundary fencing hereby permitted shall not be altered to increase the height of any part of the fence, inclusive of the lower level fence to the corner.

Preliminary Matters

2. The description appearing in the banner heading above is taken from the planning application form. The Council's Decision Notice alternatively uses 'Change of use of open space to domestic garden area, erection of a 2m side and 1m side and front boundary fence and erection of outbuilding (retrospective)'. This was used by the appellant for the purposes of the appeal. It does not change the development for which planning permission was sought. However, it provides a more accurate description of the development and, aside from the reference to the development being retrospective, I have used it in my decision.
3. For the purposes of the appeal, the appellant has requested consideration of Block Plan 2204.2.01 Rev A. This shows an alternative alignment of the 2m high fencing between the site's eastern boundary and the side of the dwelling. According to the appellant, this was submitted to the Council but was not the proposal on which the Council made its decision.

4. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. In this case the revision shows a reduced amount of high fencing on the eastern boundary and more limited enclosure of land by the taller fencing. As this is a minor amendment, and the nature of concerns of those who would normally have been consulted are clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I take this amended plan into account. I shall therefore determine the appeal on the basis of the following plans: Site Location Plan, Block Plan 2204.2.01 Rev A, and Shack Plan and Elevations 2204/2.02.
5. At the time of my site visit, an outbuilding and some of the fencing had been erected on the site. For the avoidance of doubt, my decision is based on the detail of the development shown on the above listed plans only.
6. Notwithstanding the description, there is some dispute between the main parties as to the status of the new building and whether it benefits from permitted development rights under the terms of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), and whether the building should be considered as an extension rather than an outbuilding.
7. It is not for me, under a section 78 appeal, to determine whether or not development is lawful under the terms of the GPDO. To that end it is open to the appellant to apply for a determination under s191 of the Act and my determination of this appeal under s78 does not affect the issuing of a determination under s191 regardless of the outcome of this appeal. As a proposal of development for which planning permission has been sought, I have determined the appeal on the basis of its description and the detail shown on the relevant plans.

Main Issues

8. The main issues are the effects of the development on the character and appearance of the locality and highway safety.

Reasons

Character and appearance

9. The appeal site consists of a 2-storey end terrace dwelling set behind a short front garden with private amenity space to the side and rear. A linear grassed embankment running alongside the garden has been acquired and incorporated into the domestic site and fenced. Beyond the strip is a public footway and landscaped verge alongside Clifford Bridge Road, a busy north-south route in the locality. The area to the front of the house is an open grassed field edged by mature trees.
10. The proposal seeks the incorporation of the embankment to form part of the garden. On its outer edge it has been enclosed by 2m high post and timber panel fencing. From the Clifford Bridge Road footway, the fence as proposed would angle towards the dwelling from a point behind the line of its principal elevation to slightly dogleg close to the front corner of the side wall. The remainder of the relocated side boundary and the extended front boundary would be timber fenced to a height of 1m.

11. A flat-roofed outbuilding has been erected immediately adjacent to the side elevation of the dwelling. It is timber clad and would also be enclosed by the line of the higher fence.
12. Within the housing estate, frontages are generally open. However, there are examples of frontage enclosures by fencing of various types, particularly on corner plots. The use of high timber fencing is commonplace on rear and side boundaries within the estate, such that the proposed fences would not appear unusual in their context.
13. The alignment, scale and appearance of the side fence enclosing the former landscaped slope would be contiguous with one sitting alongside 17 Keswick Walk, which lies directly to the rear of the site. In its elevated position, compared to the former boundary, there would inevitably be a greater sense of enclosure to users of the footway and in views from the south and east. Along the Clifford Bridge Road footway, this would be similar to the effect of the previously approved¹ fence on the adjacent site, which is highlighted by the appellant. Given the limited overall height, it would not be unduly imposing or oppressive to users of the footway.
14. From Clifford Bridge Road, views of the fences would be highly filtered by the existing tree line and hedging between the footway and the grassed roadside verge. Although it would be seen in some gaps, this would be similar to the various types of enclosure along this stretch of the road. These are viewed against the backdrop of the residential estate and enclosed gardens such that they would not appear incongruous in the locality.
15. I acknowledge the Council's reference to an appeal decision² on Blandford Drive nearby. However, the proposals in that case did not have the benefit of existing mature landscape screening alongside. It related to an open residential streetscape. It is therefore distinct from the screened location of the fence on a main road corridor.
16. The outbuilding has a low profile against the side of the existing dwelling. Set behind the fencing, only the upper fringe of the roof verge would be visible. Along with the timber finish with similar appearance to the fencing, it appears as an ancillary building comparable to other domestic outbuildings on the estate and has a limited visual effect.
17. For the reasons above, I find that the proposals would preserve the character and appearance of the locality. They would be consistent with the requirements in Policy DE1 of the Coventry City Council Local Plan [2017] (the CLP), the National Planning Policy Framework and the Council's Design Guidance for New Residential Development [1991] (the SPG) as they seek development to clearly define the boundaries between public and private spaces, respect and enhance their surroundings and positively contribute towards the local identity and character of the area.

Highway safety

18. The front boundary fence would be 1.0m high and extend along that part of the side boundary forward of the building line. According to the Council's highway advisor, the fence should be no greater than 600mm in height to achieve safe

¹ R/2001/4875

² APP/U4610/W/21/3281981

intervisibility between pedestrian and cycle users of the footways which junction at the south-eastern corner of the site.

19. The reduced length of the 2m fence to the side boundary would provide walkers and cyclists with an opportunity to view across the frontage from one path to the other on the approach to the junction. The incline and higher position of the side path and presence of bollards to slow movement at the junction would assist opportunities for intervisibility between users on the opposing approaches. Although the fence would be higher than the Council's stated maximum desired height, it would be consistent with that suggested in the SPG.
20. I note the comments of the highway advisor that cycle traffic could be increased on the footway if a Binley Cycleway proposal is implemented. However, there is little before me to indicate that that is a ratified or programmed proposal. Therefore, my assessment must be made on the circumstances observed on the ground.
21. Taking those matters together, I consider that the risk to footway users would be limited. It would not cause an unacceptable impact on highway safety or materially undermine the Council's aim of encouraging sustainable travel modes. It would comply with Policy DE1 of the CLP as it requires development to provide safe public spaces and clear routes that are easy to move through.

Other Matters

22. I note the comments of a third party in relation to the potential for a precedent to be set by the proposed development. However, precedent is rarely an argument that should carry great weight in planning decisions, which should be made on their own merits in the context of the development plan and other material considerations.

Conditions

23. I have considered the suggested conditions from the Council and had regard to Paragraph 56 of the National Planning Policy Framework and the National Planning Practice Guidance in terms of the use of planning conditions. A condition specifying the relevant drawings provides certainty. A condition preventing future increase of the fence heights is necessary to prevent an adverse effect on the appearance of the locality and provide adequate intervisibility between the converging pavement users.
24. A condition requiring detail of the external materials of the substantially completed outbuilding is unnecessary given the detail shown on the approved plans and existing appearance. For an existing domestic property, a landscaping requirement would not be reasonable or necessary.

Conclusion

25. For the reasons given, I conclude that the appeal should succeed.

R Hitchcock

INSPECTOR