
Appeal Decisions

Site visit made on 27 October 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

**Appeal Refs: APP/J4525/C/22/3303811 (Appeal A) &
APP/J4525/C/22/3303812 (Appeal B)
59 School Road, East Rainton, Houghton le Spring DH5 9QW**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Ms Monika Wojciechowska (Appeal A) & Mr Dawid Karasek (Appeal B) against an enforcement notice issued by Sunderland City Council.
 - The enforcement notice is dated 28 June 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a boundary fence and gate to the front and front side boundaries, exceeding 1m in height adjacent to a vehicular highway. The location of the subject fence is indicated by a red line on the plan 'EN1' attached to the enforcement notice and illustrated in the photograph sheet 'EN2'.
 - The requirements of the notice are: (i) With reference to the attached plan "EN1", remove the boundary fences, and gates the positions of which are indicated by a red line, including boards, rails, supporting posts and concrete to a depth of no less than 15cm below ground level. (ii) Infill residual post holes using topsoil to match the contours of the garden. (iii) Remove from the land the dismantled components and any wastes arising from fulfilling requirements (i) and (ii) above.
 - The period for compliance with the requirements is two months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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**Appeal Ref: APP/J4525/W/22/3303807 (Appeal C)
59 School Road, East Rainton, Houghton le Spring DH5 9QW**

- 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 Ms Monika Wojciechowska against the decision of Sunderland City Council.
 - The application Ref 22/00825/SUB, dated 7 April 2022, was refused by notice dated 23 June 2022.
 - The development is described as 'Retrospective planning application to install a 1.5 metre high close boarded timber fence, with a 4 metre wide and 1.8 metre tall metal vehicular access gate, a 4 metre wide dropped kerb and vehicular crossing to the existing public highway. Permeable vehicular hardstanding provided to the front garden'.
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Decisions

1. It is directed that the enforcement notice be amended by the deletion of the requirements paragraph in its entirety and its replacement with the following text: 'Restore the land to its previous condition.'
2. Appeal A is dismissed, the deemed planning application is refused, and the enforcement notice as amended is upheld.
3. The appeals on ground (f) succeeds and the notice is amended accordingly.
4. Appeal C is dismissed.

Appeal A on ground (a) & Appeal C

5. Ground (a) is that planning permission should be granted for the development that is attacked by the enforcement notice. Appeal C relates to a modified proposal for a gate and a fence in the same location. As the schemes are similar, I have considered them together in my reasoning to avoid unnecessary duplication.
6. With regard to Appeal C, the Council confirm that no planning permission is required for the permeable hardstanding and the dropped kerb providing access to the site from the unclassified road. I have therefore not considered these elements further in the discussion below.

Main Issue

7. The main issue in both appeals is the effect of the development, as existing and proposed, on the character and appearance of the surrounding area.

Reasons

8. Policy BH1 of the Sunderland City Council Core Strategy and Development Plan 2015-2033 (CSDP) applies to all development, and amongst other things, requires it to be of a scale, massing, layout, appearance and setting which respects and enhances the positive qualities of nearby properties and the locality.
9. The Council's document entitled 'Development Management Supplementary Planning Document' (SPD) advises that 'high quality and well-designed walls, fences and other forms of enclosure can make a highly positive contribution to the appearance of a property and the wider street scene. Conversely, poorly designed and positioned boundary enclosures can have a significant negative visual impact'.
10. Such developments should take into account the character and appearance of the area and the scale, form, design and materials used in other nearby boundary treatments. This is particularly important if the application site is within an 'open plan' housing estate or occupies a prominent or corner plot.
11. The appeal site is a two storey semi-detached dwelling which occupies a prominent position on the junction between School Road and Corrighan Terrace. The property includes a generous garden area to the side and front of the dwelling. The surrounding estate is relatively open and spacious due in part to the characteristically low boundary enclosures, a circumstance that is

- acknowledged by the appellant. There are some taller hedges, but these are not subject to planning control.
12. I did not see any other examples of high fencing of the type installed at No 59, and there is no evidence that this is a built form characteristic of the area in the vicinity of the appeal site. No 59 occupies a corner plot, and so the fencing along its boundary is clearly visible within the surrounding area. Due to its excessive height and close boarded character, it dominates the streetscape. Particularly when walking on the footpath alongside the fence, it restricts views, reducing the spacious open feel of the area. The gate is also taller and more ornate than those of the neighbouring properties, and so it too appears out of character.
 13. The appellant argues that, in contrast to many of the surrounding properties, No 59 does not benefit from a secure rear garden that offers a high level of privacy from views from the public realm. In support of her case, she provides a series of photographs of the property from the time when it had a boundary fence of only around 1m in height.
 14. The appellant also describes a number of incidents of anti-social behaviour that have taken place whilst they have been at No 59. It does not appear that the incident involving damage to the vehicles could have been avoided by a higher fence. With regard to the other incidents, I fully acknowledge the appellant's wish to feel more secure within the property. However, there is no evidence that these benefits could not be achieved through a more visually appropriate solution, or by other security measures. In any event, this is a temporary situation that would not justify the granting of permission for a development whose harmful impact would be permanent.
 15. I therefore conclude that the development as built unacceptably harms the character and appearance of the surrounding area, contrary to CSDP Policy BH1, and the requirements of the SPD.
 16. Turning to **Appeal C**, the appellant has applied for a similar scheme, but with a fence proposed to reach the lower height of 1.5m. However, although I saw some variation in the height of boundaries in the area, there is little evidence that a height of 1.5m is a predominant characteristic of the area. On the contrary, the majority of fences and walls appeared to be well below this height. A new fence at 1.5m would undoubtedly have a lesser impact than the boundary fence as built. Nonetheless, it would still appear out of character and overly dominant in the streetscape.
 17. In addition, it is proposed to include a steel pedestrian gate to the side of the property, and a steel vehicle gate to the front. Although these would be of a simple design, their height at 1.8m would remain out of character with the surroundings, where they would be in the minority. Furthermore, the use of steel would result in an austere appearance that would not blend with the character of the nearby properties.
 18. The Council confirm that in discussions with the appellant, they indicated that they would accept fencing at a height of up to 1.3m at the site. The appellant argues that the additional 0.2m height they seek would not be so harmful as to warrant the withholding of planning permission. However, in a context where the majority of boundaries are notably lower in height, this additional 20cm would be readily and harmfully apparent, and so it would be unacceptable. If

the main parties are agreed on a height of 1.3m, then it is open to the appellant to make a new planning application for such a development.

19. The appellant goes on to say that the local area does not have any special characteristics that would be harmed by a 1.5m fence. In the same vein, she states that No 59 and the neighbouring properties have no elements of architectural merit that would be harmed by the proposal. However, these terms are not included in the wording of CSDP Policy BH1, which makes no requirement for special characteristics or elements of architectural merit for its aims to apply. Instead, the policy applies to all development, and requires it to take account of the positive elements of its surroundings, whatever those might be in each particular case.
20. Drawing these threads together, I conclude that the proposed development would be unacceptably harmful to the character and appearance of the area, contrary to CSDP Policy BH1, and the guidance set out in the SPD.
21. Within the National Planning Policy Framework (NPPF), there is a presumption in favour of sustainable development, with good design cited as a key aspect. As I have concluded that the development gives rise to visual harm, it does not meet the criteria of good design in its context, and so it conflicts with the NPPF.
22. No representations were made in response to the planning application, and I have considered the letter of support, but these have not led me to a different conclusion on the merits of the case.

Conclusion

23. For the reasons above, Appeal A fails and the deemed planning application is refused. Appeal C is dismissed.

Appeals A and B on ground (f)

24. Ground (f) is that the steps required to comply with the requirements of the notice are excessive. The enforcement notice requires the removal of the unauthorised fence in its entirety.
25. The appellants argue that there is an additional option which would remedy the breach of planning control, using the permitted development rights set out in Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). Class A permits the erection of a fence of up to 1 metre above ground level where the fence is adjacent to a highway used by vehicular traffic.
26. The Council accept that the fence and gates attacked by the notice could be removed, altered and reused, or simply reduced in height, to achieve a boundary that fell within permitted development limits. In practice, this would satisfy the aims of the notice and no further action would be warranted.
27. In my view, the simplest solution in this particular case is to amend the notice to require that the land is restored to its previous condition. This wording leaves it open to the appellant to meet this aim by their preferred method.
28. To that extent, the appeals on ground (f) succeed.

Conclusion

29. Appeal A is dismissed, the deemed planning application is refused, and the enforcement notice as amended is upheld. Appeal C is dismissed. Both appeals on ground (f) succeed and the notice is amended accordingly.

Elaine Gray

INSPECTOR