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# Appeal Decision

Site visit made on 11 April 2023

**by A Caines BSc(Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 April 2023**

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**Appeal Ref: APP/W4515/D/23/3317024**

**56 McCracken Drive, Wideopen, North Tyneside NE13 6NG**

- 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 Dale Calder against the decision of North Tyneside Council.
  - The application Ref 22/01871/FULH, dated 9 October 2022, was refused by notice dated 7 December 2022.
  - The development proposed is described as 'the erection of two 180cm fences in the front garden. Fences are on either side of the property, running along the boundary lines to both neighbours front gardens'.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. At the time of my site visit the proposed fences were already in place, and I note that the application was submitted retrospectively. I have dealt with the appeal on this basis.
3. In their statement of case, the appellant suggests that the 1.8 metre high fences are permitted development (PD) under the terms of Part 2, Class A, of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO). However, PD rights only apply when the development taken as a whole fully accords with the limitations set out in the GPDO. Any claim of PD rights must be measured against each of the sub-clauses of the relevant part of Schedule 2. If any limitation is exceeded, the whole development would be unlawful. It was clear to me when I visited the site that where the new fences adjoin the highway, they are in excess of 1 metre high. It would also appear from the evidence before me that the height of the fences exceeds that of the former fences. As such, this development does not meet all of the sub-clauses in Part 2 Class A of Schedule 2 to the GPDO and, therefore, cannot benefit from PD rights. I note this is also the view of the Council. I have determined the appeal accordingly.

## Main Issues

4. The main issues are the effect of the development on:
  - the character and appearance of the area; and
  - the living conditions of the occupants of 54 and 58 McCracken Drive with particular regard to outlook.

## Reasons

### *Character and appearance*

5. This part of McCracken Drive is characterised by similar pairs of semi-detached dwellings overlooking a central green space. The front gardens are predominantly enclosed by low boundary treatments. These attributes give the area a strong cohesive character.
6. In this context, the 1.8m high fences at the appeal site appear markedly out of character. They can be seen over a relatively wide area because of the central green space, and for some distance when travelling northwards along McCracken Drive, where they stand out as starkly incongruous and visually intrusive features within the street scene because of their height.
7. Whilst there is a similar example at 27 McCracken Drive, it is firmly in the minority and the Council advises that it does not benefit from planning permission. The fence at 62 McCracken Drive reduces in height towards the highway so is not directly comparable. Other examples cited by the appellant are not seen within the same context as the appeal site, such that they exercise only a limited influence on the character and appearance of the area surrounding the appeal site. Consequently, these few identified exceptions should not be seen as setting any precedent for the appeal scheme.
8. It may be that some alternative form of enclosure could be erected under PD allowances, but any such development is likely to be less harmful so I give this matter very limited weight.
9. The appellant states that the former fences were in a poor condition and that the new fences also bring privacy and security benefits. Even so, this is not justification for harmful development.
10. In conclusion, I find that the development significantly harms the character and appearance of the area. As such, there is conflict with the general principles of Policy S1.4 of the North Tyneside Local Plan 2017 (the LP) in so far as it requires proposals to have regard to and address impacts on the built environment. There is also conflict with LP Policy DM6.1 where it requires proposals to demonstrate a positive relationship to neighbouring buildings and spaces. The Council also references its Design Quality Supplementary Planning Document 2018 (SPD), and there is conflict with its advice that boundary treatments should be appropriate to the appearance, style and scale of the street scene.

### *Living conditions*

11. I have no reason to doubt that the new fences have a greater prominence from the front windows and gardens of Nos 54 and 58 when compared to the former fences along these boundaries. However, the fences extend for a relatively short length; do not cut across any windows; and are confined to just one side of these neighbouring properties. At my site visit I saw that each neighbouring property still retains a reasonably open outlook at the front.
12. I am therefore satisfied that the fences are not harmful to the living conditions of the occupants of 54 and 58 McCracken Drive, with particular regard to outlook. Thus, I find no conflict with the requirements of LP Policies S1.4 and

DM6.1 to achieve a good standard of amenity for existing and future residents. However, this absence of harm is a neutral matter.

### **Other Matters**

13. I have noted the appellant's concerns about comments made by other parties in their representations, and in relation to the Council's handling of the planning application. However, these matters have limited bearing on my assessment of the merits of the appeal case.

### **Conclusion**

14. For the reasons given, I conclude that the proposal fails to accord with the development plan as a whole, and there are no material considerations which indicate the decision should be made otherwise. Accordingly, the appeal should be dismissed.

*A Caines*

INSPECTOR