



Appeal Decision

Site visit made on 8 March 2023

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2023

Appeal Ref: APP/A3010/W/22/3307610

7 Danesfield Road, Worksop S80 1AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant a planning permission subject to conditions.
 - The appeal is made by Mr Evan Attard against the decision of Bassetlaw District Council
 - The application Ref 22/00780/HSE, dated 7 June 2022, was approved on 15 September 2022 subject to conditions.
 - The development permitted is described on the decision notice as: '*Retrospective Removal of Privet and Erect New Front Fence and Gates*'.
 - The condition in dispute is No 1 which states that: '*Within three months of the date of this permission, details of the exact finish of the fence and gates hereby permitted shall be submitted to and agreed in writing by the Local Planning Authority. The finish shall be carried out within 1 month of the approval by the Local Planning Authority in accordance with the agreed details*'.
 - The reason given for the condition is: '*In the interests of the character and appearance of the area*'.
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Decision

1. The appeal is allowed and the planning permission Ref 22/00780/HSE for Retrospective Removal of Privet and Erect New Front Fence and Gates at 7 Danesfield Road, Worksop S80 1AD granted on 15 September 2022 by Bassetlaw District Council, is varied, by deleting condition No 1 and substituting it for the following condition:
 - 1) Within 3 months of the date of this decision and prior to the application of any paint, stain or other treatment or finish to the fence and gates hereby permitted, full details of the proposed treatment or finish shall be submitted to and approved in writing by the local planning authority. The fence and gates shall be finished in accordance with the approved details within 6 months of that approval and shall be maintained as such thereafter. If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the fence and gates shall be removed until such time as a scheme approved by the local planning authority is implemented.

Preliminary Matters

2. The application relates to a length of fence to the side boundary of the dwelling. It adjoins similar fences within the appeal site. The Council has set out that these fences are permitted development. I see no reason to disagree.

Background and Main Issue

3. The planning application form states that the construction of the fence was completed on 18 February 2022. The application thus sought retrospective

planning permission which was granted on 15 September 2022. In granting permission, the Council sets out in its delegated report that *'with an appropriate finish of the fence/gates, it is considered that on balance, the proposal is of no significant detriment to the character and appearance of the area as a whole.'*

4. The Council therefore imposed the disputed planning condition to secure details of the finish. Given the retrospective nature of the application, this included a time period of three months, for submission of details, and one month, following approval of details, for the treatment to be carried out. The main issue is therefore whether the disputed condition is reasonable and necessary in the interests of preserving the character and appearance of the area.

Reasons

5. 7 Danesfield Road is a semi-detached dwelling located on a corner plot adjacent to a crossroads in a residential area. Boundary treatments here typically comprise of low brick walls and hedges. This gives the area an open verdant character. Fences are rarer and typically located on the boundaries between properties rather than at the pavement edge.
6. The appeal relates to a tall timber boarded fence that has been constructed above the existing low brick wall to form the side boundary of the garden. Given its siting on a corner, this fronts the pavement of Danesfield Crescent. It also incorporates two pairs of double gates. The fence is a large structure and due to its comparatively solid nature, it is readily discernible from the boundary hedges that are prevalent here. However, I accept that part of the prominence of the structure is due to its 'new' appearance that is yet to weather.
7. Nonetheless, given its extensive nature and its visibility on a corner, the application of paint or other external treatment has potential to increase the visibility of the structure, emphasising its solid appearance and contrast with the more verdant boundaries that are prevalent here. In this regard, a bright or vibrant finish could increase the prominence of the structure to the detriment of the character and appearance of the area. It follows that a more muted colour, reflective of the verdant setting, may have the opposite effect.
8. Whilst the appellant suggests that if the fence were finished in an inappropriate manner, the Council could then approach them to rectify this afterwards, the appellant has not suggested how this could be incorporated into a planning condition. Indeed, in my view there is no mechanism for such an approach.
9. Although I have not been directed to any fence in particular, I have had regard to the presence of other fences I saw in the locality, both painted and unpainted. However, I did not see a fence with a height and degree of prominence in the streetscene that was comparable with that at the appeal property. Moreover, it is likely that the majority of fences would have been constructed as permitted development without planning permission.
10. For the foregoing reasons, whilst I accept that this may not be the intention of the current owner, the effect of allowing the appeal would be to permit the painting of the fence and gates in a colour or finish that would exacerbate its prominence and emphasise its solid appearance in contrast with the surrounding verdant boundaries. Such a treatment would adversely affect the character and appearance of the area. This would be contrary to the provisions

of Policy DM44 of the Bassetlaw Local Development Framework (2011) which requires development proposals to be of high-quality design that is respectful of local character. Control over the finish of the fence through a planning condition is therefore considered to be reasonable and necessary in the interests of the character and appearance of the area.

Other Matters

11. The appellant has referred to Article 1 of the First Protocol of the Human Rights Act 1998. Article 1 of the First Protocol sets out that every person is entitled to the peaceful enjoyment of their home. The appeal relates to a condition requiring details to be supplied of the treatment of a fence that is already erected. The fence provides privacy and security. The provision of details regarding its treatment and requiring this to be carried out in accordance with those details would not affect the privacy or security provided by the fence and would be unlikely to interfere with the appellant's rights under Article 1. Moreover, these are qualified rights, and any interference may be justified where it is in accordance with the law and is necessary in a democratic society, applying the principle of proportionality.

Conditions

12. The appellant has raised concerns with regard to the compliance period of the condition. I have deleted the disputed condition and replaced it with a new condition. This condition includes greater flexibility and includes a longer period for compliance. This would allow the appellant to apply any treatment over the summer months. It would also require the fence to be maintained in accordance with the approved details thereafter, clarifying the situation with regard to future maintenance which was raised by the appellant in their submission.
13. The amended condition would still ensure that the details of the finish of the fence and gates are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the treatment of the fence before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

Conclusion

14. For the reasons given above, I conclude that the planning permission should be varied as set out in the above decision.

Paul Martinson

INSPECTOR