



## Appeal Decision

Site visit made on 6 June 2023

**by K L Robbie BA (Hons) DipTP MTP MRTPI**

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

**Decision date: 28<sup>th</sup> July 2023**

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**Appeal Ref: APP/M4510/D/23/3319888**

**93 Montagu Avenue, Newcastle Upon Tyne NE3 4SB**

- 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 Peter Ledgerwood against the decision of Newcastle Upon Tyne City Council.
  - The application Ref 2021/1153/01/DET, dated 28 May 2021, was refused by notice dated 13 January 2023.
  - The development proposed was described as "*Retrospective application for erection of boundary fencing*".
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. At the time of my site visit the fence had already been constructed. However, 'retrospective' as referred to in the application form and the Council's decision notice is not an act of development. I have dealt with the appeal on the basis that planning permission is sought for the erection of boundary fencing.

### Main Issues

3. The main issues the effect of the development on the:
  - Character and appearance of the area; and
  - Highway safety

### Reasons

#### *Character and Appearance*

4. 93 Montagu Avenue is located close to the corner of Montagu Avenue and Briardene Crescent. It is situated within an established residential area. Most of the front boundaries close to the appeal property are marked by low brick walls with planting behind them, which gives the streets a pleasant open and verdant feel.
5. The fence has been erected along the front and side boundaries of the wedge-shaped side garden of the appeal property, it continues along the side of the driveway to enclose the garden area. Along the front boundary it consists of brick pillars built on top of the existing low wall and infilled with timber panels. The section of the fence alongside the driveway is made up of timber fence panels only. The driveway slopes down from the front of the house towards the highway. The result being that the side section of the fence is visible above the fence along the front boundary when viewed from the

north. The front boundary is angled where it turns the corner into Briardene Crescent. Given its height, overall length, and prominence due to the angled corner location and sloping site which exacerbates its visibility within the street scene, it forms an obtrusive and incongruous feature on this part of the Avenue which is at odds with its prevailing character.

6. The appellant has stated that the fence was built during the Covid-19 pandemic in order to create a safe play space for his children. Whilst I have given the appellant's personal circumstances careful consideration, I am mindful of the advice contained in Planning Practice Guidance that in general in planning is concerned with land use in the public interest. It is probable that the proposed development would remain long after the current personal circumstances cease to be relevant.
7. Accordingly, I conclude that the development harms the character and appearance of the area and conflicts with Policy CS15 of the Core Strategy and Urban Plan for Gateshead and Newcastle upon Tyne 2010-30 (the Core Strategy) and Policies DM20 and DM23 of the Newcastle upon Tyne Development and Allocations Plan (the DAP) which seek to ensure that development responds positively to local distinctiveness and character and provide a high-quality environment. It would also fail to comply with the design aims of the National Planning Policy Framework (the Framework) which promotes high quality development.

#### *Highway Safety*

8. The fence runs along the length of the appeal property's driveway at a height of about 1.85m. Taking the fence in its entirety, it blocks drivers' visibility from the drive northwards onto the Avenue. Although the Avenue is in a residential area where vehicle speeds are low, it would be difficult for anyone leaving the drive in a forward direction to have a full view of the pavement until after the bonnet of the car has left the driveway and manoeuvred onto the pavement. It would be even more difficult to see the pavement if reversing off the driveway. I therefore consider that this is an unacceptable risk to the safety of pedestrians, especially, small children. This is compounded by the proximity of the appeal property to the nearby primary school where pedestrians with children are likely to be walking regularly.
9. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out provisions for means of enclosure where they abut a highway and where they do not. However, I am obliged to determine the proposal as presented to me. If the appellant wishes to pursue alternative schemes this is a matter to be pursued with the Council and not as part of the appeal.
10. Nevertheless, as submitted, I conclude that the fence significantly harms highway safety and conflicts with Core Strategy Policy CS13 and DAP Policy DM14 which indicate that development should mitigate against its impact on the highway network in the interests of safety, efficiency and accessibility. The development would also not accord with the aims of the Framework in relation to highway safety.

## **Other Matters**

11. I acknowledge the appellant's frustration that a previous hedge would not grow higher. Nevertheless, I can see no reason why a hedge of an alternative species would not have grown successfully in this location and whilst I appreciate that this may also in time create visibility issues it would not be subject to planning controls in the same way that the proposal before me is.
12. I understand that cars associated with the nearby school park close to the appeal property, which is a cause of concern to the appellant. However, they are likely to be parked for very short periods of the school day and would not preclude use of the garden at other times. I also understand that rubbish from elsewhere collects in the garden at times. Whilst I realise that this would be frustrating, it has not been demonstrated that there are not less harmful ways of preventing it from occurring.
13. My attention has been drawn to other tall fences and walls in the local area, some of which are infilled with railings as opposed to solid fence panels. However, I do not know how these came into being, and the existence of them does not justify further harm. I have also noted the appellant's reference to the nearby school railings. However, these are not solid like the fence. I have, nevertheless, determined the appeal on the information before and on the planning merits of the case. These factors are not sufficient to outweigh the harm that would be caused to the character and appearance of the area and to highway safety contrary to the development plan and the Framework.

## **Conclusion**

14. For the reasons given above and having considered the development plan as a whole and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*K L Robbie*

INSPECTOR