



Appeal Decision

Site visit made on 2 May 2023

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2023

Appeal Ref: APP/X1355/W/23/3315170

9 Meadow Dale, Chilton, Ferryhill, Durham DL17 0RW

- 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 Michael Atkinson against the decision of Durham County Council.
 - The application Ref DM/22/01939/FPA, dated 14 September 2022, was refused by notice dated 10 November 2022.
 - The development is change of use of land to side from open space to residential and enclosure with 1.8m fence.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of development from the Council's decision notice. It adequately and simply describes the development instead of the description given on the application form which includes details in support of the proposal, which are not acts of development in themselves. Nevertheless, I have taken the points raised into account in my reasoning below.
3. I saw at my site visit that the fence has been constructed and appears to be completed, therefore I am considering this appeal retrospectively.

Main Issue

4. The main issue is the effect of the development on the character and appearance of the area.

Reasons

5. The appeal site is located on a corner plot on Meadow Dale within a residential area. The grass verges and front gardens along Meadow Dale creates a spacious, open character which has a landscape quality, owing to the greenery of the front gardens and the grass verges. While boundary treatments vary in design, comprising hedging, brick walls and timber fences, the generally low height or absence of enclosure creates a clear sense of balance which contributes positively to the character and appearance of the area.
6. The appellant sets out that the land to the side of the property is privately owned by the occupiers, albeit as open space, and this is not in dispute. It forms part of a landscaped green corridor on this side of Meadow Dale, continuing along Woodham View, that provides verdant open spaces that are a visual break from the surrounding built form, and so contribute to the open

character of the area. While the development has some set back from the footpath, it almost fully encloses the grass verge with a tall timber fence to facilitate the change of use of the land to residential.

7. The development introduces a close boarded timber fence that is uncharacteristic of the area closest to the site and is appreciably taller than other boundary treatments. The appellant has drawn my attention to the fact that there have previously been taller trees and hedging at the appeal site which is said to have detracted from the street scene and obstructed neighbouring occupiers' views. Furthermore, the previous fence at the site was in a state of disrepair. Nevertheless, the development's height, length and solid appearance introduces a visually discordant element into the open space. It results in a break in the landscaped green corridor, creating a sense of enclosure in an area that is otherwise generally open in character.
8. I note that the fence is proposed to be stained dark green. While this would soften the visual impact of the boundary treatment, owing to its height and length the development would remain prominent, drawing the eye and standing out as being incongruous. I note the appellant's suggestion that the height of the fence could be lowered, and soft landscaping planted in front of the fence, but I do not have any plans showing this and it would not be appropriate to comment on a scheme I have not seen.
9. I have considered the examples of tall fences in the wider area which are located adjacent to a footpath. The context of the examples differs in overall appearance and relationship with the street scene. They are on a different street, and as such would not be seen with the appeal scheme. Moreover, they do not form part of a landscaped green corridor as the appeal site does. Accordingly, they are not directly comparable. While comprising some tall sections of hedging, the boundary treatment at 1 Meadow Dale has variation in height and comprises soft landscaping so does not adversely affect the character and appearance of the area in the way the appeal scheme does. The other examples do not, therefore, lead me away from my above findings.
10. For the reasons given, the development is harmful to the character and appearance of the area, in conflict with policies 6, 26 and 29 of the County Durham Local Plan (2020). These policies, amongst other things, require development to not result in the loss of open space that contributes to the character of the locality, or cause harm to green infrastructure assets. Development should also be appropriate in terms of scale to achieve well designed places that contribute positively to an areas character.
11. The development is also contrary to the provisions of the National Planning Policy Framework at Section 12, which seeks well-designed places.

Other Matters

12. The development has secured the health and safety of the appellant's family. In particular, it has been explained how their young children were unable to safely play on the grassed area before the fence was erected as it was primarily used for dog fouling and littering, creating a hazardous environment. In refusing to permit the fence, such safety measures may not be available, so there could be interference with the appellant's children's human rights as set out in Article 8 of the Human Rights Act 1998.

13. However, it does not follow that not granting planning permission for the fence would be a violation of their human rights. In this instance, dismissing the appeal would not be disproportionate when balanced against the need to uphold the operation of the planning system, which includes the requirement for development to accord with the adopted development plan; that being made and applied in the wider public interest.
14. In exercising my function on behalf of a public authority, I have also had due regard to the Public Sector Equality Duty contained in the Equality Act 2010. The Act sets out the relevant protected characteristics, which includes age. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three aims set out in Section 149 of the Act.
15. In dismissing this appeal, the appellant's children may be disadvantaged by the land in question not being as clean and safe. However, having due regard to this, and to the need to eliminate discrimination and promote equality of opportunity, in my view the adverse impacts of allowing the scheme would be disproportionate having regard to the development plan and the issues and reasons identified above.
16. The appellant's submissions make reference to their maintenance responsibilities for the grass verge and suggest that without the development, the verge would not be maintained which could pose a safety risk to members of the public using the grass verge. However, even if the grass cutting of the land was not carried out by the Council, and even if the verge has poor drainage and is slippery in the winter, it has not been shown to what extent the grass verge is used. I observed the grass verge to be relatively narrow in width with sloping ground levels, as such any recreation value would be limited. Therefore, this matter carries little weight in the determination of the appeal.

Conclusion

17. My above findings bring the proposal into conflict with the development plan, read as a whole. There are no material considerations that have been shown to have sufficient weight to warrant a decision otherwise than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

F Harrison

INSPECTOR