



Appeal Decisions

Site visit made on 27 June 2023

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 July 2023

Appeal Ref: APP/V4305/C/22/3312974 (Appeal A) & 3312975 (Appeal B) 767 Knowsley Lane, Knowsley L34 9EE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Jeffrey Thompson (Appeal A) and Mrs Leanna Thompson (Appeal B) against an enforcement notice issued by Knowsley Metropolitan Borough Council.
- The notice, numbered 22/00050/UNBLD, was issued on 2 December 2022.
- The breach of planning control as alleged in the notice is without the benefit of planning permission the erection of boundary fencing to the front of the property.
- The requirements of the notice are to: Reduce the overall height of the fence where it is adjacent to the public highway (the B5202) to no more than 1 metre, measured from the surface of the adjoining footway. The parts of the fence which must be reduced in height are shown in appendix 1 by the green line. For the avoidance of doubt the combined height of the fence and the wall that it sits on in these areas shall not exceed 1 metre.
- The period for compliance with the requirement is: One month.
- The appeals are proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since appeals have been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decisions

1. The appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. The appellants requested that I enter the site, however, given the location of the breach and its proximity to the highway, I am satisfied I was able to see everything I needed to see from the public domain.

Main Issues

3. The main issues of the appeal are the effect of the appeal scheme on:
 - The character and appearance of the area; and
 - Highway safety.

Reasons

Character and appearance

4. The appeal site comprises a semi-detached dwelling, with a modest front garden, which fronts onto Knowsley Lane. Although the appeal site is a limited distance from Knowsley Village, this part of Knowsley Lane has a verdant

character, with boundary treatments generally comprising mature hedgerows and modest stone walls. The Council has provided me with a photograph of the appeal site which shows that prior to the erection of the fencing, the boundary treatment comprised a mature hedgerow sat behind a modest brick wall.

5. Policy CS2 of the Knowsley Local Plan Core Strategy (2016)(the KLPCS) seeks to enhance local character and policy CS19 of the KLPCS seeks development which responds to the positive characteristics of the immediate surrounding, including local materials. Saved policy H8 of the Knowsley Replacement Unitary Development Plan (2006)(UDP) seeks design and materials which reflect those used in the original dwelling.
6. The Householder Development SPD (2016)(the SPD) advises that where the curtilage of a house adjoins the highway, it should not be enclosed by high boundary features or screening that conceals the house from the street and vice versa. It goes on to advise that in more traditional areas, the character of the area is often determined by existing attractive hedging, sandstone walls or brick walls, where the existing character of the boundaries should be preserved.
7. The appeal scheme comprises close boarded fencing, finished in an orange hue, which has been erected atop the modest brick wall. The adjoining semi-detached dwelling has a similarly modest brick wall, with a hedgerow above, which makes a positive contribution to the verdant character of the area and reflects boundary treatments located in Knowsley Village.
8. Due to its height and proximity to the highway, the appeal fence appears a dominant feature which diminishes the verdant character of this part of Knowsley Lane and harms the character and appearance of the area. Although I saw vegetation has been planted between the dwelling and the fencing, it is largely obscured from public view by the fencing and so does not contribute to the verdant character of the area.
9. The appellants advise there are other fences along Knowsley Lane of a similar height or higher than the appeal fencing. While the appellants have not identified any specific examples they wish me to consider, during my visit I saw that there are other fences in the area of a similar height to the appeal scheme which have been erected. However, they are generally located on side returns or to enclose rear gardens, rather than to enclose the frontage of dwellings. I do not, therefore, consider them to be comparable to the appeal scheme before me. Furthermore, I do not have full details of their erection and cannot therefore be sure they were lawfully erected.
10. For the reasons given above, I find that the appeal scheme is harmful to the character and appearance of the area, contrary to policies CS2 and CS19 of the KLPCS and saved policy H8 of the UDP and the SPD, the requirements of which are set out above.

Highway safety

11. Knowsley Lane is a classified road which provides access to Knowsley village. The appeal site is located along a section of Knowsley Lane which has footpaths either side of the carriageway. The footpath which abuts the appeal site provides access to a wooded area, through which a public right of way runs, which appears well used by walkers. The appellants describe the road as busy,

especially at rush hour, with a lot of 'passers by'. From my inspection of the site, I would agree with the appellants' description in this regard.

12. The fencing which has been erected is adjacent to the highway and, due to its height, limits views to and from vehicles egressing the appeal site, as well as No 767A. As a consequence, vehicles exiting these properties are likely to have to pull onto the public highway before sufficient visibility is achieved. This may result in conflict between vehicles leaving the site and vehicles or pedestrians travelling from Knowsley Village towards the appeal site and is harmful to highway safety.
13. The appellant explains that the fence replaced a hedge of similar height. The Council has provided me with a photograph which shows that a hedge of similar height to the neighbouring property was previously *in situ*. I acknowledge that the hedge would limit visibility, depending upon its height. However, it would have been possible for the owner to reduce the hedge in height to improve visibility whereas the fencing is a permanent feature. Moreover, a hedge does not require planning permission. Consequently, I afford this matter limited weight in support of the appeal scheme.
14. I note the Highways officer suggests modifying the fence so that no part of, above the height of the 'existing dwarf wall', was situated within the right-hand visibility splay of 2.4m x 43m. However, I have no alternative proposals before me and am concerned about being able to draft any planning permission with the necessary precision to ensure the right outcome.
15. I find the appeal scheme harms highway safety, contrary to policy CS7 of the KLPCS which seeks development which enhances road safety and the expectations of the National Planning Policy Framework (2021)(the Framework) which advises that development should (only) be refused on highway grounds if there would be an unacceptable impact on highway safety.

Other Matters

16. The Council refers to Policy SD1 of the KLPCS in its enforcement notice, which sets out that the Council will take a positive approach which reflects the presumption in favour of sustainable development. While I note the commitment set out in the policy, I do not consider it to be determinative in this case.

Planning Balance and Conclusion

17. The Public Sector Equality Duty (PSED) as set out under the Equality Act 2010 concerns the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The appellant has provided me with evidence to show that one of the occupants of the property is disabled, and so they will have protected characteristics for the purposes of the PSED.
18. The appellant has provided me with a letter from the General Practitioner of one of the occupants of the appeal dwelling, which sets out why it is in their best interests for the fencing to be retained. The occupant resides in the downstairs front facing bedroom, into which passers by may be able to peer if the fencing were removed. While I agree privacy is likely to be necessary for the occupant of the bedroom, I consider the appeal scheme is not the only

means of affording such privacy. The provision of planting, for example, would provide a level of privacy for the occupant of the front room.

19. I saw that the fencing also provides a fully enclosed front garden, which prevents the occupant from getting on to the road and provides a safe space for occupants of the appeal dwelling and its visitors to enjoy the garden. However, I consider it would be possible to secure an area of outside space which users of the property can enjoy without extending the fencing along the frontage. I have considered whether it would be appropriate to allow the fencing to be retained for a temporary period. However, given the harms I have identified above, I consider it would be undesirable to allow the fencing to remain even for a temporary period.
20. Under the Human Rights Act 1998, Article 8 affords the right to respect for private and family life, home and correspondence and Article 1 of the First Protocol affords the right to the peaceful enjoyment of their possessions. These are qualified rights, and interference may be justified where in the public interest.
21. Having regard to the legitimate and well-established planning policy aims to protect character and appearance and highway safety, in my view, the benefits of the appeal scheme would be outweighed by the harm I have identified above. A refusal of permission would be proportionate and necessary and would not unacceptably violate the family's rights under Article 8 and Article 1 of the First Protocol. The protection of the public interest cannot be achieved by means that are less interfering of their rights.
22. Thus, for the reasons given above, I conclude that the appeal scheme would harm the character and appearance of the area and highway safety and would conflict with the development plan as a whole. There are no material considerations which indicate that the decisions should be taken otherwise in accordance with the development plan.

M Savage

INSPECTOR