
Appeal Decision

Site visit made on 8 August 2023

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023.

Appeal Ref: APP/C4615/D/23/3318367
111 Attingham Drive, Dudley DY1 3HY

- 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 Deepak Karwai against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P22/1595, dated 28 October 2022, was refused by notice dated 20 January 2023.
 - The development is the erection of boundary fencing retrospective.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The fence in question is in place. It appears to have been erected broadly in accordance with the submitted plans and accompanying details.

Main issues

3. The main issues are the effect of the fence on the character and appearance of the local area and on highway safety for users of Attingham Drive.

Reasons

Character and appearance

4. The appeal property is a detached dwelling within a modern estate style residential area. It addresses Attingham Drive as the road curves around the site. Consequently, No 111 has a relatively long highway frontage that is marked, in part, by the appeal fence. The fence is metal in a blue colour. It has solid vertical panels and posts with some sections topped by a trellis.
5. The Council's objections focus the section of fence that encloses the garden and garage of No 111 adjacent to 109 Attingham Drive. This part of the fence runs along the back edge of the footway with return panels both into the site and along the common boundary with No 109. The fence is about 2.1 metres high along most of its length and includes a solid entrance gate. For brevity, I shall refer hereafter to this part of the fence as Section A.
6. The Council also raises concern about a separate part of the fence, which marks the shared side boundary with 113 Attingham Drive and includes a short section that runs along the back edge of the footway. Due to the sloping ground, this fence occupies a slightly elevated position relative to No 113 and it

includes low level panels next to the road. I shall refer to this element of the fence as Section B. No objection appears to be raised in relation to any other boundary feature within the site. From the submitted evidence, I have no reason to disagree with that finding.

7. The solid form, height and considerable length of Section A means that it is a significant and conspicuous feature when seen from the road. In these views, the fence draws the eye as a rather tall and uncompromisingly solid barrier. Its imposing presence in the street scene markedly contrasts with the more low-key and informal appearance of the front boundary treatments prevailing along this part of Attingham Drive. In the main, the highway frontages of existing properties on this road are marked by open driveways and parking spaces, short gardens, hedgerows of varying height, and occasionally timber fences. While these boundary features are varied in type and style, most are low level. Similarly, Section B of the fence is obtrusive given its solid form, metal construction and prominent position next to the road. In that context, both Sections A and B are an incongruous and discordant feature that harms the character and appearance of the local area. A change to the colour of the fence or removal of the trellis would not overcome its harmful visual impact.
8. Within the local area, there are examples of properties with boundary fencing or walls that are visible from the highway, including those to which the appellant has referred and provided details and photographs. Reference is also made to the fencing around a sports pitch at Dudley College. In most cases, the existing fences differ to the development before me in their materials, type, scale, height or prominence in the street scene. Given these differences, I am unable to draw any direct parallels from these cases with the appeal scheme. From what I saw, these examples are not a predominant characteristic of the front boundary treatment along that section of Attingham Drive to which the site belongs. Even if the Council has been inconsistent in approving tall fences elsewhere, it does not in itself justify allowing this appeal.
9. On the first main issue, I conclude that the fence causes significant harm to the character and appearance of the local area. Accordingly, it is contrary to Policies L1 and S6 of the Dudley Borough Development Strategy (DBDS), and Policies ENV2 and ENV3 of the Black Country Core Strategy (BCCS). Together, these policies promote high quality design and aim to ensure that development responds to and is compatible with the character of the area. It is also at odds with the National Planning Policy Framework (the Framework) which states that developments should be sympathetic to local character and add to the overall quality of the area. While Planning Guidance Note No 17, *House Extension Design Guide*, is also referred to, its content is less directly relevant to the development sought.

Highway safety

10. The height and position of Section A close to the adjacent footway causes it to obstruct the view from the driveway of No 109 of highway users approaching from the south. As a result, a driver exiting this adjacent property would need to edge out onto the adjacent footway before there would be a more unrestricted view of oncoming pedestrians, cyclists, and vehicles. Similarly, motorists leaving the driveway of No 113 also have a restricted view of oncoming road and footway users approaching from the west due to the obstruction caused by Section B, even with its low-level panels. Although the

number of vehicle movements using these driveways would be relatively modest, and there are measures in place to moderate vehicle speeds along Attingham Drive, the restricted visibility of other road users caused by the fence poses an obvious and significant risk to highway safety.

11. From the photographs provided, vegetation previously at the front of No 109 would have obscured views of oncoming road users from its driveway. I also saw that some properties in the local area had accesses to the highway where the visibility of other road users would be hindered by existing boundary features, walls, roadside greenery and on-street vehicle parking. I am unaware of the detailed circumstances of these arrangements, most of which were far from ideal with regard to highway safety. These examples do not persuade me that the appeal scheme, which adds to highway danger, should therefore be accepted.
12. On the second main issue, I conclude that the fence has an unacceptable effect on highway safety for users of Attingham Drive. As such, it conflicts with BCCS Policy TRAN2 and DBDS Policy S17. Combined, these policies seek to ensure that development makes adequate provision for safe and secure access and that it maintains highway safety. It is also contrary to the Framework, which states that development should achieve safe and suitable access for all users. Although reference is made to the Council's Parking Standards Supplementary Planning Document, its content is less directly relevant to the development.

Other matters

13. I have no doubt that the fence has improved the security and privacy for the appellant and his family and created a safer outdoor play space for use particularly by children and pets than would otherwise be the case with the dilapidated fences and planting that was previously in place. These are important matters given the personal circumstances of the appellant and his family and in dealing with problems such as inconsiderate and anti-social behaviour and dog fouling, amongst other things. I am sympathetic to these matters and recognise that such problems are unpleasant and can have a profound impact on health and social well-being. I also note that the gates allow access to on-site parking and for disabled and wheelchair users, which is an important consideration given the health conditions of the appellant's friend. It also allows access for the appellant's mother, a blue badge holder. The Framework states that planning decisions should aim to ensure that developments create safe and accessible environments.
14. The introduction of the fence and cutting back the vegetation that previously marked the site's highway frontage has tidied and 'cleaned up' the street frontage and widened the usable area of the adjacent footway. I have taken into account the redacted letter from the Office of the appellant's local MP, which raises various questions about the various issues raised, and a redacted doctor's letter, dated 24 April 2023. However, these other matters, taken individually and combined, do not outweigh the significant harm that I have identified in relation to the main issues.
15. It may be that an adjustment to the height of the fence, in part or as a whole, would enable it to be considered as permitted development and so not require planning permission. However, planning permission is sought for the fence, as built, and I have assessed the development on that basis.

16. To my mind, the reasons for refusal are clear and concise with reference to relevant planning policy and guidance. These reasons given provide a reasonable summary explanation of the Council's objections to the fence.
17. The appellant is deeply critical of the Council's handling of the application and of its advice and service. The interaction with the installer of the fence has also been provided. However, my remit is solely to determine this appeal on its own merits, which I have done.

Conclusion

18. Overall, the fence conflicts with the development plan, when read as a whole. There are no material considerations, including the policies of the Framework, which indicate that the decision should be taken other than in accordance with the development plan.
19. For the reasons set out above, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

Gary Deane

INSPECTOR