



Appeal Decision

Site visit made on 16 August 2023

by Nichola Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2023

Appeal Ref: APP/P0119/W/23/3316358

24 Poplar Road, Warmley, South Gloucestershire BS30 5JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Mark Heywood-Briggs (Phoenix Childcare Limited) against the decision of South Gloucestershire Council.
 - The application Ref P22/05681/RVC, dated 26 September 2022, was refused by notice dated 12 December 2022.
 - The application sought planning permission for erection of 3m fencing and 4no. gates (retrospective) without complying with a condition attached to planning permission Ref P21/08129/F, dated 22nd July 2022.
 - The condition in dispute is No 1 which states that: the fencing hereby permitted shall be brought into strict accordance with Revised Fencing Block Plan - 2060 - PL03A (received 8 June 2022) within 3 months of the decision date.
 - The reason given for the condition is: to protect the residential amenity of the local residents to accord with Policy CS1 of South Gloucestershire Local Plan Core Strategy (Adopted December 2013) and Policy PSP8 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (Adopted) November 2017
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Planning application P21/08129/F, dated 22nd July 2022, granted permission for the erection of 3m fencing and 4no. gates (retrospective). That planning permission included a condition which requires that the fencing be brought into strict accordance with a revised fencing block plan - 2060 - PL03A within 3 months of the decision date.
3. The appellant wishes to vary this condition and replace it with a condition which substitutes drawing 2060 - PL03A with drawing - 2060 - PL03B as the approved plan. This drawing shows a number of changes to the fencing including an increase in height of security fencing from 2.4 to 3 metres in some places. At my site visit I observed that the development appears to have been carried out in accordance with plan - 2060 - PL03B, for which approval is sought. Nonetheless, I have determined the appeal in accordance with the submitted plans.
4. The Council's statement indicates that the condition is necessary due to the effect on the living conditions of the occupants of neighbouring properties and the character and appearance of the area. This is consistent with the reasons for the condition given on the decision notice.

5. Taking the above into account, the main issue is the effect that varying the condition would have on the living conditions of the occupants of neighbouring properties 18,20,26a and 28 Poplar Road and 1,2,3,4 and 5 Samuel Wright Close and the character and appearance of the area.

Reasons

Living conditions

6. The appeal property comprises a school for children with special educational needs. The school is located in a primarily residential area and is bordered by residential properties on all sides. Plan 2060 - PL03B, for which approval is sought, would result in an increase in the height of the feather edged timber fencing from 2 to 2.4 metres along the site's northern boundary, an increase in height of the security fencing from 2.4 to 3 metres along the site's southeast boundary and an increase in height of the security fencing from 2.4 to 3 metres and timber fencing from 2 to 2.4 metres along the site's southeast boundary.
7. To the northern site boundary, the site is bordered by a screen of trees and vegetation. Numbers 26a and 28 Poplar Road, which border the site to the north, have outlook onto this screen of vegetation. The fencing sits behind this vegetation and is screened from these properties. Consequently, the proposal does not appear overbearing or oppressive when viewed from 26a and 28 Poplar Road. Therefore, the increase in height of the fencing along the northern site boundary does not harm the living conditions of the occupiers of these properties.
8. To the site's southeast boundary a thick tall hedge separates the appeal site and numbers 3,4 and 5 Samuel Wright Close. The outlook for occupiers of these properties is unaltered by the proposal. Numbers 1 and 2 Samuel Wright Close are located close to the site boundary and the outlook from these properties is over the appeal site. The lightweight nature of the mesh fencing permits the passage of light through the fence panels and there is no overshadowing or loss of light to these properties; however, given the limited separation between it and these properties, the fence appears overbearing and oppressive when viewed from rear gardens and rear windows to these properties. This makes these spaces considerably less pleasant to use, thereby causing harm to the living conditions of the occupiers of these properties.
9. To the site's southwest boundary, the rear windows of 20 Poplar Road look out onto the appeal site and there is limited separation between these windows and the boundary treatment which also runs along the length of the rear garden to this property. The boundary treatment presents a dominant and overbearing feature when seen from this property and its rear garden, making these spaces considerably less pleasant to use, to the detriment of the living conditions of the occupiers of this property.
10. Whilst comments from interested parties regarding children sitting on top of outbuildings peering into the neighbouring gardens are noted, given the lightweight nature of the security fencing, any increase in height does not safeguard the occupiers of neighbouring properties from overlooking by students who have climbed on top of outbuildings. Therefore, I am not convinced that the increased height results in any benefit to the occupiers of neighbouring properties in terms of privacy.

11. The appellant states that the development plan is out of date and argues that national policy set down in the National Planning Policy Framework (the Framework) should be used to determine the proposal. However, the appellant has not substantiated how or why the current development plan is out of date, and I have not been drawn to any inconsistencies between the relevant development plan policies and the Framework. Therefore, I see no reason not to give full weight to the development plan.
12. The appellant's willingness to accept conditions which would require the installation of 3m high timber fencing along the south-eastern boundary and the approval of additional soft landscaping are noted. However, Annex M of the Procedural Guide, Planning Appeals, England (2019) and the national Planning Practice Guidance (PPG) advise that the appeal process should not be used to evolve a scheme to overcome the Council's reasons for refusal, rather a fresh planning application should usually be made. Moreover, it is important that the evidence which is considered by the Inspector is essentially the same as that which has been considered by the Council, and on which interested parties' views were sought. Thus, it is not appropriate to deal with the approval of such measures by conditions. In any case I do not consider that such amendments could overcome the effect of the proposal on the living conditions of the occupants of neighbouring properties.
13. I conclude that varying the condition would have a harmful effect on the living conditions of the occupants of 4 and 5 Samuel Wright Close and 20 Poplar Road due to the overbearing and oppressive form of the development. Therefore, I find conflict with those aims of Policy PSP8 of the South Gloucestershire Local Plan Policies, Sites and Places Plan (2017) which seek to ensure that proposals do not have an unacceptable impact on the residential amenity of occupiers of nearby properties.

Character and appearance

14. The site is located in a residential area where boundary treatments comprise a mixture of brick walls, timber fences and hedges. The timber boundary fencing component subject of this appeal proposal is domestic in scale and appearance and does not appear out of keeping with boundary treatments in the surrounding area. Additionally, given the siting of the fencing which is set back from the road, the development results in limited visual impact on the street scene.
15. The existing consent permitted fencing of varying heights, materials and designs including the use of timber fencing adjacent to security fencing. Nonetheless, the consented scheme showed security fencing of the same height as the timber fencing. Therefore, the security fencing would have been obscured by the timber fence in views from outside of the appeal site. The increase in height of the security fencing renders it clearly visible above the timber fencing from neighbouring properties, where the combination of differing designs and materials and the excessive height and institutional appearance of the security fencing is at odds with the domestic character and scale of boundary treatments in the surrounding area.
16. Accordingly, I conclude that varying the condition would have a harmful effect on the character and appearance of the area. Therefore, I find conflict with those aims of Policy CS1 of the South Gloucestershire Local Plan Core Strategy

2006-2027 (2013) which states that development will only be permitted where the highest possible standards of design and site planning are achieved.

Other Matters

17. The appeal property is a specialist school for children with special educational needs. In support of the proposal the appellant states that pupils can experience heightened emotional responses to situations during the school day which can lead them to become stressed or anxious, and in these circumstances some pupils can attempt to escape the school grounds. It is stated that if the school boundaries are capable of being breached, there is likely to be a higher frequency of attempts by pupils to escape, leading to risk of injury to staff and pupils, disruption to pupil learning and loss of privacy and disruption to the occupiers of neighbouring residential properties.
18. The appellant states that the school has experienced incidents of pupils attempting to breach the boundary along a section of 2.4 metre high fencing, and that in his experience a minimum fence height of 3 metres is required to act as a deterrent to pupils. Nonetheless, I have not been presented with any convincing evidence of the requirement for a fence of this height, or that there would be a realistic prospect that a fence of 2.4 metres in height as approved under application reference P21/08129/F could be breached by students. Consequently, whilst I note the reported incidents of attempted breaches of the boundary at a lower fence height, my attention has not been drawn to successful breaches and I am unconvinced by the evidence presented to me that the fence height of 2.4 metres shown on the approved plans would not provide the necessary security to prevent actual breaches of the fence taking place. I therefore attribute limited weight to these personal circumstances in favour of the appeal.
19. I have had due regard to the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010, which specifies 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. I have also had regard to rights conveyed within the Human Rights Act.
20. In respect of the above, a refusal of planning permission is a proportionate, and necessary approach to the legitimate aim of ensuring that development accords with the Council's development strategy. Therefore, whilst I acknowledge the particular circumstances of the school and its students, I conclude that this is not a matter that outweighs the harm that would be caused by the proposed development in respect of my conclusions on the main issues.

Conclusion

21. For the reasons given above, I conclude that the appeal should be dismissed.

Nichola Robinson

INSPECTOR