The Planning Inspectorate

Appeal Decision

Site visit made on 7 November 2023

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State.

Decision date: 28th November 2023

Appeal Ref: APP/D0121/D/23/3324771
The Homestead, Says Lane, Langford BS40 5DZ

- 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 C Russell against the decision of North Somerset Council.
- The application Ref 23/P/0733/FUH, dated 6 April 2023, was refused by notice dated 13 June 2023.
- The development proposed is described as the removal of existing fence and replacement with timber clad wall.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I note discussion in the appeal documents with regards to the correct description of the application, where comments from interested parties refer to a hedge being removed for the current wall, rather than an 'existing fence' being replaced. There are also comments within the Council's Officer report as to an outbuilding that has been erected and also that the wall in question has been built on the grass verge which is highways land and is not in the ownership of the appellant, although the correct certificate of the application form has been signed. It is not for me under a Section 78 appeal to determine the current correct and legal development of the existing development or changes of use. I have therefore made my decision purely and only upon the wall and on the basis of the existing conditions I experienced on my site visit and the information as part of the appeal. To that end it is open to the Council to pursue enforcement action, or for the applicant to apply for a determination under sections 191/192 of the Town and Country Planning Act if they believe the lawful development is different. My determination of this appeal under s78 does not affect the issuing of a determination under s191/192 regardless of the outcome of this appeal.

3. On my site visit I noticed that a concrete blockwork wall had been constructed with trellis above, however the timber cladding had yet to be applied. As such, part of the application is retrospective. I have made my decision on this basis.

Main Issues

4. Taking the above into account, the main issues are the effect of the wall upon:

   - The existing appeal site, including the character and appearance of the surrounding locality; and
   - The surrounding trees which are in close proximity to the wall.

Reasons

Character and appearance

5. The appeal site has an unusual configuration where the access is gained by a narrow driveway connecting to Says Lane, whereas the entire rear boundary and rear of the dwelling fronts Bristol Road, which is the predominant vantage point of the appeal property and its main contribution to the public realm. The dwellings appear to be within a transitional area with open countryside beyond the site along Says Lane. There are four detached properties which includes the appeal site share a similar configuration, with detached dwellings located to the centre of the sites, with long front and rear gardens. The dwellings have similar simple and functional design elements, with some dwellings exhibiting later alterations and extensions, however a are quite low scale with a lack of built form, particularly along boundaries which are planted with hedging with a grass verge between the rear boundary of the dwelling, the footpath and the road. There is a clear visual gap between properties where in many cases the open undeveloped spaces and large mature trees are experienced along Bristol Road which together with hedging creates a well vegetated streetscape in this edge of settlement location. These elements display a number of positive qualities which are experienced within the locality, which reinforces the local character and distinctiveness of the area.

6. The appeal site does incorporate some of the positive characteristics of the area being one of the functional dwellings located to the centre of the property and visual gaps and spaces in and around the property with large trees along the boundary which overhangs the appeal site and footpath. The trees are large, overhang the footpath and contribute positively to the spacious and well vegetated character of the area.

7. The North Somerset Core Strategy 2017 (CS) Policy CS12 seeks that development be of high quality and should respect the existing context, and function well and seek to improve the sense of place and local identity of the area development pattern, layout, siting, scale height, massing and density, amongst others, particularly in historic rural settlements and those within the green belt. Additionally, the North Somerset Sites and Policies Plan (SPP) Policy DM32 also has design related principles which seek to create high quality, distinctive development which should demonstrate sensitivity to local character, setting, existing context that create a sense of place and identity. The design policies are supported by the North Somerset Residential Design Guide (SPD) which contains guidance with regards to development and gives advice on elements such as ensuring development is proportionate and does not dominate the host building, and has suitable materials.

8. The wall currently constructed along Bristol Road, is constructed hard against the footpath, removing the grass verge and projects forward from the adjacent boundary hedges. The wall is quite tall and thick and has a very bulky and defensive appearance which is accentuated by the trellis which has been also

mounted above. I acknowledge comments with regards to a wall on the opposite side of the road, however based on the information before me I am not clear whether this particular wall has planning consent or the considerations which led to its erection. Additionally, the fence/wall opposite is not comparable to the appeal site as the wall opposite is set back from the grass verge and the footpath when compared to the appeal site which has a thick blockwork wall which would then be clad in timber and which removes the grass verge. Whilst the proposed timber cladding to the wall of the appeal site may give a better appearance than the blockwork currently in situ, this does not mitigate the harm caused, particularly as a result of the thickness of the wall, together with the harsh and defensive appearance which has removed the grass verge, a positive characteristic of the character and appearance of the area.

9. It is unclear of the references to hedgerow loss within the appeal, particularly given the existing plans appear to indicate that a fence was existing rather than a hedge. I note references to a larger housing development where the hedgerow was removed along the boundary, however it is noted that whilst there is a low timber railing type fence, this is being replanted with younger hedges and trees. Whilst there are different boundary types, the dominant character is that of hedging, vegetation and spaciousness, and the proposal adds a stark and hard contrast as opposed to the softer well vegetated character of the area. The wall does have an awkward appearance that does not reinforce the local distinctiveness of the locality.

10. I appreciate commentary from interested parties, some of whom view the wall as in keeping with the character, and see that the wall is necessary for security, keeping dogs and children off the busy Bristol Road and the prevention of rubbish being thrown in bushes. As mentioned above, I disagree that the wall would be in keeping with the character of the area, and would be incongruous within the locality. Whilst I have not been presented within any evidence regarding security issues at the property or accidents involving children or dogs, there may be other methods to be secure by design which are more compatible with the policies of the development plan. On my site visit I did not notice a great deal of rubbish located in neighbouring hedges, however this would not be a matter that would provide sufficient justification for a development such as wall erected at the appeal site.

11. Consequently, and in conclusion of this matter, the proposed scheme would be contrary to CS Policy CS12, and SPP Policy DM32, which is supported by the SPD, as described previously.

Effect on Trees

12. The Council's Reasons for Refusal state that the application failed to assess the impact upon the mature trees located close to the wall which contribute positively to the character and appearance of the area. The appeal documents do not illustrate how the trees are 'protected;' for example, by means of a Tree Preservation Order. The Planning Officer's report also makes no reference to the trees having any type of formal protection but has concerns with regards to the current construction of the wall under the crown of the tree and the disturbance made to the root zone as a result of the construction, foundations of the wall etc.

13. The appellant's Statement of Case states that a tree survey has not been carried out, as the trees were not removed. However, a tree survey is not only required for removing a tree, it is also important to understand whether any development or works within the crown of a tree could impact the root zone of the tree, which could potentially cause the trees to be harmed over time. It is also made clear within SPP Policy DM9 and the Biodiversity and Trees Supplementary Planning Document (BTSPD) of the requirement for a tree survey before development occurs. I agree with the Council that a tree survey is necessary to understand the impact of the works prior to development, and to understand whether there was a need for alternative foundations, protection measures or whether there was any interference with fauna that may be using these trees for nesting ect.

14. Typically such a matter could be resolved via a condition on a decision notice which seeks further information and protection measures for the trees and associated habitats prior to development taking place. As the wall has already been erected, a condition is not possible to resolve this matter, and on this basis the matter would fail to take into consideration the impact the development has had upon the trees and associated habitats.

15. Consequently and in conclusion of this matter, the proposal would be made contrary to CS Policies CS4, CS9 and SPP Policy DM8 (which seeks to give consideration to green infrastructure and the biodiversity of North Somerset, associated trees and habitats); CS Policy CS5 and SPP Policy DM10 (which seeks that the character distinctiveness and diversity of landscape features are considered within development proposals); CS Policy CS12 and SPP Policy DM32(which seeks to promote development that acknowledges the existing context, including environmental sustainability); and SPP Policy DM9 which is specific to seeking that development that affects trees demonstrates that the trees have been considered throughout the design and development process.

Conclusion

16. Considering the scheme as a whole against the development plan and any other material considerations, the appeal is dismissed.

J Somers

INSPECTOR