



Appeal Decision

Site visit made on 7 November 2023

by C Billings BA (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th December 2023

Appeal Ref: APP/E2530/W/23/3322050

2 Briar Walk, Bourne, Lincolnshire PE10 9TG

- 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 Darren Crooks against the decision of South Kesteven District Council.
 - The application Ref S22/1893, dated 26 September 2022, was refused by notice dated 14 November 2022.
 - The development proposed is retrospective application for the change of use of amenity land to private garden and the erection of fences to enclose the area.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my site visit the fences were in situ in the position shown on the proposed plans, already enclosing the land within the garden area of the host dwelling 2 Briar Walk (No 2).
3. There is dispute between the parties in relation to whether change of use of the land is required. I have however considered the development that has been applied for. Whether or not the change of use of the land requires planning permission is a matter for determination away from this appeal.

Main Issue

4. The main issue is the effect of the change of use of the land and fencing on the character and appearance of the surrounding area.

Reasons

5. The appeal site is located within a housing estate, which is characterised by large, detached houses set within large plots, generally set back from the road with open front gardens. There are pockets of verdant landscaping and small amenity spaces dotted around the estate, which make positive contributions to the character of the area. The appeal property is a 2-storey dwelling set on a corner bend leading into a cul-de-sac. There is no public footpath to the side of No 2 and only a narrow strip of grass remains between the fencing and the road edge.
6. As the appeal site is within a residential area, the principle of the use of the land as part of the garden of the host dwelling, would not in itself be harmful to the character and appearance of the area. Also, I do not have any substantial evidence to demonstrate that the land is or was designated as public open space, which needs to be retained for general, public enjoyment. However, the

land appears to have been incidental amenity space as part of the original estate layout, providing a positive visual contribution to the open and verdant character of the surrounding area and wider estate. Therefore, the land would have provided an important function in this regard.

7. It is appreciated that the land which has been encompassed within the rear garden of No 2 as private garden space, is and has been in the same private ownership for many years. Its private ownership, however, does not affect its function as an incidental amenity space, which provided visual amenity value to the character of the surrounding area.
8. The appellant has highlighted that there are no other examples within the estate where there is an area of land of comparable size and location remaining as open amenity space, as they have all been enclosed. However, during my site visit I observed an area of such open land to the side of 1 Briar Walk that retains such characteristics. In my view, these areas of green space next to the roads are important contributors to the visual quality of this suburban setting.
9. The position of the fence, close to the edge of the highway, together with its tall height and long length provides a greater sense of enclosure on the entrance into the cul-de-sac, appearing as a stark, incongruous, and dominant feature within the street scene. Therefore, the combination of the position and scale of the fence and, that it removes an open area of land and the lack of landscaping, has a negative impact on the character and openness of the area.
10. The retention of only a narrow strip of grass in front of the fence does not protect the open character of the surrounding area, as this is inconsequential in size and an untypical feature found in the immediate surrounding area. Also, as there is no public footpath between the road and grass strip and that the road bends round at this point, the fence appears very forward and so, prominent in its location within the street scene.
11. There are other examples of close boarded fencing nearby that are visible within the street scene, including to the side of 1 Briar Walk, 9 Briar Walk and 69 Stephenson Way. However, these other fences are generally further set back from the highway edge than the appeal proposal and include some landscaping in front of them, or are shorter in length and so, appear less stark in appearance compared to the appeal fence.
12. The examples provided of fencing in the much wider area, which are outside of the housing estate, do not influence the immediate character and appearance of the appeal surroundings. I have therefore had regard to the individual merits of the appeal proposal and its surrounding context in reaching my decision.
13. Painting the fence and introducing some hedge planting in front of it would not overcome the harm to the character and appearance of the area. It is rather the combination of the height, forward position with limited space in front, the extent of fencing and the lack of landscaping in combination that cause harm to the surrounding area. Also, a condition to reduce the height of the fencing to 1 metre would result in a form of development materially different from the appeal scheme and therefore, would be unreasonable to impose.
14. For the reasons given above, the enclosure of the land and proposed fencing would have a harmful effect on the character and appearance of the surrounding area. Therefore, the proposal would conflict with Policy DE1 of the

South Kesteven District Council Local Plan (2020) which, amongst other matters, requires development to make a positive contribution to the character of an area and not have an adverse impact on the street scene.

Other Matters

15. It is appreciated that the appellant bought the property on the basis of there being no known restrictions on the land. However, this is a private land matter. I therefore provide neutral weight to this in my consideration of the appeal.
16. It is also appreciated that there have been instances of miss-use of the area by others, which have been difficult to manage and/or caused damage to the land. I do not however have any substantive evidence in this regard and therefore can only afford limited weight to this. Also, it is unlikely that such considerations would outweigh the harm I have identified.
17. It is noted that the appellant has had some difficulties with the communication and advice given by the Council's officers and that, in their view, the Council failed to approach their decision in a positive and creative way. Such matters do not however relate to the main issue of concern and planning merits of the proposal before me. Therefore, this is a neutral finding that has no weight either for or against the proposal.
18. The use of locally sourced materials and tradespeople, which supports the local economy, is appreciated. It is also noted that the development is within a settlement and housing estate, where fencing of the same height is typically found, and therefore the development is acceptable in principle. However, I afford these matters limited weight in the planning balance, as they could apply to any residential development proposal.
19. I acknowledge that the enclosure of the land would provide an enhanced area of private amenity space for the occupiers of No 2, although I do not have any evidence to show that the property previously lacked sufficient garden space to meet the needs of its occupiers. I therefore consider this is a neutral matter that has no weight either for or against the proposal.
20. It is not clear from the evidence provided why the repositioning of the fence closer to the road provides greater security and enhances the mental well-being of the occupiers of the host dwelling, than a fence in another or the previous location. I therefore provide very little weight to these matters.
21. I cannot comment on other cases where the Council has not taken enforcement action for similar development, as I do not have full details of these. It may be possible to construct a different fence under permitted development rights. However, I do not have any substantive details of what that would be, and it is clear to me that what the appellant desires is to keep the current fence. Therefore, I attach only limited weight to this fallback position.
22. The lack of concerns related to highway safety and surface water drainage has neutral influence in making my decision, as such matters do not relate to the main issue of concern.

Conclusion

23. In view of the above, the appeal proposal conflicts with the policies contained within the development plan taken as a whole. There are no material planning considerations, including the National Planning Policy Framework, which would outweigh that conflict.

24. Therefore, I conclude that the appeal should be dismissed.

C Billings
INSPECTOR