



Appeal Decision

Site visit made on 10 January 2024

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th January 2024

Appeal Ref: APP/C3105/D/23/3329642

1 Benmead Road, Kidlington, Oxford, Oxfordshire, OX5 2BZ

- 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 Ann Josephine Chasebi against the decision of Cherwell District Council.
 - The application Ref 23/01414F dated 11 June 2023, was refused by notice dated 15 August 2023.
 - The development proposed is (retrospective) replacement of hedge with fence.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have utilised the Council's description of the proposal as I note from my site visit and the submitted evidence that the proposal is submitted on a retrospective basis.
3. Since the determination of the application a revised National Planning Policy Framework 2023 (the Framework) was adopted on 5 September 2023. The Framework was then revised in response to the Levelling-Up and Regeneration Bill: reforms to national planning policy consultation on 19 December 2023. The refusal reason generically references the Framework however, it is not considered that this impacts upon the determination of this appeal given the main changes to the Framework and the main issues before me.

Main Issue

4. The main issue is the impact of the proposal upon the character and appearance of the area as well as the appearance of 1 and 2 Benmead Road (no. 1 and no. 2) as the dwellings marking the entrance to Benmead Road.

Reasons

5. The appeal site is a detached dwelling which is located adjacent to the junction with Benmead Road and Banbury Road. The appeal site also has a frontage with Banbury Road along which the fence which is the subject of this appeal fronts (as a result of the appeal site occupying a corner plot). Both no. 1 and no. 2 share similar visual and overarching characteristics, which makes them more notable, in terms of overall visual balance, as the properties which stand either side to the entrance of Benmead Road. Prior to the erection of close boarded panel fencing, along the southwestern boundary of the appeal site, I note that there was a boundary hedgerow which is demonstrated within the photographs submitted by the appellants.

6. At the time of my site visit, I found that the appeal site occupies a prominent corner plot due to its location adjacent to the road junction. The dwelling fronts onto Benmead Road and has no garden to the rear, however, I note that private amenity space is available to the northeastern side of the dwelling which is enclosed by a red brick wall which is noted to have gained permission as outlined, in the Council's report, in 2003. This permission allowed the construction of a 1.8 metre high (6 foot) brick boundary wall. The remainder of the site has been tarmacked and was, at the time of my site visit, in use for vehicle parking.
7. Both no. 1 and no. 2 share, as previously noted, similar features including a bay window on the elevations that face towards Banbury Road. The fence which is the subject of this appeal runs along the Banbury Road boundary and partly obscures the bay window feature from view, as well as general views of the properties, which I find interrupts their visual symmetry standing either side of Benmead Road. Whilst the fence is separated from the pavement, by a grass verge and a small tree, I noted at the time of my site visit that other boundary treatments along Banbury Road (and those in the immediate vicinity on Benmead Road itself) generally consist of low fences, walls and railings which do not result in such a visually defensive or solid feature as a close boarded fence.
8. As a result of the characteristic boundary treatments outlined, the area appears open and spacious with the properties themselves being readily visible over and through the boundary treatments which contributes to the quality of the street scene and general character and appearance of the area. The fencing which has been constructed detracts from the appearance, i.e. the visual quality, of both the immediate area and the appeal site itself which then unbalances the appearance of no. 1 and no. 2. I find that the proposal results in an alien and uncharacteristic feature, in terms of both the character and appearance of the street scene, which I find is harmful to visual amenity.
9. I note that the appellant has submitted examples of similar style fencing, however, whilst these are stated to be with a 5 minutes' walk of the appeal site, they are not within such close proximity that they could reasonably be considered to be within the vicinity nor part of the character and appearance of the appeal site. The examples of fencing would not be viewed in the same or general context of the appeal site, and I have found, as previously outlined, that the typical boundary treatments in and around the appeal site are low fences, walls and railings which are a direct contrast to the proposal which is before me.
10. I do not find that the Council's assessment is, therefore, contradictory. The Officer acknowledges the appellant's submission that there are a number of examples of close boarded fencing adjacent to the highway further afield, however, the Council consider that they do not set a precedent for such fencing in the vicinity of the site. On this occasion, I agree with the Council's assessment, for the reasons outlined in the paragraph above, in that the examples provided are not visually related nor are they within the vicinity in order to be reasonably considered to be part of the character and appearance.
11. The appellant has submitted reasoning for the construction of the fence; however, these are personal reasons and they do not outweigh the harm which has been identified within the public domain. I note the appellant's assertions

as to privacy, however, I also note from my site visit and the submissions before me that the property benefits from a private amenity area to the side of the dwelling which is fully enclosed by a 1.8 metre brick wall.

12. Whilst views, from Banbury Road, into the appeal site are noted to be possible without a boundary treatment I note, from the appellant's original submissions, that the hedgerow originally extended around two sides of the appeal site boundary. The appellant has removed the hedge in its entirety, and I have no justification, or commentary, as to why this was necessary, when taking into account the desire to create vehicular access/parking of Benmead Road within the appeal site itself. I find that the desired resurfacing, and resultant parking area, could likely have retained the hedge in question maintaining the required privacy of the appellant. I note the appellant's commentary regarding the hedge, which is stated to have been much higher, however, the requirements of the General Permitted Development Order (relating to a restriction to 1 metre in height) are not applicable to a hedgerow.
13. I have no evidence that the appellant has, in this case, been discriminated against. Whilst there may be examples of fencing being over 1 metre in height there can be several circumstances relating to the presence of such fencing including, for example, being immune from enforcement action by the Council due to the passage of time which is not the case for the appeal proposal before me. The appeal proposal before me does not fall within the scope of permitted development and is therefore subject to a requirement for planning permission which must be assessed against the Local Plan in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004.
14. A lack of objection is a neutral consideration. The appellant's comments regarding liaison with local Councillors as well as the local Member of Parliament is noted, however, such support cannot and does not change the basis for assessment against the Local Plan due to the requirement for planning permission for the proposal as has been outlined. It is noted that the proposal has not resulted in any impact to residential amenity due to its positioning a sufficient distance from neighbouring properties to avoid harm in terms of loss of amenity or privacy. A lack of objection in other regards does not overcome the harm which has been identified to the character and appearance of the area as well as the impact to the visual relationship of no. 1 and no. 2 marking the entrance to Benmead Road.
15. I do not find, on this occasion, that offers to cover the proposed fence with climbing plants, plant bushes or paint the fence green would overcome the issues I have identified. Whilst such steps could, subjectively, be said to go some way to addressing concern over basic appearance (perhaps taking into account the presence of the previous hedge) it does not overcome the issues with the fence in terms of height, and material, being uncharacteristic for the area surrounding the appeal site. It should be kept in mind that character and appearance are two differing matters with character being the sum of all qualities which distinguish an area, whereas appearance is the outward, visible qualities.
16. I note that the appellant states that the houses (no. 1 and no. 2) are not held to the same standards to the houses at the opposite end of Benmead Road, however, I would outline that proposals should be considered within the immediate site context within which they would be viewed on a day-to-day

basis. In this case, the appeal site is located in a prominent corner plot location at a road junction of a road which is a busy, heavily utilised, road and which would allow day to day views of the fence in question. In the context of its immediate setting, the proposal would look uncharacteristic with the previous hedgerow being of now more limited consideration due to it having been removed in its entirety as the point of determination.

17. As a result of the materials utilised, overall height and positioning, the proposal detracts from the open, verdant, and spacious character and appearance of Banbury Road and is inconsistent with the general character of the area taking into account existing boundary treatments within the vicinity of the appeal site. In addition, the proposal unbalances the appearance of 1 and 2 Benmead Road as the dwellings which mark the entrance to the road and overall contributes to negative impact in terms of visual amenity.
18. The proposal would be contrary to the Cherwell Local Plan Part 1 2015 Policy ESD15 which requires that new development proposals should contribute positively to an area's character and identity, Cherwell Local Plan 1996 saved Policy C28 which seeks to ensure that all new development is sympathetic to the character of the urban context of that development and Policy C30 which seeks to avoid proposals that would detract from the character of an area owing to obviously poor design. The proposal would also be contrary to Paragraph 135 of the Framework which seeks to ensure that developments are sympathetic to local character including the surrounding built environment and will function well and add to the overall quality of the area.

Conclusion

19. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be dismissed.

Eleni Randle

INSPECTOR