



Appeal Decision

Site visit made on 7 November 2023

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2024

Appeal Ref: APP/J0405/W/23/3322081

1 Leapingwell Lane, Winslow, Buckinghamshire MK18 3LU

- 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 Mrs Rebecca King against the decision of Buckinghamshire Council.
- The application Ref 23/00578/APP, dated 22 February 2023, was refused by notice dated 20 April 2023.
- The development proposed is the change of use of the land from amenity space to residential land and a 6 foot fence erected behind existing conifers on land at the side of the property, including covered hardstanding and brick planter.

Decision

1. The appeal is allowed and planning permission is granted for the change of use of the land from amenity space to residential land and a 6 foot fence erected behind existing conifers on land at the side of the property, including covered hardstanding and brick planter at 1 Leapingwell Lane, Winslow, Buckinghamshire MK18 3LU in accordance with the terms of the application, Ref 23/00578/APP, dated 22 February 2023, and in accordance with the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Ref: 98/0731/APP; Location Plan; Drawing No.3a; Drawing No.4 b; and Drawing No.5a.
 - 2) If, within a period of 5 years from the date of this decision, any of the existing conifer trees shown on Drawing No.5a is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree.
 - 3) Notwithstanding the provisions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting or amending that order) no outbuildings of any kind shall be erected within the 'Existing Grass Amenity Area' as labelled on Drawing No.5a.

Preliminary Matters

2. The development has already taken place and appears to be in accordance with the plans submitted and therefore I have determined the appeal on this basis.

3. The description of development in the banner heading is taken from the application form. However, I have removed reference to 'a planning application for the retention of' as this is not an act of development.
4. Following the issuing of the council's decision notice the National Planning Policy Framework (the Framework) has been updated. As the updates do not fundamentally alter that part referred to by the parties, it has not been necessary to consult them further.

Main Issue

5. The main issue is the effect of the development upon the character and appearance of the area.

Reasons

6. Throughout the local area there are grass verges that bound corner plots that have varying depths and are typically open grassland or covered by shrubs and bushes. These grass verges retain an area of openness between the highway and the houses which softens the appearance of the area, and these positively contribute to the distinctive appearance of the area. Behind these grass verges are generally timber fences, brick walls or the flank walls of houses.
7. 1 Leapingwell Lane is located on a junction with the flank boundary of the garden extending along Magpie Way. The fence has been erected along Magpie Way behind a row of established conifer trees and a grassed verge. On the opposite side of the junction is a dwelling that has a single storey side extension with a wall that extends out from the back of it in line with the flank wall of the extension. To the side of this is a grassed verge between the wall and the highway. This wall has been built at around the same distance from the highway as the fence at No 1 and this creates a symmetry between the two properties on this junction.
8. Given the varying size of the grass verges throughout the estate, the siting of the fence retains a modest gap between the highway and the fence that is consistent with the opposite dwelling on this junction as well as other fences locally. Furthermore, timber close boarded fencing is a commonly used boundary treatment in the area and its use here does not appear out of character nor does the quality of the materials used detract from the areas appearance. Additionally, the modest height and set back of the fence ensures it does not appear overbearing from the pedestrian environment. Overall, the siting of the fencing retains the openness between the highway and the dwelling.
9. The row of conifer trees that bound the fence is an attractive feature of the development and positively contributes to softening the appearance of the grassed verge on this junction. The area is residential in character and the gardens vary in size. As such, the use of this land as garden land and the associated domestic paraphernalia does not appear out of character in the area.
10. The cover over the hardstanding is a similar height to the fence and is a simple, open structure that does not appear out of place in this residential garden. The brick planter is sited further within the garden and is not visible from the highway and again is appropriate to this domestic garden. As such, these elements of the scheme do not appear out of character for the area.

11. Therefore, the development does not harm the character or appearance of the area and is in accordance with Policy BE2 of the Vale of Aylesbury Local Plan 2013-2033. This policy seeks, amongst other matters, to ensure development respects and complements the physical characteristics of the site and its surroundings including the scale and context of the site and its setting. The scheme also accords with principle DES38 of the Aylesbury Vale Area Design Supplementary Planning Document which states that boundary treatments should be reflective of the area and local traditions. The scheme also accords with the Framework and the National Design Guide insofar as it seeks to ensure developments are sympathetic to local character and relate well to the site and its local and wider context.

Other Matters

12. The council refers to a development for a boundary fence that was dismissed at appeal (reference: APP/J0405/W/21/3283886). The main issue in that appeal related to the effect of that development on the character and appearance of that area. This was specific to that site which is located a significant distance from this appeal site. As such, the conclusions on this matter were specific to that appeal site, as are my conclusions for this appeal. Accordingly, these considerations are notably different to the appeal before me now.

Conditions

13. The development has already taken place and as such the statutory commencement condition is not necessary. However, a condition requiring the development is carried out in accordance with the plans is necessary in the interest of certainty.
14. The conifer trees make a positive contribution to the character and appearance of the area and as such it is necessary to make the development acceptable in planning terms for them to be replaced if they were to become seriously damaged or diseased via a condition. However, I have referred to Drawing No.5a as this identifies the location of all of the conifer trees, whilst drawings No.3a and No.4 b do not show the conifer trees that bound rear of the fence.
15. The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The limited height and set back of the fence contributes to retaining the openness of this corner plot. If an outbuilding was erected that was taller than the fence it would erode the openness of the site which would detract from the character and appearance of the area. Accordingly, this would provide clear justification, in this instance, for restricting the permitted development right to erect outbuildings on this part of the site.

Conclusion

16. For the reasons given above I conclude that the development is in accordance with the development plan as a whole and there are no material considerations that indicate that a decision should be made other than in accordance with it. Therefore, the appeal should be allowed.

G Sibley

INSPECTOR