



Appeal Decision

Site visit made on 20 February 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2024

Appeal Ref: APP/F2415/W/23/3322902

54 Station Road, Thurnby, Leicestershire LE7 9PU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Mohammedimran Ansari against the decision of Harborough District Council.
 - The application Ref 22/02075/FUL was approved on 2 March 2023 and planning permission was granted subject to conditions.
 - The development permitted is the erection of a 1.5 storey rear extension, installation of dormer window and rooflight to front roof elevation, addition of timber cladding.
 - The condition in dispute is No 6 which states: *Notwithstanding the provisions of Part 2 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order revoking or reenacting or amending that Order with or without modification) no gates, fences, walls or other means of enclosure, shall be erected around the front garden of the site.*
 - The reason given for the condition is: *To safeguard the character and appearance of the area and in the interests of the safe and convenient use of the private access road, having regard to Harborough Local Plan Policy GD8, and the National Planning Policy Framework.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the appeal was lodged, a revised National Planning Policy Framework ('the Framework') has been published. This has not raised any new matters which are determinative to the outcome of this appeal.
3. The description of development as detailed on the planning application form included a front boundary wall. I have been advised that due to concerns raised by the Council, this was omitted from the scheme. Consequently, I have taken the description of development in the banner heading above from the appellant's appeal form and the Council's decision notice which excludes the boundary wall.
4. The name shown on the planning application form is a shortened version of the appellant's name. Therefore, I have included the appellant's full name in the banner heading above, as shown on the appeal form.

Background and Main Issue

5. Planning permission for the extension and alteration of the existing dwelling was granted under Ref 22/02075/FUL. Condition 6 removed permitted development rights for the erection of gates, walls, fences or other means of

enclosure under Class A, Part 2, Schedule 2 of The Town and Country (General Permitted Development) (England) Order 2015 ('the GPDO') as the Council was concerned that these features could affect the character and appearance of the surrounding area and highway safety. Accordingly, the main issue is whether Condition 6 is reasonable and necessary.

Reasons

6. The appeal site comprises one of five detached dwellings accessed via a narrow road set back from Station Road by a heavily planted grass verge. The dwellings' front gardens are all open to the access road with an absence of boundary treatments. The front gardens are landscaped and together, with the planted grass verge on the opposite side of the road, they create a verdant character and appearance. Consequently, the construction of gates, walls, fences or other means of enclosure within the front garden or along the front boundary of the appeal site would be incongruous and appear prominent and alien within the surrounding area.
7. Condition 6 does not prevent the construction of gates, walls, fences or other means of enclosure at the appeal site. Instead, it would require the appellant to submit a planning application for consideration by the Council. This would ensure that the siting, height and materials of any means of enclosure would be appropriate for their context. The Council has suggested that Condition 6 could be amended to require the submission of details for approval. However, even if these could be agreed between the main parties, depending on their siting, it would not necessarily prevent the construction of a harmful means of enclosure under the GPDO.
8. The Council has raised concern that the construction of a gate, wall or fence adjacent to the road could harm highway safety. However, section 3(6) of the GPDO does not authorise developments under Class A, Part 2, Schedule 2 that would create an obstruction to the view of persons using any highway used by vehicular traffic so as to likely to cause a danger to such persons. Consequently, a gate, wall, or fence erected at the appeal site as permitted development, could not pose a highway safety issue. Therefore, Condition 6 is not reasonable or necessary on highway safety grounds.
9. In reference to the main issue, Condition 6 is reasonable and necessary to ensure the character and appearance of the surrounding area is not adversely harmed by any gates, walls, fences or other means of enclosure permitted under Class A, Part 2, Schedule 2 of the GPDO.

Other Matters

10. The appellant has raised concern that a means of enclosure to the front garden is necessary to prevent trespassing and to secure their vehicles. However, there is nothing before me to suggest that the area is susceptible to crime, that trespassing would be prevalent, or that other less harmful means of security measures could not achieve the same outcome.
11. It has been brought to my attention that members of the appellant's family (children) have been diagnosed with a health condition that meets the statutory definition of a disability. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the Public Sector Equality Duty ('the PSED') contained in Section 149 of the

Equality Act 2010 ('the Act'), which sets out 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.

12. I have also had regard to Article 8(1) of the European Convention on Human Rights as enshrined in the Human Rights Act 1998, that everyone has the right to respect for his private and family life and his home. Where Article 8(1) rights are those of children, as in this case, they must also be seen in the context of Article 3(1) of the United Nations Convention on the Rights of the Child. Childrens' best interests are thus a primary consideration and no other consideration, including the impact on the character and appearance of the area, is intrinsically more important.
13. I have considered the personal circumstances of the appellant's family members. The best interests of the children weigh in favour of allowing the appeal. The appellant asserts that the front garden needs to be enclosed to provide a safe and secure environment for the children to use. Nonetheless, this consideration is tempered somewhat as the appeal site is a substantially sized plot and the appellant has not indicated why the rear and side gardens could not be enclosed to provide sufficient outdoor space for the children, or why other less harmful means of securing the front boundary, such as with a hedgerow, would not be appropriate. Therefore, I am not persuaded from the information before me, that the best interests of these children could not be achieved by less harmful means of enclosing the site.
14. As such, while I acknowledge the particular circumstances of the appellants' family members, there are no considerations of sufficient weight to indicate a decision should be made other than in accordance with the development plan. My decision is a proportionate and legitimate response to the requirements of the Act and those of the plan led system.

Conclusion

15. For the reasons set out above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR