

Appeal Decision

Site visit made on 20 August 2024

by V Goldberg BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 October 2024

Appeal Ref: APP/K3605/W/24/3336873

227A Fleetside, West Molesey, Surrey KT8 2NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Moin Uddin against the decision of Elmbridge Borough Council.
 - The application Ref is 2023/0124.
 - The development proposed is a replacement perimeter fence following storm damage to original wall.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form states the development was completed in March 2022. During my visit, I noted that the fence, which incorporates a grass verge into the rear garden of the appeal property, was complete and that it accords with the application plans before me. I have therefore considered the appeal on the basis that the development has already taken place.
3. The appellant has submitted an amended plan as part of the appeal. The procedural guide for planning appeals advises that the appeal process should not be used to evolve a scheme, as it is important that what is considered by the Inspector at appeal, is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage.
4. Established case law states that, in considering whether, or not, to accept amendments to a proposal during the appeal process, it must be considered whether the proposed change involves a "substantial difference" or a "fundamental change" to the application and whether the proposed amendments would cause unlawful procedural unfairness to anyone involved in the appeal.
5. The amended plan details pedestrian visibility splays and would not substantially alter the appeal scheme compared to that upon which the Council made its decision. However, the Council has not had the opportunity to comment on the amended plan. On that basis I find that accepting the plan would cause unlawful procedural unfairness. Accordingly, I have determined the appeal having regard to the same plans on which the Council made its decision.

Main Issues

6. The main issues are the effect of the development on:

- the character and appearance of the area and green infrastructure; and
- highway safety.

Reasons

Character and appearance/green infrastructure

7. The appeal site comprises a two-storey end of terrace dwelling, which flanks Fleetside. The road is part of a carefully planned housing estate, with a prevailing verdant, open character and appearance resulting from the open frontages on properties, grass verges and landscaped areas throughout the estate.
8. The grass verge enclosed by the fence that is the subject of this appeal, would have contributed to a sense of place and made a positive contribution to the character and appearance of the area prior to its enclosure. In addition, as it appears to have formed part of the integral greenspace of the estate, evident from detail in the original planning application (ESH/1966/0772), it constitutes a 'green infrastructure asset' under Policy 14 of the Elmbridge's Core Strategy 2011 (ECS). This is notwithstanding that it is not shown on or specifically designated on any of the Council's formal plans or maps and is in private ownership.
9. The enclosure of the grass verge by close boarded fencing with concrete pillars, appears stark in the street scene and fails to protect or enhance the prevailing open qualities of the area. This gives rise to significant harm to the character and appearance of the area and diminishes the green infrastructure of the estate by a marked degree.
10. I have been made aware of other examples of high walls and fences. While I do not know the specific planning or policy considerations behind these, I note that Nos 25A, 39A and 92 all have grass verges adjacent to the fence/wall thus retaining a verdant quality. Whilst No 256 appears comparable to the appeal site, it is the exception rather than the rule. In addition, there is no evidence before me that this site or the others referred to enclosed what was originally a grass verge outside of a private garden space, as is the case in the development the subject of this appeal. As such, these examples are not wholly comparable to the development before me and do not justify a planning permission.
11. I note that the appellant disputes the relevance of an appeal decision provided by the Council (Ref APP/K3605/W/21/3288660) in support of its case. Nonetheless, I have reached my conclusions independent of its findings.
12. For the reasons identified above, I conclude that the development has an unacceptable effect on the character and appearance of the area and the provision of green infrastructure. It is therefore contrary to Policies CS7, CS14 and CS17 of the ECS and Policy DM2 of the Elmbridge Development Management Plan 2015 (EDMP). These policies require, amongst other things, development to integrate with and preserve or enhance local character and to protect green infrastructure.

13. The Council's decision notice cites Policy DM20 of the ECS, which refers to the definition of 'Open Space' within the National Planning Policy Framework (the Framework). However, given that the grass verge did not offer an important opportunity for sport and recreation, it would not constitute 'Open Space' as defined in the Framework. Accordingly, this policy, nor Paragraph 97 of the Framework, are relevant to the appeal.

Highway Safety

14. The rear section of the appeal site is positioned on the corner forming the access to some garages serving Fleetside. I observed that the fence as erected provides limited visibility between pedestrians using the footpath and drivers exiting the garages onto Fleetside, with resulting harm to highway safety.
15. Whilst a condition requiring amendments to the fence to provide appropriate visibility splays might have overcome this concern, I have not pursued this given that I am dismissing the appeal for other reasons.
16. I conclude that the development has an unacceptable effect on highway safety. It is therefore contrary to Policies DM2 and DM7 of the EDMP which require access to and from the highway to be safe for users and for developments to create safe and secure environments.

Other Matters

17. The appellant advises that the previous wall was insufficiently supported which resulted in its failure. However, this does not justify the design or position of the replacement fence.
18. With reference to the fence being required to protect privacy and discourage burglars, the erected fence and its position is unlikely to be the only method to address these matters and the evidence does not adequately demonstrate that the appellant has explored all other potential options. Reference is also made to a secure enclosure being required to safeguard the appellant from being liable, in the event of a person being injured on his land. However, the open nature of the verge is not particularly different from the appellant's front garden or from other privately owned open spaces. In addition, if this concern persists, as the solicitor letter suggests, insurance options could be explored. Whilst this might have a cost implication for the appellant, such a matter is not material to my consideration of the appeal. I thus afford limited weight to these matters and they do not outweigh the harms I have identified.

Conclusion

19. The development conflicts with the development plan as a whole and the material considerations before me do not indicate that the appeal should be decided other than in accordance with it. Accordingly, I conclude that the appeal should be dismissed.

V Goldberg

INSPECTOR