



Appeal Decision

Site visit made on 5 November 2024

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 22 November 2024

Appeal Ref: APP/F0935/W/24/3339074

1 Furnace Row, Distington, Workington, Cumbria CA14 4NZ

- 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 Jennifer Gibson against the decision of Cumberland Council.
 - The application Ref is FUL/2023/0253.
 - The development proposed is retrospective application for fence erected at 1.78 meters high, adjacent to a highway. Including change of use of land to domestic.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my visit, I observed the fence and saw that the appeal site comprises a residential garden with a parking space. The evidence indicates the vehicle access will be closed once the works to the garden are complete. In this regard, the planning application form states that the development was completed in February 2021. Moreover, planning permission is sought to retain the development that has been implemented. Nevertheless, I have determined the appeal on the basis that the fence would extend across the entire frontage of the appeal site as indicated on the submitted plan.

Main Issue

3. The main issue is the effect of the development on highway safety.

Reasons

4. The appeal relates to an area of land on Furnace Row, to the rear of Winscales Avenue, and between the appeal property and the side boundary of the rear garden of 15 Winscales Avenue. Formerly overgrown and with a boundary hedge, the appeal site has been cleared to create a garden with a roadside boundary fence. It is separated from No 1 by a hardstanding driveway that provides access to the rear of the appeal property terrace.
5. The Council considers that the change of use of the land to residential garden for No 1 is acceptable, and I see no reason to disagree.
6. The new boundary fence extends for around 30m along the highway and for around 5m along the side boundary with 15 Winscales Avenue. The fence has been sited forward of the line of the former hedgerow and it is within the highway boundary. Taking into account its siting, design and height, adequate visibility splays cannot be achieved for the access to the rear of No 15 or for the parking area in the appeal site. As noted above, the parking space would

be removed if the appeal was allowed. However, the extended fence would then restrict visibility from the access to the side of the appeal property.

7. Vehicles exiting an access to either side of the fence, in forward or reverse gear, would have to protrude into the highway before the driver could see if the road was clear. More vulnerable road users, these being pedestrians and cyclists, using either access would similarly need to step out beyond the fence to see if the road was clear. The fence restricts intervisibility between road users passing the appeal site and those exiting the accesses. This potential for conflict between pedestrians, cyclists and vehicles is detrimental to the safe operation of the highway.
8. I understand that the access to No 15 is rarely used and the neighbours have no concerns about visibility. Be that as it may, adequate visibility splays cannot be achieved to either side of the fence subject of the appeal. In this regard, the reduced visibility from the neighbours' access has constrained their ability to upgrade or alter the access to the rear of their property¹. Moreover, irrespective of how the neighbours currently use it, there could be no guarantee that future occupiers of No 15 would not seek to use the rear access, which leads to their garage, on a frequent and regular basis.
9. At the time of my visit, I saw the building works close to the junction of Winscales Avenue, together with associated scaffolding and fencing. Few details have been provided in relation to that building, but it is not in any case directly comparable to the appeal fence. Moreover, even if it did restrict visibility and compromise highway safety, that would not provide a justification for the appeal. I understand that the former vegetated boundary protruded towards the highway. However, vegetation is temporary and it can be cut back, unlike the appeal fence which would be permanent.
10. Therefore, I conclude that by virtue of the height, design and siting of the fence, the appeal scheme harms the safe operation of the highway. As such, it conflicts with policies S4 and DM14 of Allerdale Local Plan Part 1 Adopted July 2014. These require, among other things, that development functions well by ensuring suitable standards of access for vehicles, cyclists and pedestrians.

Other Matters

11. The garden will undoubtedly be a benefit to the appellant and her family. However, while a boundary fence may be reasonably necessary to secure the highway frontage, substantially similar benefits could be achieved by appropriately siting the fence back from the highway or by lowering its height.
12. The neighbours are generally supportive of the proposal and consider that the change of use results in visual enhancement of the area. However, the visual improvement could be achieved without harm to highway safety. Neither this nor the support for the scheme outweigh the harm that I have found.
13. Bat boxes have been erected on the inside of the fence. These are positioned low to the ground and away from tree lines and hedgerows. This reduces their suitability to be used by roosting bats and renders any bats that use them vulnerable to predation and disturbance. The bat boxes do not weigh in favour of the scheme. However, while no survey has been provided, the appellant states she has seen bats using the boxes. Therefore, any future works to

¹ Ref HOU/2024/0077

move or alter the fence will need to comply with the legislative protection afforded to bats and their roosts, this being a matter that would need to be advised upon by a suitably qualified and experienced bat consultant.

14. As the change of use would be acceptable, I have considered whether or not it would be appropriate to issue a split decision allowing the change of use but dismissing the fence. However, as the appeal site extends into the highway boundary, I cannot be certain that the provision of the necessary visibility splays would not result in a change to the boundaries of the appeal site.

Conclusion

15. For the reasons set out above, notwithstanding that the change of use is acceptable, I conclude that the development and the appeal scheme conflict with the development plan and there are no material considerations that outweigh that conflict.
16. Therefore, I conclude that the appeal is dismissed.

Sarah Manchester

INSPECTOR