



Appeal Decision

Site visit made on 11 December 2024

by **Andrew Dale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 December 2024

Appeal Ref. APP/P3040/D/24/3350031

23 Pankhurst Close, East Leake, Loughborough LE12 6BD

- 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 Ms H Scotney against the decision of Rushcliffe Borough Council.
 - The application ref. is 24/00969/FUL.
 - The development proposed is erection of boundary fencing to rear garden.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of boundary fencing to rear garden at 23 Pankhurst Close, East Leake, Loughborough LE12 6BD in accordance with the terms of the application, ref. 24/00969/FUL, and the plans submitted with it numbered/titled: MSP.1799/001 Site Location Plan; and MSP.2075/002A Block Plan/Fence details.

Preliminary matters

2. The appeal concerns fencing that was erected in January 2024 on the side and rear boundaries of the back garden of 23 Pankhurst Close. The external face of the fencing consists of vertically boarded timber.
3. The application was made retrospectively. It is worth noting, chiefly for the benefit of third parties, that the fact that a person has carried out works before obtaining planning permission is not held against him or her when assessing the planning merits of a development, at the application stage or at appeal. Equally, the fact that the development already exists is not a factor that weighs in favour of its retention.
4. A revised National Planning Policy Framework (Framework) was published on 12 December 2024. The substantive parts of the new 2024 version do not however differ from the previous version insofar as they relate to the main issues in this appeal. The cases of the main parties will not therefore be prejudiced by my reference to the new version. I have proceeded on this basis.

Main issues

5. The decision notice contains a single reason for refusal which relates to the impact of the fencing on the character and appearance of the area. There is no specific mention within it of an alleged overbearing effect on the occupiers of 28 Pankhurst
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Close. Yet this matter is highlighted in the Officer's report under the subheading *Impact on residential amenities*, referred to in the third party representations (as is the allied matter of overshadowing) and covered in Ms Scotney's Planning Appeal Statement. I shall assess the residential amenity impacts as a second main issue.

6. The main issues are the impact of the fencing upon the character and appearance of the area and upon the amenity of the occupiers of 28 Pankhurst Close with particular regard to the potential for any overbearing or overshadowing effects.

Reasons

7. No. 23 is a detached house. It stands on the southern edge of a recently built and sizeable housing estate. At the front, it overlooks a private drive and open space beyond. The appellant has created an attractive, low maintenance rear garden. It includes a garden room behind the garage. The back (northern) boundary of the rear garden runs up to the southern side boundary of the bungalow at no. 28 and the private drive that serves the front driveways of nos 28 and 29 and rear parking spaces for 3 other dwellings that front onto the public highway of Pankhurst Close.
8. The Council takes exception to the visual impact of the 2.34m high timber fence along the rear northern boundary and to a return section of the same height in the north-eastern corner of the garden on the boundary with no. 24. The Council accepts that the 2.49m high section of fence-like cladding to the garden room building that joins the western end of the timber fence is permitted development; it was not part of the application and it is not before me.
9. The plans approved for the estate included 1.8m high screen fences to most of the side and rear boundaries of the dwellings, as was provided for at no. 23.
10. The subject close boarded timber fencing's length, siting and location, style, design, appearance and natural finish are largely in keeping with the other rear boundary fences in the immediate locality around the private drive and the rear parking court.
11. I accept that due to its height, the fencing is taller than those other fences and the original fence at the rear of no. 23 which is still in place. The difference in height is only of the order of about 0.54m. The fencing is not visually prominent from any public vantage points on land at the front of the property or on the route of the public highway of Pankhurst Close to the east and north of the site.
12. Pages 36 and 37 of the Rushcliffe Residential Design Guide Supplementary Planning Document (SPD) on boundary details, when read together, are essentially aimed at guiding the treatment to typical front garden boundaries, where the protection of privacy is likely to be less important than the character of the public street scene. The reference to a height limit of 1.8m in the SPD must surely relate to such boundaries given the permitted development right to erect 2m high structures on other boundaries in most cases.
13. That the several properties that back onto the private drive have tall screen fencing to their rear gardens and that the general public do not pass and repass through the unadopted space at the back of no. 23 indicates to me that the appellant's description of the fencing being at a private to private interface rings truer than the Council's call for a comparison with the prevailing pattern and character of boundary treatments adjacent to highways in the immediate area.

14. The fencing is seen from private vantage points in and around the private drive to the north including the windows and gardens of several dwellings. Even so, being visible in such private views does not mean that the fence is necessarily at odds with its surroundings or inappropriately obtrusive. The fencing is not viewed as a wholly unusual structure in terms of its height and scale in the context of the characteristics of its surroundings. I consider that the 2 sections of fencing identified by the Council do not result in such a markedly discordant development in visual terms as to warrant refusal of planning permission.
15. I therefore find on the first main issue that the fencing does not have a materially harmful impact upon the character and appearance of the area.
16. On the second main issue, the Council considers that the height of the fence along the side boundary with no. 28 results in an overbearing and dominant feature having a negative impact on this property. Relating to this issue, the occupier of that neighbouring property said that the height of the fence increases in size as it runs down the side of no. 28 and blocks sunlight to the area containing the driveway and the side entrance gate.
17. The boundary fence is sited next to the forwardmost part of the side boundary of no. 28 where there is the side passageway and the front driveway to the bungalow. The reference to the fence increasing in size as it runs down the side of no. 28 appears to refer to the 2.49m high section of fence-like cladding to the garden room building at the appeal property. As I explained above that cladding is not before me.
18. There are no windows to habitable rooms in the forwardmost side of no. 28 directly opposing the common boundary. The fencing does not affect the light received by the rear garden of no. 28 or the natural views from within it. The main outlook of no. 28 is from its rear-facing windows across the rear garden. This is not harmed by the fencing. I accept that the fencing is visible from some parts of the side passageway, from the front drive and, in angled views, from the bedroom windows in the front elevation. Any impact on the outlook from, the light received by or the enjoyment of those areas and rooms is, in my view, limited. In particular, the fence does not impede the direct outlook from the bedrooms and the appellant demonstrates through cross section drawings how the angled outlook from the closest front bedroom window is affected more by the surrounding buildings than by the adjacent fence.
19. I therefore find on the second main issue that the fencing does not materially harm the amenity of the occupiers of 28 Pankhurst Close with particular regard to the potential for any overbearing or overshadowing effects.
20. Given my findings on the main issues, I can identify no conflict with Policy 10 of the Rushcliffe Local Plan Part 1: Core Strategy or Policy 1 of the Rushcliffe Local Plan Part 2: Land and Planning Policies which, when read together, cover a wide range of design objectives and development requirements. Amongst other things, planning permission for new development will be granted provided that its scale, density, height, massing, design, layout and materials are sympathetic to the character and appearance of the neighbouring buildings and the surrounding area and that it is not overbearing or the cause of undue overshadowing in relation to neighbouring properties. These policies are consistent with the Framework's objectives for achieving well-designed places.

21. The Framework encourages the creation of places with a high standard of amenity for existing and future users. There is a suggestion made by the appellant that the original rear boundary fence was not totally effective in securing privacy because the ground levels of the appeal dwelling and its rear garden are higher than the private drive to the rear. Be that as it may, I found that the fencing simply encloses the rear garden of the appeal property so that the occupiers have a good standard of privacy and nothing more. I saw also how the fencing restricts views down onto the front of the bungalow at 28 Pankhurst Close, improving the privacy for those neighbours. These factors add some further weight in favour of the scheme.
22. The Council is concerned that allowing the appeal could set an undesirable precedent for similar fencing schemes in the area. However, I have, as is required, determined the application on its individual merits having regard to the circumstances of the case and the prevailing development plan policies. I have found that the appeal scheme is not out of kilter with the development plan and would not cause harm. Any other proposals that come forward would also need to be considered on their own merits and the Council would be entitled to refuse planning permission for them should demonstrable harm be found.
23. As the development I am permitting has already been carried out in accordance with the submitted plans, I see no need for any planning conditions. For the avoidance of doubt, I shall however refer to the relevant plan drawings in the effective part of the decision.
24. For the reasons given above and having regard to all other matters raised by all the parties, I conclude that this appeal should succeed.

Andrew Dale

INSPECTOR