Appeal Decisions

Site visit made on 7 April 2009

by J B Pybus DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
21 April 2009

Appeal A Ref: APP/M3835/C/08/2081790
49 Parklands Avenue, Worthing, BN12 4NG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Spencer T Adams against an enforcement notice issued by Worthing Borough Council.
- The Council's reference is 002837/AN.
- The notice was issued on 26 June 2008.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a fence and wall over one metre high adjacent to the highway.
- The requirements of the notice are:
  (i) Reduce the height of the wall and fence panels fronting Goring Road to no more than one metre in height and
  (ii) Reduce to no more than one metre the height of the first metre of each of the two wall and fence panels running southwards from the Goring Road frontage
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Appeal B Ref: APP/M3835/A/08/2084748
49 Parklands Avenue, Worthing, BN12 4NG

- 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 Spencer T Adams against the decision of Worthing Borough Council.
- The application ref WB/08/0271/FULL, dated 3 March 2008, was refused by notice dated 29 April 2008.
- The proposal is enclosing partial side section of garden for security purposes by means of erecting brick pillars with featherboard fencing in between on a corner plot. Replacing front wall with same bricks as house to make good and add wrought iron balustrades with spear head finials.

Decision

1. I allow Appeal B and grant planning permission for the retention of side and rear garden boundary walls of brick piers and featherboard fencing, and for the construction of new wrought iron balustrades and spear head finials incorporated in reconstructed walls around the front garden, at 49 Parklands

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Avenue, Worthing, BN12 4NG, in accordance with the terms of the application ref: WB/08/0271/FULL, dated 3 March 2008, and the plans submitted therewith, subject to the following condition:

1) Within one month of the date of this permission, details of measures to stain the featherboard fencing hereby permitted, to include a specification of the colour of such staining, shall be submitted for approval to the Local Planning Authority. The measures as approved shall be implemented within a further two months and the fencing shall be permanently retained in the colour approved.

Procedural Matters

2. As the development to which Appeal B relates has partially taken place, I am dealing with this element of the proposal as provided for by section 73A (2) (a) of the *Town and Country Planning Act 1990*.

3. The description of the proposed development in Appeal B is taken from the application form. The Council has used a different description. I consider that the above description used in the decision is both more comprehensive and more accurately describes the proposed development.

4. With the ground (a) appeal having lapsed in relation to Appeal A, there is only the ground (g) appeal to consider. Although the appeal form itself contains no specific reference to a ground (g) appeal, subsequent submissions by the appellant confirmed that such an appeal is made, and it is contended that the time for compliance with the notice should be increased by a further two months. However, as provided by section 180 of the Act, the effect of planning permission for the retention of the section of fence in dispute is that the enforcement notice ceases to have effect to the extent that its requirements are inconsistent with that permission. I therefore do not consider the ground (g) appeal further.

5. I find that paragraph 3 of the enforcement notice, when read in conjunction with the attached plan, is unclear as regards specifying precisely the section of fence which is attacked by the enforcement notice. However, as the notice is of no effect by virtue of the planning permission I am granting, I am not proceeding to correct it using the powers that are available to me.

Appeal B

Main issue

6. The main issue in the appeal is the effect of the disputed fence on the street scene.

Reasons

7. The appeal property is a detached dwelling on a prominent corner at the junction of Parklands Avenue and the busy Goring Road. The side garden actually flanks a slip road which is parallel to Goring Road. The immediate residential area comprises detached and semi-detached houses, mostly on reasonably sized plots and set back from the road. This results in a generally open appearance.

8. The development the subject of this appeal has two elements. The first is a three sided section of close boarded feather edged fencing on a low brick wall,

acknowledges that the open character of the front of the dwelling would be retained. However, I do not consider that there needs to be a low enclosure along the entire boundary of this corner property in order to maintain a general sense of openness; I am confident that this can be achieved by retaining a low enclosure along the front and part of the side garden only, as is proposed. It is not uncommon in estates which are generally regarded as 'open plan' for corner properties to have some form of higher enclosure of the rear garden. Indeed, to the extent that the disputed enclosure has already been constructed, and the frontage wall is basically as it is proposed to be minus the iron railings, I consider that the open character of the property is retained.

14. The use of the property and the benefit of the rear garden to its occupants should also be considered. It is not an unreasonable expectation that the rear garden should be private, as secure as possible and capable of use by young children unsupervised. As far as I can see, this can only be satisfactorily achieved in the circumstances of the appeal property by establishing a higher enclosure either on the line of the former wall, or very close to it. A suggestion made by the Council following the refusal of the planning application of setting back the fence with planting between the fence and wall might reduce the impact of the fence in the fullness of time, but it would result in a somewhat cluttered appearance and would do little to maintain the openness of the rear garden which previously existed.

15. With regard to the various fences and walls referred to me by the appellant, I noted that they were in a variety of styles with differing proportions of fencing and brick, and more significantly in different locational contexts, with few actually relating to corner properties as here. Moreover, the Council states in response to these examples that the large majority do not have planning permission. I do not find therefore that these other instances of fences or walls in the region of 1.8m to 2m high have a significant bearing on the case before me, which I have considered on its own merits in the light of the relevant development plan policies.

16. I conclude on the main issue that subject to suitable staining of the fence panels that the whole enclosure of the rear and part of the side garden has no materially detrimental effect on the street scene. I find no conflict with development plan policies DEV1 and BE1 and I therefore propose to allow the appeal and grant planning permission subject to a condition, for the reasons given, relating to the treatment of the fence.

J B Pybus

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with individual panels separated by brick piers. The average height to the top of the brick piers is about 2m, although this does vary due to a drop in ground level towards the house. The effect of this section of fence is to enclose the side and rear garden, and it is this part of the development which has taken place and to which the enforcement notice relates.

9. The second element is the construction of wrought iron balustrades and spear head finials along each section of reconstructed low wall around the remainder of the side of the property and the front garden. The wall is an average of about 0.6m high, with intermediate piers of about 1m in height. The infilling between the piers with railings with a low overall height preserves the open appearance of the front of the property and the Council raises no objection to this element. I agree that it is uncontroversial and the materials specified in the application are acceptable. I therefore turn my attention to the 2m high fence.

10. The thrust of the Council's objection is that the fence is obtrusive and detracts from the open character of the area. It is stated that a large number of applications to increase the height of residential boundary fences and walls are received, many of which involve corner properties, and in these cases the importance of the openness of gardens is generally considered to prevail. The appellant, however, has pointed to the need to enclose his rear garden for the security and privacy of his family, and has stressed that much thought and consideration has gone into the design and materials of the fence. Other instances of high boundary walls and fences in neighbouring residential roads have been cited, and either before or during the site visit I saw all the examples referred to in Parklands Avenue, Warnham Road, Warnham Close, Cowdray Drive, Alinora Crescent, Smugglers Walk and Marlborough Way.

11. I fully appreciate the Council's concern to maintain the open character of the residential roads in the vicinity of the appeal property, and boundary walls and fences are clearly key factors as far as this objective is concerned. This objective is consistent with policies DEV1 and BE1 respectively of the *West Sussex Structure Plan 2001-2016* and the *Worthing Local Plan,* both of which aim to achieve high quality in new development. Policy BE1 also advises that the relationship between built forms and open spaces surrounding is compatible with the character and appearance of the locality.

12. From my inspection of the appeal property and surroundings, I recognise that the fence is very visible, especially from the slip road, but also from Goring Road some distance either side of the Parklands Avenue junction. However, I consider that the principle of increasing the height of the existing brick piers with matching brick and infilling the spaces between with close boarded fencing has resulted in an enclosure of acceptable appearance. Any prominence in the street scene is largely as a result of the rather 'raw' appearance of the untreated timber, rather than from the length, height and overall design of the enclosure itself. This 'harshness' could be overcome by suitable staining of the fence panels, which it is clear the appellant is prepared to undertake.

13. On the matter of the open character of the appeal property and other dwellings in the vicinity of the Parklands Avenue and Goring Road junction, it is particularly significant that the appeal proposal would result in the retention of the open front garden facing Parklands Avenue. The Council readily