



Appeal Decision

Hearing and site visit held on
14 July 2009

by **Anthony J Wilson BA MA DipLA MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
3 August 2009

Appeal Ref: APP/W0734/A/09/2100359

25 Pine Hill, Coulby Newham, Middlesbrough, TS8 0RW

- 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 Mr E J Brady against the decision of Middlesbrough Borough Council.
- The application Ref: M/FP/1953/08/P, dated 7 December 2008, was refused by notice dated 19 January 2009.
- The development proposed is described as a "Retrospective planning application for the erection of a new boundary line wall with wrought iron railings above and the installation of a new vehicular exit from the property".

Procedural matters

1. The original description of the development is set out in the last bullet point above. However, I understand that between the submission of the application and its determination, the vehicle exit on to Gunnergate Lane was withdrawn and the wall and railings were extended to fill the gap in the site frontage. The Council subsequently amended the description to read "Retrospective 1.8m boundary enclosure" and this description appears on the decision notice.
2. Whilst I am aware that the application is retrospective, I consider that the description ought to be worded so as to more accurately reflect the development for which permission is being sought. It was agreed by the main parties, therefore, that the proposal should be described as "*The erection of a 1.8m boundary enclosure, comprising a brick wall with wrought iron railings above*", and I have proceeded to determine the appeal on this basis.
3. The Council also advised that, following the withdrawal of the vehicle exit from the application, the plans were amended to reflect this change. The revised drawings numbered 3 of 4 and 4 of 4, and annotated Revision B: 26/12/08, were not part of the submitted appeal documents but copies were provided to me at the Hearing. It was also confirmed that the revised plans were those before the Council when the decision was taken and that they accurately show the wall, pillars and railings as they currently stand on the appeal site. For the avoidance of doubt, I have considered the development on the basis of these revised drawings.

Costs

4. At the Hearing, an application for costs was made by the applicant against the Council. This application is the subject of a separate Decision.
-

Decision

5. I allow the appeal, and grant planning permission for the erection of a 1.8m boundary enclosure, comprising a brick wall with wrought iron railings above at 25 Pine Hill, Coulby Newham, Middlesbrough in accordance with the terms of the application, M/FP/1953/08/P, dated 7 December 2008, and the amended plans dated 26/12/08 submitted with it.

Main issues

6. I consider the main issues are:
 - a) the effect of the proposed development on the character and appearance of the area; and
 - b) the effect of the proposal on the amenities of the occupiers of the neighbouring residential properties.

Reasons

Policy and other publications

7. Pine Hill was developed to a broad template set out in a design brief published by the Council, entitled *Coulby Newham-Pine Hill Plots for Sale (MP95)*. The brief was relatively prescriptive and, amongst many other things, required the roadside frontages to be generally open, with any front walls being only 500mm high. I gather that Members felt that the standards set by the brief had been so successful in securing a high quality design for this small residential estate that its requirements should still be followed when making their decision. However, I understand that this document was produced by the Council in 1978, before any houses were erected on Pine Hill, with the objective of strictly guiding the development process on a self-build site. Having served its original purpose, and over 30 years on, I consider that little or no weight can be attached to such a dated, non-statutory planning document which forms no part of current development plan policy.
8. All new development in the locality must now be assessed against the policies of the Core Strategy of the Middlesbrough Local Development Framework (LDF) (2008). Policy CS5 requires proposals to demonstrate a high quality of design in terms of their contribution to the character and appearance of the area by, amongst other things, ensuring that they are well integrated with the immediate and wider context. Sub paragraph (c) of Policy DC1 seeks to protect the amenities of the occupiers of nearby properties.
9. I must also have regard to the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) in relation to boundary means of enclosure. The GPDO provides authorisation for walls and fences, up to 1m in height, to be erected on the site boundary of a dwelling with the highway. At the Hearing, the Council confirmed that No 25 enjoys the benefit of the permitted development rights conveyed by the GPDO, notwithstanding the original restrictions on wall height set out in the design brief. Measurements taken on the appeal site reveal that almost all of the lower sections of the wall are less than 1m in height, except for a small section adjacent to the rear fence on Gunnergate Lane. Effectively, therefore, only the railings and their supporting pillars constitute development for which an

express planning permission is necessary. Whilst I have considered the appeal on the basis of the effects of the completed development as it currently stands on the site, the terms of the GPDO are a material planning consideration.

Character and appearance

10. As a corner plot, No 25 Pine Hill has a frontage to two roads and the effect of the wall and railings can be readily observed from both. In my opinion, the main visual impact of the development is within the street scene of Gunnergate Lane, where it is very prominent. A noticeable characteristic of the road frontages of the lane is the considerable diversity of boundary treatment, both in the immediate locality of the appeal site and in the wider context, as the road passes through several local neighbourhoods in Coulby Newham. There are examples of many different walls and fences, of varying heights and detailing, including some of much greater dimensions than the development at appeal.
11. Prior to the development taking place, I understand that well planted front garden to No 25 was defined by a 500mm high brick wall on Pine Hill and by a close-boarded, stained, timber fence on Gunnergate Lane, increasing in height from 500mm to 1.8m. In general terms, I can find no fault with the principle of replacing the ageing fence with the combination of a plinth wall, with railings and pillars above. Indeed, I consider that, as built, the development is much more attractive alternative, which is wholly in keeping with the visual diversity of the frontages of this local distributor road and which is an acceptable feature in the street scene.
12. Although the original design concept for Pine Hill sought to secure open plan frontages, significantly, the mature front garden planting now gives a noticeably enclosed appearance to the street scene. A few dwarf walls are still present but most of them are visually overwhelmed by the planting, particularly at the front of the dwellings on either side of the street near to the appeal site. Whilst I accept that the garden landscaping was secured through the detailed planting requirements imposed on the original developers by the brief, it is a matter of fact that the approach into and out of the cul-de-sac no longer displays an open plan appearance.
13. The wall and railings have been constructed to a very high standard, using good quality materials, and have been built to a design which compliments the host dwelling and its built surroundings. This would be consistent with the provisions of LDF policy CS5. Although the wrought iron railings and pillars stand between 500 and 600mm above the 1m height permitted by the GPDO, nevertheless, they retain a degree of openness and permeability to the views across the front garden of the property from the footway at the entrance to the cul-de-sac. Notwithstanding its prominence, the appearance presented to Gunnergate Lane is wholly satisfactory and I do not consider that the site context is so markedly dissimilar on the short section of the cul-de-sac at the entrance to Pine Hill to justify adopting a completely different approach. Taking all of these factors into account, in my opinion, the development does not have any seriously detrimental effects on the character and appearance of the Pine Hill street scene.

14. I recognise that the development at No 25 is clearly quite different from the other existing boundary treatments in Pine Hill. I also acknowledge that there is a degree of contrast with the appearance of the dense vegetation defining the garden frontages nearby. This, together with the newness of the construction, does draw attention to the site. Nevertheless, as the appellant correctly points out, the test is not whether the development differs from its surroundings but whether that difference is unacceptably harmful. On this occasion I have found that it is not.
15. I conclude, therefore, that the development does not cause any material harm to the character and appearance of the street scene on either Gunnergate Lane or Pine Hill and it would thus comply with the objectives of Policy CS5 of the LDF.

Amenities of adjoining occupiers

16. It was explained at the Hearing that this aspect of Members' concern related to the fact that all of the local residents would pass by the development every time they travelled to and from their homes. I was advised that many of those residents were the original self-builders, who had been compelled to comply with the development brief, in every respect, in order to be allowed to construct their houses. I gather that the Member's considered that the pangs of irritation these local people would experience when observing the wall should be given significant weight.
17. Whilst I do sense some degree of irritation in the correspondence from the local residents, it appears to me that a large part of their indignation is directed at the inflexibility and unfairness of some of the requirements originally imposed upon them by the Council. In such circumstances, I can also understand that there might be an expectation from some local people that the original restrictions should continue to be applied to everyone living on Pine Hill. I can also appreciate that they would not necessarily be aware of the severe limitations upon the continued application of the terms of the brief within the modern policy framework. That being said, however, I do not consider that such perceptions would be so significant as to constitute a material planning consideration; and I certainly do not believe that such matters would be sufficiently harmful to justify the refusal of planning permission under the provisions of LDF Policy DC1.
18. I conclude, therefore, that the general amenity of the neighbouring residents has not been diminished by the development at No 25 and that development plan policy has not been infringed in this respect.

Conditions

19. In the event of planning permission being granted, the Council has suggested the imposition of two conditions and I have examined these within the terms of Circular 11/95: The Use of Conditions in Planning Permissions. At the Hearing, the Council accepted that the condition requiring matching materials for the development was unnecessary for a retrospective application and this was withdrawn. However, the Council suggested that any permission ought to be subject to a condition requiring planting behind the wall to help soften its appearance. The appellant's agent was unenthusiastic about providing any planting, fearing difficulties with future maintenance to a specified height.

However, the suggested condition was accepted, provided that it was deemed to be a necessary requirement to the granting of a planning permission. I also heard from the appellant himself that the area at the front of his house had previously been planted with vigorous, prickly plants which had been ill-suited to the front garden and had been difficult to maintain.

20. To my mind, a selection of appropriate decorative shrub species, planted along the edge of the loose, blue slate surfacing would be of considerable benefit to the appearance of the front garden at No 25. However, I do not consider that such planting would be sufficiently essential to the retention of the wall and railings to meet the test of necessity set out in the circular.

Anthony J Wilson

INSPECTOR

Documents submitted at the Hearing

- 1 The Council's list of those expected to attend the Hearing
- 2 The Council's letter of notification of the Hearing
- 3 The Council's written rebuttal to the Costs Application

Plans submitted at the Hearing

- A Plan 3 of 4 as amended and annotated 'Revision B 26/12/08'
- B Plan 4 of 4 as amended and annotated 'Revision B 26/12/08'