
Appeal Decision

Site visit made on 20 September 2013

by N McGurk BSc (Hons) MCD MBA MRTPI

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

Decision date: 17 October 2013

Appeal Ref: APP/Q0505/A/13/2199140

Citygate, Woodhead Drive, Cambridge, CB4 1YL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by City Gate Ltd against the decision of Cambridge City Council.
 - The application Ref 13/0262/S73, dated 22 February 2013, was refused by notice dated 23 April 2013.
 - The application sought planning permission for erection of four one bed and four two bed flats and works to parking area without complying with a condition attached to planning permission Ref 10/0367/FUL, dated 15 November 2010.
 - The condition in dispute is No 14 which states that: Notwithstanding the details shown on the approved plans and unless otherwise agreed in writing by the local planning authority, the boundary treatment to the rear of the building hereby approved on the boundary with 56 Robert Jennings Close shall take the form of a brick boundary wall of a minimum height of 1.8 metres.
 - The reason given for the condition is: To protect the amenity currently enjoyed by the occupiers of 56 Robert Jennings Close (Cambridge Local Plan policies 3/4 and 3/12).
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Decision

1. The appeal is dismissed.

Procedural Matters

1. The site the subject of this appeal was granted planning permission for a residential development in 2010¹. During my site visit I noted that that development appeared to have been largely completed. This appeal relates to the treatment of the site's boundary with that of a neighbouring dwelling.

Main Issue

2. The main issue in this case is whether the condition imposed is reasonable and necessary in the interests of the living conditions of the occupiers of No. 56 Robert Jennings Close, with regards to noise, disturbance and pollution.

Reasons

3. The appeal site is located near to the junction of Milton Road and Woodhead Drive. The site is within a mainly residential area, comprising a range of

¹ Ref 10/0367/FUL.

dwelling types in two and three storey buildings. Trees, gardens and attractive boundary treatments, including brick walls along Woodhead Road, afford the area a green, spacious and attractive character.

4. Part of the site lies immediately adjacent to No. 56 Robert Jennings Close, a two storey semi detached property. Consequently, Citygate's parking area is next to No. 56. I noted during my site visit that, due to this immediate proximity, activities within the appeal site have the potential to impact significantly on the living conditions of the occupiers of No. 56.
5. The appellant, in support of its case, considers that the approved landscape plan, which illustrates a timber fence, boundary hedgerow and low planting "between the car park and the neighbouring property" provides sufficient protection against noise and pollution. However, no detailed information is provided to demonstrate that a timber fence affords the same, or greater, levels of protection against noise and disturbance, and pollution, as would a tall brick wall. By their very nature, I consider that timber fences are likely to be less substantial than brick walls and therefore, less able to protect from such harm.
6. Given the above and in the absence of any substantive evidence to demonstrate otherwise, I find that the removal of condition No. 14 would result in greater noise and disturbance, and pollution, to the rear of No. 56 than would be the case if a 1.8 metre high brick wall was built, as per the condition. Whilst the appellant, in support of its case, suggests that any noise and disturbance will be lessened as a result of cars in the car park moving slowly, I find that there would still be noise resulting from the movement of cars. Furthermore, I consider that there would also be noise resulting from, for example, the opening and closing of car doors, or from car radios, and that these factors would not be reduced as a result of cars moving slowly.
7. Taking the above into account, I find that non-compliance with condition 14 would result in inappropriate noise and disturbance and pollution, to the harm of the living conditions of the occupiers of No. 56 Robert Jennings Close. This would be contrary to Local Plan policies 5/7 and 4/13, which together amongst other things, seek to protect amenity.
8. Consequently, I find that condition 14 is reasonable and satisfies the tests in Circular 11/95: The Use of Planning Conditions.

Other Matters

9. The appellant, in support of its case, suggests that the condition the subject of this appeal is not necessary as it repeats provisions in another condition regarding landscaping. However, condition 14 is distinctive from condition 4 in that it sets out a specific requirement. All of the conditions imposed on the planning permission need to be addressed and the fulfilment of one condition does not mean that another should be disregarded, or considered unnecessary.
10. The appellant, also in support of its case, considers condition 14 to be unenforceable because it does not state when the wall needs to be erected or how long it should be. However, I find condition 14 to be precise and satisfactory in this regard – it clearly states that the wall should be erected along the boundary with No. 56 Robert Jennings Close and as a condition

imposed on the development, it needs to be discharged as part of the development.

11. The appellant, in support of its case, considers that condition 14 places an unjustifiable financial burden on it as the cost of erecting a wall is more expensive than a timber fence. I find that brick walls are likely to be more expensive than timber fences because they are more substantial. I have found that is the substantial nature of the wall required by condition 14 which would protect the neighbouring occupiers from harm.
12. Whilst I note that some general background noise is to be expected in the surrounding area and that some nearby developments have timber fences – just as some have brick walls. These are not factors which would justify non-compliance with condition 14.

N McGurk

INSPECTOR