



Appeal Decision

Site visit made on 7 February 2011

by **Malcolm Rivett BA (Hons) MSc MRTPI**

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

Decision date: 11 February 2011

Appeal Ref: APP/H0738/A/10/2139876 19 Goose Pasture, Yarm, Teesside, TS15 9EP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Derek Andrew against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 10/1300/RET, dated 18 May 2010, was approved on 15 July 2010 and planning permission was granted subject to conditions.
 - The development permitted is erection of 1.8m fence and gate to the rear.
 - The conditions in dispute are Nos 2 and 3 which state that: (2) Within one month of the date of this approval, the hereby approved fence shall be stained with a colour that shall be agreed with the Local Planning Authority before being implemented and the hereby approved stain colour shall remain in place for the life of the fence unless otherwise agreed in writing by the Local Planning Authority; and (3) Notwithstanding any description submitted as part of the application a detailed scheme for landscaping including shrub planting shall be submitted within one month of the date of this approval and approved in writing by the Local Planning Authority. Such a scheme shall specify types and species and works shall be carried out in the first planting and seeding season whichever is the sooner. Any plants which within a period of five years from the date of planting die, are removed, become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless the Local Planning Authority gives written consent to any variation.
 - The reasons given for the conditions are: (2) to reserve the rights of the Local Planning Authority with regard to these matters in the interests of the visual amenity of the surrounding area; and (3) to ensure satisfactory landscaping to improve the appearance of the site in the interests of visual amenity.
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Decision

1. I allow the appeal, and vary the planning permission Ref 10/1300/DET for erection of 1.8m fence and gate to rear at 19 Goose Pasture, Yarm, Teesside, TS15 9EP granted on 15 July 2010 by Stockton-on-Tees Borough Council, deleting conditions nos 2 and 3.

Main Issue

2. The main issue is whether the disputed conditions are necessary and reasonable having particular regard to the character and appearance of the area.

Reasons

3. The fence which is the subject of the appeal was in place at the time of my visit and this was also the case when the planning application was submitted. I understand that it replaced a previously existing fence which was, in part, set

back a short distance from the footway of The Spital. I gather that small trees once existed on the land between the old fence and the footpath.

4. The area is characterised by a variety of boundary treatments including various styles of fence, walls, railings and hedging. The fences immediately to the north and south of no 19's, although both stained dark brown, are of contrasting styles. A fence on the opposite side of the Spital (at Yarm Preparatory School) appears to be unstained timber and is very similar to (although older than) the fence at no 19.
5. I appreciate that the unstained fence would have had a stark appearance when first erected although it has now weathered somewhat and the attractive variations in the timber's natural colours are emerging. I envisage that this process will continue and that the fence will become increasingly pleasing to the eye - as much, if not more so, than if it were stained. I see no material harm arising from the fact that it contrasts in colour with the fences to either side of it given the wide variation in boundary treatments in the area and the existence of the, apparently, unstained fence on the opposite side of the road. Consequently, in terms of its colour, it has no conflict with the requirement of policy CS3 of the adopted *Stockton-on-Tees Core Strategy Development Plan Document* that new development should make a positive contribution to the local area. Moreover, I am not aware that there were any controls over the colour of the old fence which the appellant states was also unstained. Condition no 2 is therefore unnecessary and unreasonable.
6. It is unclear to me whether the removal of the small trees between the old fence and the footway pre- or post-dated the removal of that fence, although I am also not aware of there being any controls requiring their retention or replacement. Thus, it appears to me that the old fence could have been retained (or an identical replacement one erected) with the trees removed. I accept that visible vegetation close to the fence (as now exists to some degree in no 19s rear garden in any case) 'softens' its appearance, enhancing the character/appearance of the area in line with policy CS3. However, paragraph 25 of *Circular 11/95 - The Use of Conditions in Planning Permissions* indicates that it is not sufficient that a condition is related to planning objectives; it must also be justified by the nature of the development permitted or its effect on the surroundings. I consider that the effect on the area's character and appearance of the slightly realigned new fence, in comparison with that of the previous one, is so minimal as to make unreasonable any additional requirements concerning landscaping - ie condition no 3.
7. For the above reasons, and having regard to all other matters raised, I conclude that the disputed conditions are neither necessary nor reasonable and that, thus, the appeal should be allowed.

Malcolm Rivett

INSPECTOR