

Appeal Decision

Site visit made on 14 February 2017

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 20 February 2017

Appeal Ref: APP/H1515/W/16/3161320
5 Wren Place, Brentwood, Essex CM14 4HS

- 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 Jonathan Fisher against the decision of Brentwood Borough Council.
 - The application Ref 16/00743/FUL, dated 24 May 2016, was refused by notice dated 3 August 2016.
 - The development proposed is described as 'Steps to access garden and retention of decking (retrospective)'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application form does not provide a description of development, but refers to a separate, fairly lengthy, statement. In the interests of succinctness in the heading above I have, therefore, use the description given in the Council's decision notice. The development proposed has been completed largely in accordance the application plans, although I note that the balustrade around the decking has black metal railings.

Main Issues

3. The main issues are the effects of the proposal on:
 - the living conditions of neighbouring occupiers with particular regard to overlooking;
 - the character and appearance of the area.

Reasons

Living Conditions

4. The appeal property is a link detached chalet bungalow. In common with others in the row, the end of the rear garden is at a significantly higher level than the part of the garden closest to the dwelling and the dwelling itself. At the adjoining properties the difference in levels is accommodated by fairly steeply sloping grassed or planted earth embankments. Steps up the embankments are located roughly centrally within the width of the plots.
-

5. The appeal proposal includes a timber decked area some 2.5m deep above a retaining wall which is approximately 2m high. The remaining difference in levels is taken up by a further retaining wall at the back of the decking. These structures span the full width of the plot apart from a series of steps which adjoin the boundary with No 6.
6. The front edge of the decked area is on roughly the same alignment as the foot of the embankments in the adjoining properties. As such, the decked area is positioned significantly closer to the rear elevations of the appeal property and its neighbours than the flat areas at the top of the embankments of the adjoining gardens. The decked area, therefore, offers elevated views above the existing boundary fences and into the rear gardens and rear windows of Nos 4 and 6 at closer range than would otherwise be available. The decking is also large enough to accommodate a considerable number of people. This, together with the proximity of the decked area, would make views into neighbouring properties seem particularly invasive.
7. The steps adjoining the boundary with No 6 also allow short range views over the existing fence into the rear garden and rear windows of that property.
8. The appellant has suggested that planting could be positioned in the corners of the decked area and fences erected on the site boundaries to reduce the degree of overlooking. I am not convinced that planting in pots on the decking would provide an effective screen, even when mature. Moreover, it would be difficult to enforce a planning condition requiring portable items such as plant pots to be retained in place.
9. The erection of fencing on the site boundary would reduce the angle of view from the decked area into the neighbouring gardens and would effectively screen views from the steps. However, unless the fencing was disproportionately high and extended to positions close to the neighbouring dwellings, it would not prevent views into the rear windows on Nos 4 and 6. Consequently, I consider that the use of fencing would not provide a realistic solution to the overlooking issue.
10. Therefore, I find that the proposal would have a detrimental impact on the living conditions of the occupiers of neighbouring properties by reason of loss of privacy and, as such, would conflict with Policy CP1 of the Brentwood Replacement Local Plan 2005 (LP). Amongst other things, this policy seeks to safeguard the amenity of nearby occupiers in terms of overlooking and loss of privacy. Nor does the proposal accord with National Planning Policy Framework (the Framework) paragraph 17 which includes a similar requirement.

Character and Appearance

11. I recognise that part of the retaining wall was in place before the current works took place. However, the additional height of the retaining wall below the decked area, the decking itself, the balustrade the new wall to the rear of the decking have created an imposing and assertive structure which is at odds with the softer, more organic form of the earth embankments which characterise other rear gardens in the row. I consider that neither changing the colour of the timberwork nor replacing the decking with grass would overcome these concerns which stem from the scale, form and position of the structure.

12. Whilst the structure is not visible in public views, it is prominent in private views from neighbouring properties.
13. Consequently, I find that the proposal is harmful to the character and appearance of the area. As such, it conflicts with LP Policy CP1 insofar as that policy requires proposals to not have an unacceptable detrimental impact on the character and appearance of the area and to be of a high standard of design. Nor does the proposal accord with Framework paragraphs 56 or 64 which have similar aims.

Other Matters

14. The appellant argues that the proposal is necessary in order to provide safe access to the upper levels of the garden and has submitted a report by Kudos UK Ltd dated 1 June 2016. It finds that 'planning guideline compliant' alternatives to the appeal proposal would be unsafe. I recognise the need for safe access to the upper garden area. However, no information has been provided to show how those alternatives were formulated or whether others were considered. Therefore, it has not been adequately demonstrated that safe access to the upper garden level requires the provision of the decked area and steps close to the boundary with No 6 in the form currently proposed.
15. The appellant has also expressed concern regarding the way in which the Council handled the application and the response of the occupiers of No 6 to attempts to achieve a mutually acceptable scheme. I also recognise that the occupier of No 4 has written in support of the proposal. Nevertheless, my decision is based on the planning merits of the proposal determined by the Council.
16. The appellant has also stated that the occupiers of No 6 did not object to proposals put forward under a Party Wall award, although that is not a planning matter.

Conclusion

17. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR