

Appeal Decision

Site visit made on 24 January 2017

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 21 February 2017

Appeal Ref: APP/L2250/W/16/3153932

Signals, Sunnyside Road, Sandgate, Kent CT20 3DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to a condition.
 - The appeal is made by Mr Paul Withington against the decision of Shepway District Council.
 - The application Ref Y16/0195/SH, dated 19 February 2016, was approved on 17 June 2016 and planning permission was granted subject to a condition.
 - The development permitted is described as retrospective application for the erection of a first floor walkway linking dining room to garden.
 - The condition in dispute is No 1 which states that: Within two months of the date of this permission, a perimeter fence shall be erected along the common boundaries of the application site and the adjacent properties known as 'Greenways' and Rabbit Hill'. The fence shall be impenetrable to sight and have a height of 1.8 metres and shall be retained and maintained at all times.
 - The reason given for the condition is: In the interests of neighbouring amenity.
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Decision

1. I allow the appeal and vary the planning permission Ref Y16/0195/SH for retrospective application for the erection of a first floor walkway linking dining room to garden at Signals, Sunnyside Road, Sandgate, Kent CT20 3DR granted on 17 June 2016, by Shepway District Council, deleting condition 1.

Preliminary Matter

2. The appeal form indicates that the appeal is made on the basis that the local planning authority granted approval of the matters reserved under an outline planning permission subject to conditions to which the appellant objects. As the planning application to which this appeal relates was a full application I have dealt with it on that basis.

Main Issue

3. The main issue is whether a condition requiring the erection of perimeter fences is necessary and reasonable having regard to the living conditions of neighbouring residents.

Reasons

4. Planning permission was granted for the walkway between the dining room and the garden and this is in place as I saw during my visit. I also saw that a solid fence of approximately 1.8 metres high was in place between the appeal site
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and Rabbit Hill and therefore appears to partially comply with the condition. This fence also extends around the rear of the garden.

5. On the boundary between the appeal property and Greenways part of the boundary is obscured by a garden shed and a further section has some shrubbery and small trees. A section of fencing of approximately 1.8 metres high has also been erected on the boundary with the top of the fence at about the same height as the walkway handrail. In addition part of the boundary was open when I visited the site.
6. Although the walkway adjoins the house at first floor level, because of the significant change in level across the site, the walkway is below the patio towards the rear of the garden which is reached by steps. The majority of the rear garden is therefore at a higher level than the ground floor of the house. Nevertheless, from the walkway it is possible to see into the garden of Greenways.
7. Angled views from the door to the dining room of Signals into the garden of Greenways would be possible whether or not 1.8 metre high fencing on the boundary was in place. Similarly views from the elevated patio into Greenways' garden would also be possible with or without the fencing. Moreover, the primary use of the walkway is to move between the house and the patio and therefore any observation of the Greenways garden would be intermittent unlike views from the patio or dining room doors.
8. Removal of the condition would mean that the existing fence between Rabbit Hill and Signals could be removed without the need for consent. However, as the previous walkway which was closer to Rabbit Hill than the current one was not subject to a condition to retain perimeter fencing it is unreasonable to require the retention of the fence on this boundary when the walkway is now further from it.
9. Consequently I do not consider that the condition would be effective in preventing potential overlooking from the walkway to Greenways or Rabbit Hill. There is no justification for the disputed condition in terms of Policy SD1 of the Shepway District Local Plan Review, 2006 which seeks to ensure that development safeguards and enhances the amenity of residents. Similarly, no conflict exists with Policy BE8 which states that alterations to existing buildings should not adversely affect the amenity enjoyed by the occupiers of neighbouring properties and that alterations that cause undue loss of privacy for occupiers of neighbouring properties should be avoided.
10. Furthermore, having regard to the tests for the use of planning conditions set out in the National Planning Policy Framework and the advice in Planning Practice Guidance I find that the condition is neither necessary to protect the living conditions of neighbouring residents nor reasonable.
11. For the reasons set out above, I conclude that the planning permission should be varied as set out in the formal decision.

Kevin Gleeson

INSPECTOR