

Appeal Decision

Site visit made on 11 April 2017

by B Bowker Mplan MRTPI

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

Decision date: 16 May 2017

Appeal Ref: APP/G4620/W/16/3163089

3 Boscobel Road, Great Barr, Birmingham B43 6BB

- 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 B Shergill against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/16/59637, dated 29 June 2016, was approved on 25 August 2016 and planning permission was granted subject to conditions.
 - The development permitted is 'retrospective application for level changes in rear garden'.
 - The condition in dispute is No 2 which states that:
 - 2 a) The 'planting area' and 'screening' as shown on the approved plan shall be provided within three months of the date of this permission; and shall be retained as such.*
 - b) The screening as stated on the approved plan shall be provided in the form of evergreen Portuguese laurel shrubs (Prunus lusitanica), which shall be planted as per the approved plan (unless an alternative shrub is agreed in writing by the Local Planning Authority).*
 - c) The shrubs as identified in condition 2b shall be planted as per the approved plan at the heights stated (2m from patio level and 3.5m from garden level) within three months of the date of this permission.*
 - d) Once planted, the shrubs as identified in condition 2b shall be retained (or replaced if lost) at a minimum height of 2m from patio level and 3.5m from garden level; as per the approved plan.*
 - The reason given for the condition is:
To ensure privacy to the living room window and patio area of the adjacent property.
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Decision

1. The appeal is allowed and the planning permission Ref DC/16/59637 for 'retrospective application for level changes in rear garden', at 3 Boscobel Road, Great Barr, Birmingham B43 6BB, granted on 25 August 2016 by Sandwell Metropolitan Borough Council, is varied by deleting condition No 2 and substituting for it the following condition:
 - 2) Within three months of the date of this decision, details of screening measures, at the heights and positions indicated on the approved plan, shall have been provided in accordance with details that have been approved in writing by the local planning authority. The development shall be carried out and completed in accordance with the approved details and retained as such thereafter.
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Background

2. Planning permission has been granted by the Council subject to two conditions. The appellant's disputes the necessity of condition no 2 as outlined above.
3. Whilst I note part of the neighbour's objection relates to matters of surface water drainage and loss of trees, the purpose of the disputed condition is to ensure privacy; the condition has not been imposed for purposes relating to surface water drainage or tree compensation. Accordingly, my consideration of the appeal focuses solely on the matter of privacy as reflected in the main issue below.

Main Issue

4. The main issue is whether the condition is reasonable and necessary to protect the privacy for neighbouring occupants at 5 Boscobel Road.

Reasons

5. The appeal site is a detached dwelling with an adjoining raised patio area and lower grass garden area to the rear. The rear garden is bounded by a wooden panel fence. No 3 Boscobel Road is set slightly back from the rear elevation of the neighbouring detached dwelling at No 5. Owing to local topography, No 5 is set at a lower level than no 3.
6. During my site visit, when stood near the retaining wall on the raised rear patio area at No 3, I could clearly see over the boundary fence into the adjoining patio and garden area. This would be the case for the majority of people when stood or walking across the raised decking area; particularly the section of patio area between the garden steps and the boundary fence with No 5. However, owing to the slight increase in separation distance and reduced levels of exposure when compared to the patio and garden area, views of the French windows at no 5 from the patio area would be less direct and thus not harmful to neighbouring privacy.
7. This aside, I share the Council's concern that in the absence of sufficient boundary screening, occupants at no 3 are currently able to overlook a large section of the adjoining patio and garden area at no 5. The resultant level of overlooking from the raised patio area has led to an unacceptable loss of privacy for neighbours at no 5 when spending time in their garden and patio area.
8. However, the planting area annotated on the approved drawing is immediately adjacent to the roof plane of no 5 which contains no facing windows. Consequently, I agree with the appellant that it is unnecessary to provide the annotated planting area to ensure privacy for neighbours at no 5. Whilst I do accept that the planting area could have a role in alleviating surface water drainage concerns, such a purpose goes beyond that prescribed in condition no 2. The need to provide a particular type of plant or an alternative shrub is also unreasonable and unnecessary as a variety of screening methods could equally ensure privacy. The condition has therefore been varied to ensure flexibility without reducing its effectiveness in securing all year round privacy for neighbours at no 5.
9. In reaching this view, I have carefully considered the appellant's evidence and comments regarding the previous height of the patio area and boundary wall.

However, even in accepting the appellant's points on these matters, including the smaller measurement for the resultant increase in patio height, the proposal has still increased the extent of overlooking into the neighbouring garden area. Moreover, the previous extent of overlooking available from no 3 is not sufficient justification to increase the level of overlooking into the garden and patio area of no 5.

10. I conclude that, in its current form the condition is unreasonable to ensure the protection of privacy for neighbouring occupants at 5 Boscobel Road. As a result I will vary the planning permission by deleting the disputed condition and replacing it with the condition specified above.
11. The disputed condition does not refer to any relevant development plan policies. However, copies of Core Strategy Policy ENV3 and Sites Allocations and Delivery Development Plan Document Policy EOS 9 are before me and are of some relevance requiring development to be a high quality design. I also note that paragraph 17 bullet point 4 of the National Planning Policy Framework seeks to ensure a good standard of amenity for existing occupants of lands and buildings. The replacement varied condition above would not conflict with these policies.

Other matters

12. The appellant considers that the works carried out fall within homeowners permitted development rights. However, this is not a matter for me to determine in the context of an appeal under Section 78 of the Town and Country Planning Act 1990. It is open to an appellant to apply to have the matter determined under sections 191 or 192 of the Act.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed subject to the varied condition.

B Bowker

INSPECTOR