



Appeal Decision

Site visit made on 23 May 2017

by CD Cresswell BSc (Hons) MA MBA MRTPI

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

Decision date: 23 June 2017

Appeal Ref: APP/K1128/W/17/3168369

1 Longpark Cottages, East Portlemouth, Kingsbridge, TQ8 8PA

- 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 Mr P Fleming against the decision of South Hams District Council.
 - The application Ref 2906/16/VAR, dated 16 September 2016, was determined by a notice dated 25 November 2016.
 - The application sought planning permission for proposed re-location of external garden steps linking lower patio with upper terrace and lawn without complying with conditions attached to planning permission Ref 20/2136/15/F, dated 27 January 2016.
 - The conditions in dispute are Nos 2, 3 and 4 which state that:
 - No 2: The development hereby approved shall in all respects accord strictly with drawing number S_01 received by the Local Planning Authority on 11 September 2015 and drawing numbers P_01 rev A, P_02 rev A, P_04 and P_03 received by the Local Planning Authority on 13 November 2015 in respect of planning permission reference 20/2136/15/F.*
 - No 3: The existing stair indicated in green on drawing number S_01 shall be demolished and removed and the screen fence that is indicated on drawing P_01 rev A to be erected along the northern boundary of the raised patio shall be erected in accordance with the approved plans within 2 months of the substantial completion of the new steps. The fence shall be retained in perpetuity.*
 - No 4: Prior to its installation, notwithstanding any details shown on the plans hereby approved details of the trellis fence to be erected on the eastern site boundary shall be submitted to and approved in writing by the Local Planning Authority.*
 - The reasons given for the conditions are:
 - No 2: To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates.*
 - No 3: In the interests of the privacy and amenity of the occupants of the adjoining property, the stairway hereby approved facilitates the use of this raised patio which, without the provision of the screen fence, would cause an unacceptable level of overlooking to the neighbouring property.*
 - No 4: In the interests of the amenity of the adjoining property.*
-

Decision

1. The appeal is allowed in part and dismissed in part and planning permission is granted for the re-location of external garden steps linking lower patio with upper terrace at Longpark Cottages, East Portlemouth, Kingsbridge, TQ8 8PA in accordance with application Ref 2906/16/VAR without compliance with condition numbers 1, 2 and 3 previously imposed on planning permission reference 20/2136/15/F, dated 27 January 2016, but instead subject to the following conditions:

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: S_01, P_01 and P_02.
- 3) Prior to its installation, notwithstanding any details shown on the plans hereby approved, details of the trellis fence to be erected on the eastern site boundary shall be submitted to and approved in writing by the Local Planning Authority.

Background

2. The appeal property is situated at the end of a row of terraced houses which face towards the adjacent estuary. The private outdoor space to the rear of the property slopes steeply upwards, with the upper level being at a similar height to the first floor windows. A patio area has been constructed at this upper level which can be accessed from steps running to the side of the house. It can also be accessed from a walkway which extends from a set of doors situated on the first floor. This walkway (described as a 'bridge' by the appellant) was permitted following a recent appeal decision¹.
3. I understand that steps were also constructed in order to link the ground floor patio immediately to the rear of the appeal property with the upper patio (although these had been removed when I visited the site). The Council raised concern that that the steps did not benefit from planning permission and would undermine the privacy of neighbouring occupiers in 2 Longpark Cottages. Following discussions with the Council, a planning application² was submitted which proposed the relocation of the steps further from the boundary of the neighbouring property. This scheme was granted planning permission by the Council, subject to a number of conditions.
4. There are four conditions in total. As well as standard conditions imposing a time limit (No 1) and compliance with the plans (No 2) there is also a condition which requires, amongst other things, the provision of a 1.3m high fence along the front of the upper patio (No 3) to help restrict views of the neighbouring property. There is also a condition requiring further details of trellis fencing along the boundary with the neighbouring property (No 4). The trellis was in place at the time of my visit.
5. The appellant subsequently made an application³ to the Council for conditions No's 2, 3 and 4 to be varied. This included removing the requirement for a fence to be installed on the upper patio. However, although the Council made a minor alteration to condition 3, the requirement to place a fence on the upper patio remains. No changes have been made to any of the other conditions and so the requirement to provide further details of the trellis fencing is also retained in its original form. It is these conditions which form the subject of the current appeal.

¹ Appeal Decision: APP/K1128/D/16/3153721

² Council Ref: 20/2136/15/F

³ Council ref: 2906/16/VAR

Procedural Matter

6. Although the Council argue that the upper patio is unlawful development, this is not a matter which I am able to address in an appeal of this type.

Main Issue

7. The main issue is whether the disputed conditions are reasonable or necessary in the interests of the living conditions of neighbouring occupiers, with particular reference to outlook and privacy.

Reasons

Proposed fencing on upper patio

8. The purpose of the proposed fence along the front of the upper patio is to help reduce overlooking towards the first floor windows of No 2 Longpark Cottages. The Council argue that the condition is necessary as the proposed steps would facilitate increased use of the upper patio. However, the upper patio is already easily accessible by virtue of the steps that run to the side of the property as well as a direct link from the first floor of the property via the bridge. Consequently, the proposed steps are unlikely to increase the extent to which the upper patio is currently used.
9. I understand that the Council negotiated provision of the fencing as a way of helping to regularise the upper patio, which they consider to be unlawful. However, whatever effect the proposed fence might have on overlooking from the patio, it would make little difference the degree of overlooking which might take place when ascending or descending the proposed steps. It therefore seems to me that the requirement in condition 3 to provide patio fencing is not directly related to the proposed steps or otherwise necessary in the interests of protecting the living conditions of the neighbouring occupiers. As such, the condition does not meet the tests within paragraph 206 of the National Planning Policy Framework (the Framework).
10. Although I am informed that enforcement action will be pursued if the requirement to provide a fence is withdrawn, this is a separate matter which has no bearing on my decision in this case.

Former steps

11. During the course of my site visit I saw that the steps which were originally constructed between the lower and upper patios had already been removed. As such, the requirement in condition 3 for 'the existing stair indicated in green' to be demolished is unnecessary. These steps did not benefit from planning permission and if they were ever to be reinstated in the future, it would constitute a new act of development.

Trellis fencing

12. The trellis fencing next to the boundary of No 2 Longpark Cottages had already been installed at the time of my site visit. In my view, the existing design of the trellis allows plenty of light to pass through and it does not have an overbearing impact on the neighbouring occupiers. Nonetheless, to ensure that the trellis remains acceptable in perpetuity it remains necessary for the details to be approved by the Council.

13. The appellant seeks to change condition 4 so that it includes the wording 'the trellis fence shall be provided within one month of the practical completion of the proposed steps'. However, the trellis would do little to prevent overlooking from the steps and it is somewhat unclear why modifying the condition in the way suggested is necessary in order to make the development acceptable. The condition as currently worded takes account of a scenario where the trellis is installed independently of the steps.
14. I therefore consider condition 4 to be reasonable and necessary. Whether the Council would actually require the existing trellis to be removed whilst the details are approved is not a matter for me to comment on.

Conclusion

15. For the reasons given above, I have found that condition 4 is reasonable and necessary whilst condition 3 is not. The planning permission is therefore varied by the removal of condition 3 while condition 4 is retained in its present form. In order to reflect these changes, it is also necessary to vary condition 1 regarding the time limit as well as modifying condition 2 so that reference is made to the relevant plans.

CD Cresswell

INSPECTOR