

Appeal Decision

Site visit made on 31 July 2017

by John D Allan BA(Hons) BTP MRTPI

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

Decision date: 15 August 2017

Appeal Ref: APP/X1165/D/17/3177365

7 Barcombe Heights, Preston, Paignton, TQ3 1PU

- 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 Paul Lavender against the decision of Torbay Council.
 - The application Ref P/2016/0963/HA, dated 5 August 2016, was refused by notice dated 16 May 2017.
 - The development proposed is:
 - 1) Front wall - to position a metal framed cedar cladded fence along the length of wall. To replace existing double gates with a sliding gate.
 - 2) Raise driveway by 3ft on one side to allow the driveway to be level with the road side.
 - 3) Raised platform over a bank between two ground levels to produce a level outdoor area.
 - 4) Create a "Zen" style area to include self-contained water feature, seating and plants.
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Decision

1. The appeal is dismissed insofar as it relates to: 2) raise driveway by 3ft on one side to allow the driveway to be level with the road side; 3) Raised platform over a bank between two ground levels to produce a level outdoor area; and 4) Create a "Zen" style area to include self-contained water feature, seating and plants.
2. The appeal is allowed insofar as it relates to: 1) Front wall - to position a metal framed cedar cladded fence along the length of wall and to replace existing double gates with a sliding gate, and planning permission is granted to position a metal framed cedar cladded fence along the length of wall and to replace existing double gates with a sliding gate at 7 Barcombe Heights, Preston, Paignton, TQ3 1PU in accordance with the terms of the application, Ref P/2016/0963/HA, dated 5 August 2016 and the plans submitted with it so far as relevant to that part of the development hereby permitted.

Procedural Matter

3. The application was retrospective and at the time of my visit I saw that all of the proposed works had been implemented.
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Main Issues

4. The main issues are: - (i) the effect of the front boundary fence and gates upon the character and appearance of the street scene; (ii) the effect of the raised platform to the side garden of the property upon the living conditions at adjoining properties along Shorton Valley Road, particularly at No 89 with regard to visual impact; and (iii) the effect of the development upon the risk of flooding.

Reasons

5. The appeal property is a detached split-level dwelling set back from its frontage to Barcombe Heights, a wholly residential road comprising a mix of property types within a wider residential area. The topography of the area is such that the natural levels of the site fall dramatically away to the rear where the plot backs on to the rear of Nos 83-89 Shorton Valley Road, the gardens to which continue with the lie of the land and with the dwellings themselves at significantly lower levels in relation to the appeal site.
6. The works that have been undertaken at No 7 involve a new front boundary enclosure and gates; raised decking to the side of the property and immediately to the rear of 89 Shorton Valley Road to provide a split level garden accessible direct from the ground floor flank elevation of the property; and new raised levels to the front garden to provide a hard-surface for vehicle parking parallel with the road.

Front Boundary - Character and Appearance

7. I saw during my visit a clear and established sense of enclosure to the front gardens at the back edges of the pavements along both sides of Barcombe Heights at this point. However, this was achieved through a mix of front boundary treatments in terms of style and materials, with no particular pattern for these within the street scene.
8. Although contemporary in its design, I found the front boundary enclosure that has been erected, with horizontal timber panels surrounded by a painted steel frame set above an original low wall, to be appropriate in terms of materials, scale and form. Its height was proportionate to its length which, despite its gated appearance, was appropriately broken by the centrally positioned and open pedestrian access. My overall impression was that the modifications to the front boundary sat as a pleasing and comfortable feature within the residential context of the street scene without any harm to the character or appearance of the area. In this regard I find no conflict with Policy DE1 *Design* of the Adopted Torbay Local Plan 2012-2030 (LP) which, amongst other things, requires development to integrate with its surroundings.

Raised Platform - Living Conditions at 89 Shorton Valley Road

9. The principal garden area is to the side of No 7 and beyond an original walled car port immediately adjacent to the flank elevation of the house and with a base constructed level in height with the property's ground floor. The natural ground levels of the side garden, which backs on to the rear of 89 Shorton Valley Road, fall steeply. In order to make use of this space, and to create a level and accessible garden, a raised timber deck has been constructed to the

side of the car port, utilising its surface as a patio. The decking has two levels and rises slightly higher nearest to the plot's front boundary along Barcombe Heights. The decked area is enclosed to the rear with a horizontally clad timber fence that measures just over 1.7m in height when measured above the lowest level of the deck. Its height however appears noticeably taller when viewed from 89 Shorton Valley Road where the fencing is seen to drop below the level of the decking.

10. I saw that the top of the rear fence line is more or less contiguous with a fence that encloses an electricity sub-station to the side of No 7. This fence sits on top of a high retaining wall that can be seen from the backs of the properties in Shorton Valley Road but which is fairly inconspicuous due to the mass of climbing vegetation which has grown across its surface. However, what this and other features of the area demonstrate, are the obvious challenges in attempting to achieve reasonable harmony between back-to-back properties where such dramatic changes in land levels exist. In this regard I saw for myself that in many cases the outlook from the rear of many dwellings along Shorton Valley Road is towards steeply rising rear gardens but with the dominant presence of walled enclosures or dwellings in the background at significantly higher and imposing levels. That said, despite their prominent positions, I saw that such built features appeared appropriate and in context with the residential character of the area.
11. In this instance, the underbelly of the decking is exposed to full view from the rear of No 89 at a height of almost 3m at its maximum above the original ground levels and where the structure is most visible, including also from Shorton Valley Road in the gap between No 89 and its unattached neighbour. Due to the uncharacteristic void beneath it and the construction method involved, I find sight of the underside of the decking from the rear of No 89 at such close proximity, and when combined also with the scale of fence above, results in a structure that is visually unappealing and intrusive. It soars above the garden to No 89 in an unsympathetic way that detracts significantly from the occupiers' outlook and reasonable enjoyment of their garden. As such this part of the development is contrary to the aims and objectives of LP Policies DE3 *Development amenity* and Policy DE5 *Domestic extensions* insofar as they both seek to ensure development is designed not to unduly impact or have any adverse effects upon the amenity of neighbours.

Flooding

12. Despite apparent original suggestions to the contrary, the appellant has confirmed that the pavers used to construct the level driveway and parking area are not permeable. Furthermore, that the hard-surfaced area on the site has increased as a result of the works by around 20%.
13. LP Policy ER1 *Flood risk* confirms that Torbay is designated a Critical Drainage Area and as a consequence all developments will require a basic Flood Risk Assessment (FRA). As such, I find the area of additional hard surface on the site to be not insignificant.
14. The appellant has advised that the slope of the driveway is such that surface water would run off towards the property and into a built-in drain that lies beneath an area of loose fill that I saw on site. However, I have no details of

this drainage method's form or function. Neither is it explained in the appeal submissions why the appellant considers infiltration testing would be particularly dangerous in this area.

15. I am mindful that any FRA should be proportionate but I am also mindful that the National Planning Policy Framework advises that even for minor development, requirements for site specific FRAs should still be met. Given the absence of any clear details in this case, and the area's level of sensitivity to flooding, based on the information I have available to me I could not be certain that the development would not lead to increased surface water run-off that would in turn increase the risk of flooding elsewhere.
16. I have noted the appellant's offer to replace the pavers with a permeable surface but as the development is retrospective this could not reasonably be achieved by condition. Regardless, it would not address the deficiency of details for the design of the soakaway. This part of the development therefore conflicts with Policy ER1 and with LP Policy ER2 *Water management* as it relates to surface water.

Other Matters

17. I have taken note of the horizontal gaps in the rear fence but these are minimal and I saw that these do not allow for any clear sight into neighbours' gardens to the rear. There is no impact to any significant degree upon existing levels of privacy, particularly also having regard to the relationships generally between the higher gardens and dwellings along Barcombe Heights and those much lower along Shorton Valley Road.
18. I have no evidence to support suggestions that the development has impacted upon any wildlife habitats, even if some vegetation was removed from the site before the development commenced. Neither is there anything to support a suggestion that the level of car parking provided on the site has impacted upon the availability of on-street parking spaces along Barcombe Heights to a degree that would be somehow harmful.
19. I am mindful that the appellant's son suffers from a debilitating condition that affects, amongst other things, his balance. As such I appreciate the need to provide safe and level access to garden areas with minimal need for stairs. I also appreciate the significant difficulty in achieving this given the acute levels changes on the land. However, and notwithstanding also the degree of support that appears to have been originally given to the development by an officer of the Council and from one nearby occupier, when the issues are weighed in the balance I do not consider that the harm to the living conditions at 89 Shorton Valley Road, or the possible increased risk of flooding, are outweighed by any of the issues that have been put to me.

Conclusions

20. For the reasons given, I find no harm to the character or appearance of the area as a result of the works to the front boundary. However, I conclude that the raised platform to the side garden is harmful to the living conditions at 89 Shorton Valley Road. In addition, I am not satisfied that the parking area to the front of the dwelling would not increase the risk of flooding.

21. As the three parts of the development are clearly severable from each other I am able to issue a split decision.
22. The appeal is therefore allowed as it relates to the works to the front boundary but is dismissed as it relates to all other parts of the development. As the works to the front boundary are retrospective I have no reason to impose any conditions in relation to the part of the appeal that is allowed.

John D Allan

INSPECTOR