



Appeal Decision

Site visit made on 11 November 2019

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th November 2019

Appeal Ref: APP/A2280/D/19/3233057

32 The Shoreway, St Marys Island, Chatham ME4 3SU

- 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 Carter against the decision of The Medway Council.
 - The application Ref MC/19/0360, dated 6 February 2019, was refused by notice dated 12 June 2019.
 - The development proposed is described as "Replacement of the existing 1.8m high close board fencing to rear boundary with 1.8m high metal railings topped with fleur de Lys finials. Retrospective application for the Replacement of existing patio to rear and side of property with new patio being extended to the rear, maintaining central grass area using artificial grass. Retrospective application for the construction of low-level brick planters/retaining wall, incorporating an aquatic feature and seating area, constructed of brick and rendered in white rendering."
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Decision

1. The appeal is allowed and planning permission is granted for replacement of the existing 1.8m high fencing with railings to rear of boundary; replacement of and extension to existing patio to rear and side of property; construction of low-level brick planters/retaining wall, incorporating an aquatic feature and seating area, at 32 The Shoreway, St Marys Island, Chatham ME4 3SU in accordance with the terms of the application, Ref MC/19/0360, dated 6 February 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: SHORE/32/002 and SHORE-32-0006.

Procedural Matters

2. The Council's Decision Notice describes the proposal as "Replacement of the existing 1.8m high fencing with railings to rear of boundary; replacement of and extension to existing patio to rear and side of property; construction of low-level brick planters/retaining wall, incorporating an aquatic feature and seating area". As this more accurately reflects the scheme that is before me and that which the Council considered, I have dealt with the appeal on this basis. However, I have omitted the reference to the development being "part retrospective", as the matter of the appeal scheme being retrospective is not itself an act of development within the meaning of S55 of the 1990 Act¹.

¹ Town and Country Planning Act 1990

3. I observed during my site visit that parts of the appeal scheme have already been implemented. Nonetheless, as those elements do not differ from that shown on the proposed plans, I have dealt with the appeal on the basis of the development shown on the proposed plans and elevations referenced: SHORE/32/002 and SHORE-32-0006.

Main Issues

4. The effect of the proposed low-level brick planters/retaining wall, incorporating an aquatic feature and seating area, on the living conditions of neighbouring occupiers, with particular regard to privacy.

Reasons

5. The appeal site is within an area that is residential in character. To the northern side of The Shoreway, dwellings and their rear gardens are situated between the carriageway and the River Medway. The rear boundary is inset from the flood wall of the river and separated from it by a service strip. The fences to either side of the appeal property are reasonably tall and provide screening between respective garden areas.
6. The proposed development includes several raised areas incorporating a shallow I-shaped area of seating adjoining the rear boundary and side boundary to 30 The Shoreway, a planter adjacent to the boundary with 34 The Shoreway and a hard-surfaced area above an aquatic feature adjoining the rear boundary. Given their design, when sat on these elements, it is unlikely that the occupants of the appeal property would be able to overlook the gardens or ground floor accommodation of neighbouring properties to any greater extent than an individual stood within the garden.
7. I appreciate that the ability for the occupants of the appeal property to stand on any of the raised areas may be an unintended biproduct of the appeal scheme. However, to my mind, there is a greater than theoretical possibility that the occupants of the appeal property would be unlikely to stand, and dwell, on these raised areas to the extent that this would be harmful to the privacy of the rear gardens and ground floor accommodation of neighbouring occupiers. Given their depth, it would be equally unlikely that the raised areas would accommodate garden furniture to enable occupants of the appeal property to sit in a more elevated position. I am also mindful that there would be overlooking of rear gardens within The Shoreway from the first-floor balconies and windows of dwellings.
8. For the reasons outlined above, I conclude that the proposed low-level brick planters/retaining wall, incorporating an aquatic feature and seating area, will not be harmful to the living conditions of neighbouring occupiers, with particular regard to privacy. Hence, the proposal accords with Policy BNE 2 of the Medway Local Plan (Adopted May 2003), which requires that all development should protect the living conditions, including privacy, enjoyed by adjacent properties. The proposal also accords with paragraph 127(f) of the National Planning Policy Framework, which requires that developments incorporate a high standard of amenity for existing and future users.

Other Matters

9. I have considered the Council's argument that the grant of planning permission would set a precedent for other similar developments. However, the Committee

Report refers to other similar situations where the Council has previously granted planning permission, further details of which were provided by the appellant as part of the appeal. Nonetheless, the Council can exercise its judgement and consider each planning application on its individual merits. Therefore, a generalised concern of this nature does not justify withholding permission in this case.

10. The proposal also includes for the replacement of the close boarded fence to the rear of the dwelling with 1.8 metre high metal railings and a replacement patio and artificial grass area. The former has not been implemented but the latter already has. These proposals would/will be modest, both in their size and design, and would/will not be harmful to the character and appearance of the area or the living conditions of neighbouring occupiers. I therefore find no harm in respect of these elements of the appeal scheme. I note that the Council raised no objection in these respects either. The inclusion of those elements in the allowed appeal scheme would therefore be a logical outcome.

Conditions

11. Whilst most aspects of the appeal scheme have already been implemented, I have specified in the decision that development shall be carried out in accordance with the proposed plans and elevations, for the avoidance of doubt and in the interests of certainty. As aspects of the planning permission have not yet implemented the proposed development is also subject to the standard three year time limit condition.

Conclusion

12. For the reasons given above I conclude that the appeal has been allowed.

Paul Thompson

INSPECTOR