



Appeal Decision

Site visit made on 12 November 2019

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 8th January 2020

Appeal Ref: APP/P2935/W/19/3235554

Hopedene, The Dene, Leadside Bank, Allendale, Northumberland NE47 9PX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Adrian Gifford against the decision of Northumberland County Council.
 - The application Ref 18/02731/VARYCO, dated 31 July 2018, was refused by notice dated 14 June 2019.
 - The application sought planning permission for: Variation of Condition 2 – (approved plans) pursuant to planning permission 16/03126/FUL in order to alter the design of the approved dwelling to remove the terrace and introduce new external building materials without complying with a condition attached to planning permission Ref 17/01334/VARYCO, dated 05 June 2017.
 - The condition in dispute is No 2 which states that: *The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans. The approved plans for this development are:- Site location plan; Proposed floor plans A030001 REVD; Proposed elevations 1 A031001 REVD; Proposed elevations 2 A03100 REVD; Proposed elevations 3 A031003 REVD; Proposed elevations 4 A031004 REVD; Existing and proposed site plan A10002; Boundary Design A10003; Hard and Soft Landscaping Plan A10004; Parking Plan A10005; Surface Water Drainage Plan A10006; Construction Method Statement Plan A10007; External Lighting Layout Plan A10008; Construction Method Statement (dated 5th April 2017).*
 - The reason given for the condition is: *To ensure that the approved development is carried out in complete accordance with the approved plans.*
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs Gifford against Northumberland County Council. This application is the subject of a separate Decision.

Procedural Matters and Background

3. Planning permission (ref 16/03126/FUL) was originally granted for the construction of a new dwelling. Permission was subsequently granted in 2017 (ref 17/01334/VARYCO) to vary Condition No 2 of permission 16/03126/FUL to allow minor amendments to the dwelling and to the external hard and soft landscaping. Condition No 2 of the permission specified the approved plans.
4. The permission has been implemented and the dwelling has been constructed. However, the external works have not been carried out in accordance with the

approved plans. Accordingly, the application the subject of the appeal (ref 18/02731/VARYCO) sought to remove Condition No 2 of the 2017 permission and replace it with a condition specifying the plans that reflect the amended design of the development which has been implemented.

5. The amended scheme differs from the extant permission in a number of ways, including alterations to the courtyard, parking area and hard landscaping immediately adjacent to the building. These are relatively minor amendments to the scheme, which the Council considers do not result in any additional impacts and I see no reason to disagree.
6. However, the amended scheme additionally includes the deposition of a large quantity of excavated material on the land to the south of the dwelling beyond the approved terrace area, which has been constructed. The material has been used to create an elevated formal garden with a lawn to the front of the extensively-glazed southern elevation of Hopedene. The lawn is surrounded by a raised earth embankment (the bund), beyond which the deposited material has been graded to meet the original land levels towards the site boundaries, resulting in raised ground levels over a wide area. The amended plans reflect what has taken place on the site and I have determined the appeal on that basis.

Main Issue

7. The main issue is the effect of the amended earthworks and landscaping on the living conditions of the occupiers of the neighbouring property Inglewood, with particular regard to loss of privacy.

Reasons

8. The appeal site is a relatively large plot of sloping land on the northern outskirts of Allendale. The appeal property, Hopedene, is an elevated position in the northern half of the site. The neighbouring residential property, Inglewood, lies to the south-west of the appeal property. Inglewood has a relatively small rear garden cut into the slope of the land and it has a detached outbuilding to the rear which is in use as an office. It is separated from the appeal site by a stone boundary wall which is lower on the appeal site side due to the difference in ground levels.
9. Although Hopedene is elevated relative to Inglewood, the properties are widely separated and they do not directly face one another. Consequently, there were apparently no significant concerns that the original proposal would give rise to unacceptable overlooking or loss of privacy between windows of these neighbouring properties.
10. Using the excavated material to create the bund around the lawn to the front of Hopedene has prevented views between the first floor windows of Inglewood and the glazed elevation of Hopedene, following the felling of trees in the rear garden of Inglewood. While I accept that the loss of the trees will have increased the visibility between the 2 properties, the dwellinghouses nevertheless remain well-separated and their respective elevations are offset from one another. The bund additionally screens views of the raised formal garden and lawn from the surrounding area, including from the road and from the rear of Inglewood.

11. However, notwithstanding that the bund is a benefit to the appellants, it is not required to render the approved scheme acceptable. The removal of trees in the neighbouring garden is not therefore a justification for the creation of the lawn and its bund or the for raising of the land levels elsewhere in the appeal site.
12. I appreciate that the appellants would be unlikely to spend any significant amount of time standing on the raised bund looking towards Inglewood. However, when viewed from the lawn, the bund is a relatively low feature and it does not prevent views looking out and over it. Consequently, by virtue of the closer approach of the elevated formal garden towards the boundaries of Inglewood, the amended scheme provides opportunities for closer overlooking of the rear elevation and the garden of the neighbouring property.
13. The deposited material is graded down towards the appeal site boundaries from the bund, which is the highest point. Nevertheless, there is a marked increase in the level of the land adjacent to the side boundary of Inglewood. In particular, the raising of the land above the height of the side boundary wall allows for close overlooking into the garden and the detached office outbuilding to the rear of Inglewood. Therefore, the raising of the ground levels across the site and the closer approach of the elevated formal garden cumulatively diminish the privacy of the neighbouring occupiers.
14. I accept that the garden below the bund is currently an informal area and that the appellants do not intend to use it as intensively as the formal garden adjacent to the property. Nevertheless, the raising of the land levels does mean that even infrequent and informal use of the land to the south of the bund will be more intrusive to the occupiers of Inglewood than the extant permission. Moreover, there would be no guarantee that future occupiers would use the garden in the same way. An intensification of use of the garden closer to Inglewood, including as a children's wild play area or a more formal use, would result in a detrimental loss of privacy and increased disturbance to the occupiers of Inglewood.
15. Prior to the construction and occupation of the appeal property, and notwithstanding that the site has been used informally in the past, the occupiers of Inglewood would have been able to enjoy their property free from significant or frequent overlooking or disturbance. The construction of Hopedene has inevitably resulted in an increased domestic presence and activity in the appeal site. While the extant permission would not result in harmful overlooking or loss of privacy, the further amendments to the approved scheme do result in adverse impacts on the living conditions of the neighbouring occupiers.
16. I acknowledge that there are trees within the appeal site adjacent to the shared boundary and part of the bund between Hopedene and Inglewood has been planted with small trees or shrubs. On that basis, at least during the summer months while the trees are in leaf, the vegetated boundaries and the planting will function to screen and protect the privacy of the occupiers of the respective properties. However, there is no guarantee that future occupiers of the appeal property would retain the planting or the trees within the appeal site. Moreover, vegetation is not permanent and it cannot be relied upon to mitigate the adverse effects of development. Accordingly, I am not persuaded

that the adverse effects of the amended scheme could be satisfactorily mitigated through soft landscaping.

17. Therefore, the amended earthworks and landscaping result in significant harm to the living conditions of the occupiers of Inglewood, with particular regard to overlooking and loss of privacy. It conflicts with saved Policy GD2 of the Tynedale District Local Plan Adopted October 2009 and Policy ANDP1 of the Allendale Neighbourhood Development Plan 2015-2031 Adopted July 2015. These require, among other things, that development does not result in adverse effects on adjacent land or buildings, including in terms of loss of privacy, and that it does not significantly and adversely affect the amenity of nearby residents.
18. Given that I have found that the plans which seek to amend the approved scheme conflict with the development plan, it therefore follows that Condition No 2 of planning permission 17/01334/VARYCO is both necessary and reasonable to protect the living conditions of the occupiers of Inglewood.

Other Considerations

19. I appreciate that the lawn provides the appellants with additional useable outdoor space, and that the bund renders it relatively private. However, there is nothing before me to demonstrate that the approved scheme did not provide an adequate extent of outdoor space for the occupiers of Hopedene. Therefore, while the enhanced external space may be a benefit to the appellants, this is a private benefit that does not outweigh the conflict with the development plan.
20. The amended scheme does not result in harm to the character and appearance of the area. Adequate provision would be made for the disposal of foul and surface water. These are requirements of the development plan and they are not benefits of the scheme. Moreover, while the amended scheme may deliver additional biodiversity benefits, there is little before me to demonstrate that similar benefits could not be delivered by alternative proposals including the fallback position. This is therefore a matter which carries limited weight in favour of the scheme.

Conclusions

21. I have concluded that the amended scheme conflicts with the development plan and there are no other considerations that outweigh the conflict. For this reason, the appeal is dismissed.

Sarah Manchester

INSPECTOR