
Appeal Decision

Site visit made on 18 December 2019

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2020

Appeal Ref: APP/X1165/W/19/3236830

Valley View, 7 Barcombe Heights, Paignton, Devon TQ3 1PU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Paul Lavender against Torbay Council.
 - The application Ref P/2019/0707 is dated 2 July 2019.
 - The development proposed is lower level of garden. Construct flowerbeds on sloped bank to house privacy hedge, plants and shrubs. Erect screening to protect neighbours' privacy.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. The description of development in the banner heading above has been taken from the planning application form. It differs from that provided on the appeal form, which reads "alterations to an area to include a screening area for privacy. Area located at top of bank". Third party representations refer to the development as 'retrospective', and describe the zen garden as being "formed as part of an unauthorised construction, which was refused planning consent on numerous occasions, and has been ongoing for nearly 4 years now".
3. Neither of the main parties has provided details of the site planning history. The appellant's view is that the zen garden is not unauthorised, and that works were carried out as permitted development.
4. The appellant has questioned whether the development requires planning permission. However, this is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open to the appellant to apply to have the matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.
5. Furthermore, the Council has not given a view on this matter, and, on the planning application site notice, has described the development as "creation of a level garden area and terracing, to include landscaping and privacy screens". The lack of certainty in respect of the appeal scheme description is a matter I refer to in my reasoning below.

6. It is apparent from the appellant's submission and the third party representations, that amendments were made to the original application drawings during the course of the application, and that neighbours were re-consulted with respect to the amended drawings. However, the planning application drawings are not numbered or dated, and some are not titled. There are two different versions of some drawings, and there are discrepancies between proposed elevation and section drawings, particularly in respect of the proposed tiered sleeper flowerbeds. As a result, it is unclear what precise proposal is before me for determination.
7. There is also information contained within the appellant's submitted 'material list' which differs from that contained within the application drawings in respect of the privacy screen and landscaping details. Neither party has put forward any planning conditions. Accordingly, it is unclear from the appeal submission documents, precisely what proposal is before me for determination under this appeal.
8. Following the submission of the appeal against non-determination, the Council has not clarified the position it would have taken on the application if it had the opportunity to make a decision. Nor has it provided any statement of case or suggested planning conditions. In addition, the appellant's grounds of appeal simply states that *'I, Paul Lavender, do request an appeal based on non-determination of planning. We have been working closely with the case worker, Rob Brigden, on this matter, who is behind the planning. Due to a neighbour objection, if we don't appeal, it has to go to a councillors hearing. This would be fine but wouldn't be heard till at least November. We would like to be able to finish the garden before Christmas'*.
9. The appellant's submission also states that they liaised with the planning officer to inform the plans, including with respect to details of privacy glass and shrub planting, and that the planning officer suggested that the appellant appeal against non-determination as the application had to be determined by local councillors, one of which is close friends with a third party objector.

Main Issue

10. Based on the evidence before me, including the representations from third parties and the appellant's response to them, together with my observations on site, I consider that the main issue in this appeal is the effect of the proposal on the living conditions of the occupiers of 89 Shorton Valley Road, in respect of privacy and outlook.

Reasons

11. The appeal property comprises a detached split-level dwelling, which is sited below street level on a steeply sloping site. The land levels fall away sharply towards the rear of the appeal site. This character of topography continues through to the rear gardens of the residential properties in Shorton Valley Road to the rear of the appeal site, so that the neighbouring dwellings to the north are at a significantly lower level.
12. There is a level driveway at the front of the house, and to the west side of this is a flat garden area, referred to as the zen garden by the appellant. This includes seating facilities and a water feature wall. It is enclosed on three sides by walling/fencing, and screened in views from the street and the adjacent

electricity substation site to the west of the appeal site. The zen garden is sited at a higher ground level than the house, accessed via steps, and has a white painted retaining wall to its north side.

13. A flat paved patio area is located to the west side of the house, leading directly off from the ground floor accommodation. The remainder of the garden to the west of the patio and rear of the zen garden, is at a notably lower ground level. It is overgrown, and includes a partially completed timber raised bed. Steps adjacent to the side of the house provide access to the rear of the house.
14. Photographic evidence has been provided by the appellant showing the original steeply banked garden to the west side of the appeal property. I have not been provided with details of the site planning history by either of the main parties, but it is evident from my site inspection and the photographs provided by the appellant and the owner of no.89, that significant alterations have taken place to the western garden of the appeal site, including the formation of the zen garden and raised bed below it, and the removal of mature trees and rear boundary hedging.
15. Due to the steeply sloping topography of the appeal site, the removal of the previous mature trees and hedging, and the elevated position of the zen garden in relation to the neighbouring property at 89 Shorton Valley Road, users of the zen garden currently have clear views of the rear garden of no. 89, the land levels of which also drop sharply towards the house on that site. This overlooking is exacerbated by the proximity of the zen garden to the rear boundary, which increases notably towards its western end due to the tapering shape of the rear part of the appeal site. It is also significant that, in contrast to the original grassed bank on this part of the site, which in practice would be unlikely to be an area where occupants would spend a considerable amount of time, the zen garden has been specifically designed as an outdoor amenity area with seating and a water feature to encourage occupants to spend time in this part of the garden.
16. Even with the proposed reduction in the ground level of the zen garden as shown on the application drawings, this overlooking would remain, necessitating the erection of a screen along its northern edge in order to secure privacy for the occupants of no.89. The proposed glazed screen, to be positioned on top of the existing retaining wall along the northern edge of the zen garden, at a height of 1 m or 1.5 m above the retaining wall, would add significantly to the visual impact of the garden on the outlook from the rear of no.89. The combined height of the retaining wall and glazed panel above, in relation to that of the rear garden of no.89, is such that it could not be effectively screened by rear boundary fencing. Having regard to the proposed length of the structure extending the entire length of the zen garden, and its proximity to the rear garden of no.89, particularly at its western end, the structure would appear unduly over-dominant and overbearing in relation to that property, materially harming the outlook for its occupants.
17. The planning application drawings show the provision of raised sleeper beds to the north of the zen garden, to be planted with hedging and shrubs, in order to soften the visual impact of the built development and improve the outlook from no.89. However, this would potentially increase the amount of visible built development in close proximity to no.89, adding to the overbearing impact on that property. Furthermore, the occupier of no.89 has raised concerns about

the potential impact on land stability as a result of the creation of the sleeper beds.

18. No detailed landscaping proposals have been provided for the area to the rear of the zen garden, albeit Leylandii hedging is proposed for the upper sleeper bed. It has not been satisfactorily demonstrated that a landscaping scheme could be provided in this location which would provide effective screening, could be retained and maintained in the future, and would not result in land instability.
19. Furthermore, the application drawings and third party responses to the Council's consultation regarding the amended plans, appear to indicate that the originally proposed 3 sleeper beds may have been removed from the appeal scheme. The lack of clarity regarding the precise details of the scheme and insufficient details regarding the proposed planting scheme, mean that the appellant has failed to satisfactorily demonstrate that the required planting to provide effective screening would be practical in this location.
20. I raise no objection to the principle of a garden screen, and the introduction of soft landscaping as a means of addressing impacts on the privacy and outlook of the occupiers of no.89 arising from the use and construction of the zen garden. However, I must determine the appeal on the basis of the information before me only. Having regard to the aforementioned discrepancies and lack of clarity associated with the planning application and appeal drawings and submission documents, and the absence of an appeal statement, policy position and suggested conditions from both parties, I find that there is insufficient evidence to enable me to conclude, with certainty, that the appeal proposal would not materially harm the living conditions of the occupants of 89 Shorton Valley Road.
21. I am conscious of my statutory duty under Section 38(6) of the Planning and Compulsory Purchase Act 2004, as amended, (PCPA) to determine the appeal in accordance with the development plan, unless material considerations indicate otherwise. Neither of the main parties has supplied information with respect to the development plan policies specifically relevant to the determination of the appeal. The Council has referenced the Paignton Neighbourhood Plan in their appeal questionnaire, but has not explained its relevance to the determination of the appeal.
22. An interested party has referred policies DE1, DE3 and DE5 of Torbay's Local Plan, in regard to concerns about the effects of the proposal on the character and appearance of the area and neighbouring living conditions in respect of privacy and outlook impacts, but has not provided copies of the policies.
23. Nonetheless, even in the absence of any specific details of the relevant development plan for the area, s38(6) of the PCPA requires taking into account other material considerations. The National Planning Policy Framework (the Framework) is an important material consideration. In the absence of the local planning authority providing copies of its development plan (including any relevant made neighbourhood plans), the Framework contains policies which can assist in determining schemes for which planning permission is sought.
24. Given the lack of precise details with regard to the provision of effective screening along the northern edge of, and to the north of, the zen garden, sufficient to mitigate the privacy and outlook impacts associated with the

appeal scheme, it has not been satisfactorily demonstrated that material harm would not be caused to the living conditions of the occupiers of 89 Shorton Valley Road. For this reason, the proposal would fail to accord with Paragraph 127 of the Framework, which, amongst other aims, seeks to ensure that developments will function well and will create places which promote a high standard of amenity, health and well-being for existing and future users.

Other Matters

25. The appellant has advised that pre-application advice was sought from the Council before the submission of the planning application and that liaison took place between the planning officer and the appellant during the course of the application to seek establish acceptable screening and landscaping details. However, the council has not provided any details in this respect, and I must consider the appeal on the basis of the information before me.
26. I am also aware of the reasons why the appellant is seeking to establish a flat and private area of garden, and I have taken this into account when reaching my conclusion. However, whilst I have given this modest weight, it does not outweigh the aforementioned harm that I have identified.

Conclusion

27. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR