
Appeal Decision

Site visit made on 15 January 2020

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2020

Appeal Ref: APP/H0724/D/19/3238009

1 Grassholme Road, Hartlepool TS26 0QH

- 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 J Kelly against the decision of Hartlepool Borough Council.
 - The application Ref H/2018/0504, dated 14 December 2018, was refused by notice dated 2 August 2018.
 - The development proposed is Construction of retaining wall to allow lawn re-level.
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Decision

1. The appeal is dismissed

Main Issues

2. These are the effect of the proposal on:
 - the living conditions of the occupiers of adjoining dwellings;
 - the character and appearance of the area;
 - the risk of flooding; and
 - the stability of land and retaining walls.

Reasons

Background

3. The appeal property (the property) is situated on a corner plot, at the junction of Roundhill Close and Grassholme Road. The rear garden adjoins no 26 Kielder Road and nos 1, 2 and 3 Roundhill Close¹. Work has commenced on the levelling of the rear garden and a low retaining wall made of concrete panels has been erected between the property and no 2 Roundhill Close.

¹ In the case of no 3, the boundaries only meet at the corners of each garden

Living Conditions

4. There is a significant change in levels between the property and no 26 Kielder Road. At the rear of the garden of no 26 there is a retaining wall, which at its highest is approximately 2m, reducing in height to around 1.5m at the point where it meets the rear boundary of the property. On top of the retaining wall there is a timber fence, approximately 1.8m high, which steps down along the length of the boundary over a distance of about 8m. The back garden of no 26 is around 12m in length, although less where a ground floor extension has been added.
5. From within the garden area of no 26 the retaining wall is a dominating feature. The proposal would include the raising of the height of the timber fence over the 8m length where it currently steps down, so that the whole of the wall plus fence would have a uniform height of around 4m. At the present time the stepping down of the fence has some benefit in reducing the scale of the boundary structure when viewed from no 26. Whilst the proposal may only involve a relatively small addition to the overall area of fencing, at its maximum it would add around 0.75m to the height and in visual terms it would be of some significance by increasing the scale and dominating effect of the whole structure when viewed from no 26.
6. At the present time there is a fence of around 1.8m height between the property and No 2 Roundhill Close. No 2 is at a lower level than the property and the fence may never have been of sufficient height to ensure privacy between the two properties. Previously there was some planting along the boundary. Under the proposal, the ground level of the property and the height of the fence would be increased. This would result in the fence having an overall height of approximately 2.5m when viewed from the neighbour's side. The back garden of no 2 is around 7 – 8m in length. Therefore, within the garden of no 2 the proposed height of fence would appear unusually high and would have an over-dominant effect.
7. The Council's first reason for refusal states that the privacy of the occupiers of neighbouring properties would be harmed. Since the proposals include the erection of fencing to a height of 1.8m within the appellant's garden there would be little if any loss of privacy.
8. However, in the case of both no 26 and no 2 what is proposed would result in an adverse effect on the living conditions of the occupiers of both properties. In the case of no 2 I would describe the adverse effect as moderate and in the case of no 26 the effect would be greater, although less than severe. The Hartlepool Local Plan 2018 (the HLP) seeks, amongst other things to ensure that development does not harm the amenities of the occupiers of neighbouring properties, and planning law requires that the development plan is the foremost consideration in the decision on the appeal.
9. The planning officer report (in recommending approval of the application) drew a comparison between the proximity of the retaining wall and fence and the gable wall of an adjoining property, which under Council guidelines on separation distances² could be as little as 10m. However the circumstances in the appeal are very different, and a gable wall to a house would have less

² The Council has not provided me with a copy of any supplementary planning guidance which relates to such distances however I accept them as normal practice by the authority.

visual impact than the retaining wall and fence which extends along the full width of the boundary.

10. I therefore conclude the proposal would harm the living conditions of the occupiers of neighbouring properties, contrary to Policy QP4 of the HLP which requires, amongst other things, that development should not adversely impact on the amenities of neighbouring occupiers, and the Framework which, at paragraph 127, similarly requires that developments should ensure a high standard of amenity for existing and future users.

Character and appearance

11. The works comprising the development would have little effect on the public side of the property. The exception would be the continuation of the timber fence that runs along the boundary with properties in Kielder Road from approximately level with the front elevation of the property to the back of the footpath on Grassholme Road. This would obscure the current boundary treatment which is a brick wall and which complements the appearance of the area.
12. The impact of the proposed section of fencing would not be severe, however it would on balance cause some limited harm when compared with the existing wall.
13. I therefore conclude that the proposal would be harmful to the character and appearance of the area, contrary to Policy QP4 of the HLP, which requires, amongst other things, that development should contribute positively to the Borough and enhance character.

Flood Risk

14. It is suggested that the raising of the ground levels may give rise to some additional runoff of water from the site into adjacent gardens. However the Council's Engineer has advised that providing weep holes are incorporated into the retaining structure, no issues should arise. This could be subject to a planning condition. The appellant also makes the point that there is no history of flooding issues in the area.
15. I can therefore see no reason to reach a conclusion that the works would lead to any problems due to increased flood risk or runoff, affecting either the site itself or neighbouring properties. The proposal would therefore comply with Policies QP6 and CC2 of the HLP which require that proposals should take account of flood risk and manage surface water runoff, and paragraph 180 of the Framework, which requires that planning decisions should take into account likely effects on the local area.

Land stability

16. The proposal involves the raising of the level of land within the rear garden area, particularly that part of the garden in the corner where the properties in Roundhill Close meet those in Kielder Road, where the level would be increased by approximately 0.8m. There is concern that the additional material could have an impact on the retaining structures in this area.
17. The Council's engineer has advised that providing suitable sized and aligned weep holes are provided there should be no risk to the integrity of the retaining

wall. The appellant has submitted engineering drawings and structural calculations to support the proposal, and indeed contends that the work to the structure would be beneficial to the maintenance of the existing structures.

18. I can therefore see no reason to reach a conclusion that the works would lead to adverse impact on the existing retaining walls, or land stability. The proposal would therefore comply with Policies QP5 and of the HLP which requires that proposals should be designed to be safe, and paragraph 170 of the Framework, which requires that planning decisions should take into account any risk to land stability.

Planning Balance

19. I have found that the proposal would cause significant harm to the living conditions of the occupiers of adjoining dwellings, and that on balance there would be some modest harm to the character and appearance of the area due to the proposed section of fence to the front of the property. These matters create conflict with the development plan which is the foremost consideration in my decision.
20. Whilst I have found there to be no harm due to increased flood risk or potential effects on retaining walls or the stability of the land, these are neutral factors that do not lend any weight in the planning balance.
21. The appellant's wish to improve his garden by raising the ground levels and provide a safe environment for his family, together with fencing that will provide mutual privacy between his property and his neighbours', is understandable. However the current proposals would be to the detriment of the living conditions of some neighbouring occupiers, a consideration that outweighs the benefits that the appellant is seeking to achieve.

Conclusion

22. For the reasons given the appeal is dismissed.

Tim Wheeler

INSPECTOR