



Appeal Decisions

Site visit made on 2 June 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2020

Appeal A Ref: APP/K3605/C/19/3243060

Land at Treetops, Pony Chase, Cobham KT11 2PF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Juliette Cheek against an enforcement notice issued by Elmbridge Borough Council.
 - The enforcement notice was issued on 28 November 2019.
 - The breach of planning control as alleged in the notice is the erection of raised decking/seating area.
 - The requirements of the notice are:
 - (a) Permanently remove the decking/raised seating area, as show in the attached photographs for illustrative purposes, from the Land.
 - (b) Permanently remove any resultant waste associated with complying with requirement (a) above.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) and the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/K3605/W/19/3239919

Land at Treetops, Pony Chase, Cobham KT11 2PF

- 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 Ms Juliette Cheek against the decision of Elmbridge Borough Council.
 - The application Ref 2019/0717, dated 17 July 2019, was refused by notice dated 30 September 2019.
 - The development proposed is 3 tier decking area consisting of timber frame constructed for composite decking. Steps have been installed between each tier and a steel handrail with rope wire system has been added.
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Decision

Appeal A

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is dismissed.

Procedural matters

3. The description of the development has been changed from that originally applied for. This change is reflected in both the decision and the enforcement notice. I have no evidence that this change was agreed by the appellant, and the appeal form for the s78 appeal states that it has not altered. I consider that for the sake of clarity, the description on the enforcement notice provides the most accurate description for the development. I shall therefore use this when determining these appeals.
4. Despite these differences, the development for both appeal A and B is the same and I shall therefore deal with both appeals together.

Main Issue for Appeal A and Appeal B

5. I have had regard to the reasons why the Council refused planning permission for the development, and the reasons why they issued the notice. I therefore consider that the main issue is the effect of the development on the living conditions of the occupiers of 19 Pony Chase, with regard to privacy and overlooking.

Reasons

6. The appeal site comprises a two storey dwelling and gardens within a small gated development in Pony Chase. There is a substantial wall along the rear boundary of the garden with a timber fence and then trellis above. The side boundary to No 19 Pony Chase, comprises a stepped rendered wall with vegetation above.
7. The large raised decking is sited in the rear garden of the appeal property and lies immediately adjacent to the rear boundary and the side boundary with No 19. It has been designed to provide three tiers with steps between. From the evidence provided, it has an overall height of some 2.2 metres and width of some 6.1 metres.
8. The location and orientation of No 19 means that the decking is very close to that dwelling. From the site inspection it was clear that there was at least one window in the rear elevation of No 19, although from the evidence before me, it is not possible to conclude what room this window serves. It is further acknowledged that the boundary between the decking and No 19 is currently well screened. Nonetheless, the parties agree that the planting lies outside the appellant's control. This level of screening therefore may not be permanent and is likely to be subject to change from month to month and year to year.
9. The evidence shows that this area of the garden was steeply sloped around a large tree before the decking was built. The nature of the sloping ground would have been unlikely to provide a useable amenity space. In contrast to the previous position, the provision of formal decking and seating makes this part of the garden far more attractive and useable, with occupants likely to sit and socialise for longer. This increase in the level of activity coupled with the excessive height of the decking, in such close proximity to the rear window of No 19, leads to an unacceptable level of overlooking and loss of privacy for those residents.
10. I understand that the appellant's have carried out some additional planting along their boundary and are willing to accept a condition to provide further

plant screening. However, whilst a condition could be imposed to protect such screening for several years, there is no guarantee that it would remain permanently. Moreover, screening does not adequately mitigate the harm identified by the loss of privacy and overlooking to No 19.

11. For the above reasons, I find that the development is significantly harmful to the living conditions of existing and future occupiers of No 19, with reference to loss of privacy and overlooking. The proposal is therefore in conflict with Policies DM2 of the Elmbridge Local Plan Development Management Plan (2015) and CS 17 of the Elmbridge Core Strategy (2011). In summary, these policies when taken together, seek to ensure that all new development protects the amenity of adjoining and potential occupiers and those living within the area.

Other matters

12. It is accepted that there may have been no formal objections to the development by the current occupiers of No 19. However, it is likely that the occupation of the property will change at some point in the future. Therefore, the lack of objection from current occupiers to the development, does not mean that the development is acceptable or change my conclusion.

Conclusions

Appeal A

13. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Appeal B

14. For the reasons given above and taking all matters into account, I conclude that the appeal should be dismissed.

Hilary Orr

INSPECTOR