



Appeal Decision

Site visit made on 23 June 2020 by Alex O'Doherty LLB(Hons) MSc

Decision by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2020

Appeal Ref: APP/V3120/D/19/3243832

51 Yarnells Hill, Oxford OX2 9BE

- 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 Alden against the decision of Vale of White Horse District Council.
 - The application Ref P19/V0184/HH, dated 17 January 2019, was refused by notice dated 23 October 2019.
 - The development proposed is described as, "Retrospective Planning Application submission for the rear patio carried out during the works of the approved front and rear extension and internal reorganisation of 51 Yarnell's Hill (application No. P17/V2719/HH)."
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Decision

1. The appeal is dismissed insofar as it relates to the raised level of the strip of ground situated between the patio and the site's northern boundary which was carried out during the works of the approved front and rear extension (application No. P17/V2719/HH), and the proposed erection of a timber fence on the northern boundary at a height of 1.8 metres from the rising ground level.
2. The appeal is allowed insofar as it relates to the rear patio, and the amendments to the rear extension approved by planning permission P17/V2719/HH, and the insertion of a first floor, en-suite window in the rear elevation of the dwelling, and planning permission is granted for the rear patio, and the amendments to the rear extension approved by planning permission P17/V2719/HH, and the insertion of a first floor, en-suite window in the rear elevation of the dwelling at 51 Yarnells Hill, Oxford OX2 9BE in accordance with the terms of the application, Ref P19/V0184/HH, dated 17 January 2019, and subject to the following conditions:
 - 1) Insofar as it relates to the matters approved by this decision, the development hereby permitted has been carried out in accordance with the details shown on the following drawing: P.1358 085 Rev F – DECISION.
 - 2) The first floor obscure glazed window hereby permitted shall remain obscure glazed and top hung at all times.
 - 3) The green screen shown on drawing P.1358 085 Rev F – DECISION shall not be cut down, uprooted, destroyed, pruned, cut or damaged in any manner without the prior written approval of the local planning authority.
 - 4) If the green screen shown on drawing P.1358 085 Rev F – DECISION is cut down, uprooted or destroyed or dies another green screen shall be planted at

the same place and that green screen shall be of such size and species and shall be planted, in accordance with condition 3, at such time as may be specified in writing by the local planning authority.

Appeal Procedure

3. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

4. The application form describes the proposal as stated in the banner heading above. However, the appeal form describes the proposal as, "Retrospective planning application submission for the rear patio and raised level of the strip of ground situated between the patio and the site's northern boundary which was carried out during the works of the approved front and rear extension (application No. P17/V2719/HH). Proposed erection of a timber fence on the northern boundary at a height of 1.8 metres from the rising ground level". The Council's decision notice also refers to, "amendments to the rear extension approved by planning permission P17/V2719/HH, and the insertion of a first floor, en-suite window in the rear elevation of the dwelling".
5. The description given in the appeal form, combined with the text referred to from the Council's decision notice, more accurately describes the proposal. However, as 'retrospective' is not an act of development, this text has been removed. The appeal has been considered on the basis of this revised description. For the avoidance of doubt, this is: "planning application submission for the rear patio and raised level of the strip of ground situated between the patio and the site's northern boundary which was carried out during the works of the approved front and rear extension (application No. P17/V2719/HH). Proposed erection of a timber fence on the northern boundary at a height of 1.8 metres from the rising ground level. Amendments to the rear extension approved by planning permission P17/V2719/HH, and the insertion of a first floor, en-suite window in the rear elevation of the dwelling."
6. The Council issued a split decision. As per section 79(1)(b) of the Town and Country Planning Act 1990, this appeal is not restricted to dealing with only the elements which the Council refused. However, it is clear from the Council's decision that it has no objection to the amendments to the rear extension approved by planning permission P17/V2719/HH, and the insertion of a first floor, en-suite window in the rear elevation of the dwelling, and I have no evidence before me to reach a contrary view to the Council in this regard. Therefore, the consideration of this appeal focuses on the effect of the rear patio, the raised level of the strip of ground situated between the patio and the site's northern boundary, and the proposed timber fence. I am satisfied that the amendments to the rear extension, and the insertion of a first floor, en-suite window in the rear elevation of the dwelling, are clearly severable from the remainder of the proposal.
7. The main parties were asked for their observations as to whether or not the raised level of the strip of ground situated between the patio and the site's northern boundary (including the retaining wall) is clearly severable, both physically and functionally, from the patio. The appellant confirmed that these elements are severable, both physically and functionally. As I have no evidence

to indicate otherwise, I have assessed the proposal on the basis that those elements are clearly severable.

8. At my site visit I saw that a patio and a retaining wall had already been constructed, and a green screen was in place that was a similar height to that proposed. A fence had been constructed on the boundary between Nos 51 and 49 Yarnells Hill, but I observed that its height was lower than that proposed in this appeal. The appeal proposal is therefore partly retrospective and I have assessed it on that basis.

Main Issue

9. The main issue is the effect of the patio, the raised level of the strip of ground situated between the patio and the site's northern boundary, and the proposed fence, on the living conditions of the occupants of No 49 Yarnells Hill ('No 49'), with particular reference to privacy, outlook, sunlight, and daylight.

Reasons for the Recommendation

Privacy

10. This appeal involves development to the rear of No 51 Yarnells Hill ('No 51'). As this part of Yarnells Hill slopes downwards from south to north, the slab level of the appeal property is approximately 1.3m higher than the slab level of No 49. The new patio is set off the party boundary with No 49 and is at a lower level than the host property. It is however set at a higher level than the dwelling at No 49 and the area of rear garden closest to it. Near the party boundary are French doors serving the living room of No 49, and a short patio is beyond this that leads to a fairly expansive garden.
11. Although the patio area extends beyond the rear elevation of No 49, I am satisfied that given its level relative to the rear windows and garden of this property that users of it would be unlikely to have clear views of the rear of No 49, given the landscaping that has been planted along the edge of the patio, which could be secured by planning conditions.
12. However, from the extended pathway on the raised strip of ground located between the patio and the boundary with No 49, I observed that clear views of a substantial portion of No 49's garden and patio were possible. Additionally, it was possible to see through the windows into the living room of No 49. The proposed fence would eliminate this harm caused to the occupants of No 49, in terms of overlooking.
13. Whilst the new fence would not completely obscure the view to the nearest upper-room window of No 49 when viewed from the pathway, I am satisfied that due to the height and set-back of that window, that it would not usually be in view for users of that path, and therefore a loss of privacy to this window would be unlikely to occur. Moreover, any views to that window would be of a frequency tolerated in a residential area such as this.
14. As such, the scheme is acceptable in relation to matters of privacy and accordingly the living conditions of the occupiers of No 49 are not harmed in this respect, subject to landscaping being secured on the northern boundary of the patio. In this respect, there is no conflict with Development Policy 23 of the Vale of White Horse Local Plan 2031 Part 2 – Detailed Policies and Additional Sites (adopted 10 October 2019) ('Local Plan'), which seeks to prevent

significant adverse impacts on the amenity of neighbouring uses in relation to loss of privacy.

Outlook

15. The rear garden at No 49 is a pleasant space, in part because the majority of the boundary between Nos 51 and 49 is composed of hedging and shrubbery. The new retaining wall, composed of red brick masonry and approximately 1.3m high, is not an imposing feature, and accordingly is acceptable on its own.
16. However, the total height of the retaining wall and the fence combined would be approximately 3 metres, when measured from No 49's patio. The fence, when seen in the context of the side elevation of the host property facing No 49, which consists of a blank wall, would appear overly-dominant, materially detracting from the pleasantness of the garden at No 49, and harming the outlook from it and particularly from the patio area to the rear of this property. Moreover, the fence would be significantly overbearing on the outlook from the living room windows in the rear elevation of No 49. The fence would be a dominant, intrusive feature which would be likely to make this room less pleasant to use. A condition specifying a minimum and maximum height of the hedge would not mitigate the harm to outlook, due to the scale and position of the proposed fence, nor would an alternative design of the fence.
17. Therefore, the proposal would cause material harm to the living conditions of the occupants of No 49, with respect to outlook. In this respect, the proposal conflicts with Development Policy 23 of the Local Plan, which seeks to prevent significant adverse impacts on the amenity of neighbouring uses in relation to dominance or visual intrusion. The proposal would also conflict with the guidance given in the Vale of White Horse Design Guide 2015 that proposals should not have an adverse impact on neighbouring properties in relation to oppressive or overbearing impacts.
18. As the fence, which is unacceptable, is the only method proposed to prevent overlooking from the raised strip of ground between the patio and the site's northern boundary treatment, it follows that the raised strip of ground element of the proposal is also unacceptable.

Sunlight & daylight

19. The fairly substantial tree cover in the garden close to the rear of No 49 would be likely to affect the amount of sunlight that the rear of the property receives. Due to this, and that the retaining wall and the fence would not be in the direct path of the sun, the effect of the proposal on sunlight would be minimal. The proposal as a whole, but particularly the fence, would result in some loss of daylight, because it would result in a solid mass where there was none previously. I consider however that the reduction would not be enough to cause material harm to the living conditions of the occupiers of No 49, due to the existing built features at the host property and the existing landscaping. In this respect, the scheme complies with Development Policy 23 of the Local Plan, which seeks to prevent significant adverse impacts on the amenity of neighbouring uses in relation to loss of daylight or sunlight.

Conditions

20. I have considered the conditions found in the Council's decision notice against the advice on conditions set out in the National Planning Policy Framework and the Planning Practice Guidance. Considering the planning history of the site, a condition is necessary specifying the approved plan, to provide certainty. A condition is necessary to ensure that the first floor window at No 51 remains obscure glazed and top hung, to safeguard the living conditions of the occupants of No 49. Conditions are also necessary to control the landscaping along the edge of the patio, to safeguard the living conditions of the occupants of No 49, with respect to privacy.

Other Matters

21. Whilst the patio and associated works, and the new fencing, would not constitute overdevelopment, and would have a minimal impact on the visual appearance of the host property and the local area, this does not overcome the harm identified in terms of outlook.
22. It is recognised that the proposed fence would provide a barrier between the appeal site and No 49, thus contributing to the safety of users of the patio, including children. However, there is no evidence before me to suggest that a less harmful scheme could not achieve the same aims. The proposal would modernise the existing property and assist in meeting the needs of the appellant's family. However, this would offer mainly private benefits. Thus, I give these considerations little weight.
23. It has been suggested that a comparable development could be carried out under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). However, as only limited details have been provided it is not possible to ascertain whether such development would be more harmful than the appeal scheme, and therefore limited weight is given to this matter.
24. Whilst I have found the proposal to be acceptable in terms of privacy, sunlight, and daylight, this does not overcome the conflict with the development plan with respect to outlook. Overall, I find that the matters advanced in support of the proposal, do not, either individually or collectively, outweigh the harm identified, nor the conflict with the development plan.

Conclusion and Recommendation

25. Based on the above, and having regard to all matters raised, I recommend that the appeal is dismissed insofar as it relates to the raised level of the strip of ground situated between the patio and the site's northern boundary which was carried out during the works of the approved front and rear extension (application No. P17/V2719/HH), and the proposed erection of a timber fence on the northern boundary at a height of 1.8 metres from the rising ground level, and that the appeal is allowed insofar as it relates to the rear patio, and the amendments to the rear extension approved by planning permission P17/V2719/HH, and the insertion of a first floor, en-suite window in the rear elevation of the dwelling.

Alex O'Doherty APPEAL PLANNING OFFICER

Inspector's Decision

26. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis a split decision is issued dismissing the raised level of the strip of ground situated between the patio and the site's northern boundary which was carried out during the works of the approved front and rear extension (application No. P17/V2719/HH), and the proposed erection of a timber fence on the northern boundary at a height of 1.8 metres from the rising ground level, and the appeal is allowed insofar as it relates to the rear patio, and the amendments to the rear extension approved by planning permission P17/V2719/HH, and the insertion of a first floor, en-suite window in the rear elevation of the dwelling.

RC Kirby

INSPECTOR