

Appeal Decision

Site visit made on 14 December 2020

by P Eggleton BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 December 2020

Appeal Ref: APP/D1590/D/20/3253964

22 Leigh Park Road, Leigh-on-Sea, Essex SS9 2DU

- 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 Matt Kieffer-Wells against the decision of Southend-on-Sea Borough Council.
 - The application Ref 20/00590/FULH, dated 1 April 2020, was refused by notice dated 27 May 2020.
 - The development proposed is to install decking over existing raised patio and extend width by 2 metres, including new steps to lower garden. Replace existing boundary fences. Install permanent privacy screens and pleached evergreen trees along the side of deck nearest to boundary with 20 Leigh Park Road.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect on the living conditions of the residents of 20 Leigh Park Road with regard to privacy and outlook.

Reasons

3. The proposal is for an outside terrace which has already been constructed. It extends across the full width of the dwelling, up to the shared boundary with the attached house to the west; and separated from the shared boundary to the east, with 20 Leigh Park Road, by the width of the narrow side pedestrian passageway. It includes privacy screens to both sides. To the east, pleached evergreen trees have been planted and their branches are being trained to cover the outside of the privacy screen.
 4. The plans show the decking area to be 2.95 metres deep, at its deepest; and just over 5 metres wide. I have been provided with plans and photographs which demonstrate that before these works were undertaken, the property benefited from a smaller terrace, of similar height, which was 2.75 metres deep; and just over 3 metres wide. It was bounded to the rear and the east by low level railings. Although a dimension is not provided, it would appear from the plans that the distance of the historic patio area from the eastern side boundary would have been similar to its depth, at about 2.7 to 2.8 metres.
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5. A previous retrospective application was refused due to overlooking concerns with regard to 20 Leigh Park Road. This proposal differs from the refused scheme primarily due to the addition of the side screens and the pleached trees. The Council is now concerned that the screens have an overbearing impact on the neighbouring residents when in their rear garden. The neighbouring residents are also concerned that if the screens were ever removed, the previous issue with regard to overlooking would return.
6. Whilst the original patio area would undoubtedly have allowed for a level of overlooking of the neighbouring garden, it was set much further from the boundary and was of a more limited scale. This proposal would allow residents to be within only a short distance of the shared boundary allowing shorter range view downwards. The residents would also be much more noticeable when on the terrace when experienced from the adjacent garden. Their presence, at such a high level relatively, would increase the perception of being overlooked compared to the historic situation.
7. The screens that have been erected do provide a relatively comprehensive screen although activity and noise, in such close proximity and at a high level, would inevitably be experienced in the garden below. I share the Council's concern however that the screen would be overbearing in its own right when in the neighbouring garden. The pleached trees will continue to improve the coverage of the privacy screen but although a high, living, evergreen screen would be considerably better than the structure at present, it would still be at a significant relative height. It would remain overbearing for the neighbouring residents.
8. I share the concerns of the neighbouring residents with regard to the future of the screen. It has been suggested that conditions could be imposed to require that both the screen and the trees be retained at all times. However, if the screen were removed, the neighbouring garden would be exposed to view until enforcement action was progressed by the Council and was successfully concluded. This could represent a significant period of time. If the trees were removed, their replacements, following any period of enforcement action, would take even longer to reinstate. Controlling the required level of maintenance of these trees, would also be very difficult to enforce. Whilst I have no doubts with regard to the intentions of the current residents, I must also consider the longer term and the potential for the property to change hands.
9. Regardless of the enforcement concerns however, the main issue is whether such a high decked area is appropriate in this location given its much closer proximity to the boundary and the height differences with the adjacent garden. Whilst neighbouring residents in properties such as these, given the particular details of their layouts and land levels, can expect some overlooking and activity in close proximity, this high platform allows activity to move into a location that is far too close to the neighbouring boundary. This results in the need for the screen which in turn results in unacceptable harm to the living conditions of the neighbouring residents with regard to the outlook from their garden.
10. Policy DM1(iv) of the Development Management Document 2015 (DMD) includes requirements to protect the amenity of immediate neighbours, having

regard to privacy, overlooking, outlook, visual enclosure and noise and disturbance. I find direct conflict with this policy. As the policy is consistent with the requirements of the *National Planning Policy Framework (Framework)*, I afford it full weight. The proposal also conflicts with the objectives of the Council's Supplementary Planning Document: Southend-on-Sea Design and Townscape Guide 2009 as this seeks to avoid development that is unduly obtrusive or gives rise to unreasonable or perceived overlooking. As it is consistent with the design requirements of the *Framework*, I afford it considerable weight.

11. DMD Policy DM3; and Policies KP2 and CP4 of the Southend-on-Sea Core Strategy 2007, referred to by the Council, are not directly relevant.
12. I am mindful of the family circumstances of the residents and the benefits that this structure brings. I appreciate also the difficulties associated with the varying levels. I have also had full regard to the original structure and the levels of overlooking that would have previously occurred. Whilst examples have been identified of raised terraces and boundary screens in the vicinity, these do not appear to be entirely comparable. In any event, I have to consider this proposal on its own merits.
13. Overall, the new raised platform extends considerably closer to the neighbouring boundary and represents unneighbourly development. It would result in harm with regard to the living conditions of the residents of 20 Leigh Park Road with regard to loss of outlook from their garden and it raises unacceptable concerns with regard to privacy in the longer term. Whilst I have had regard to the submissions made, I am not satisfied that there are any matters that are sufficient to outweigh these concerns. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR