

Appeal Decision

Site visit made on 23 February 2021

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2021

Appeal Ref: APP/Q5300/D/21/3266896

70 Prince George Avenue, Southgate, London N14 4SP

- 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 Dr P & Mrs S Belavadi against the decision of the Council of the London Borough of Enfield.
 - The application, Ref. 20/01728/HOU, dated 5 June 2020 was refused by notice dated 20 November 2020.
 - The development is the construction of a raised patio and fencing to the rear (Retrospective).
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Application for Costs

1. An application for costs was made by Dr P & Mrs S Belavadi against the Council of the London Borough of Enfield. This is the subject of a separate Decision.

Decision

2. The appeal is allowed and planning permission is granted for the construction of a raised patio and fencing to the rear of the dwelling in accordance with the terms of the application, Ref. 20/01728 /HOU, dated 5 June 2020.

Procedural Matter

3. As stated in the final bullet point in the above heading, the application is for retrospective permission. The application form states that the works commenced on 15 June 2019 and were completed on 6 September 2019.

Main Issue

4. The main issue is the effect of the raised patio and its adjacent boundary fence on the living conditions for the occupiers of No. 68, with particular reference to outlook and light.

Reasons

5. Within the main issue referred to above, the Council's Notice of Refusal clarifies that the objections to the completed development are the effect of the depth, siting and height of the raised patio and the height and siting of the fencing on the boundary with No. 68 Prince George Avenue. In combination these are considered to result in a loss of outlook and light and a heightened sense of enclosure to this adjoining neighbour, thereby causing significant harm to residential amenity.
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6. The occupiers of No. 68 strongly support the Council's refusal of the retrospective development and I was invited to visit that property to assess the effect of the raised patio and boundary fencing. In so doing I made my assessment from the part of No. 68's garden adjoining the fence and patio; the middle / end of the garden, and inside the dwelling's living room with an outlook through the window nearest to the boundary with No. 70 (both standing and sitting inside that room).
7. From these observations and turning firstly to outlook (of which a heightened sense of enclosure is part), I acknowledge that the area of No. 68's garden closest to the house and boundary fence does to some degree have a restricted outlook and an increased perception of enclosure as a result of development at No. 70. This is partly as a result of the boundary fence but also by the parapet wall of the recent extension, which has been measured by the Council as being 4.2m above the ground level of No. 68's garden.
8. However, the presence of this wall and its effect on the living conditions for the occupiers of No. 68 is not a matter before me in this appeal, as it does not form part of the refused application. That said, the first two fence panels (1.8m above the patio and therefore above No. 68's garden by this height plus the extent of the natural fall in the land as it slopes away from the house) are seen in conjunction with the wall.
9. It might be argued that to some extent this combination of wall and fence has a cumulative impact, albeit the wall has a fairly limited length and the only relevant complaint is the allegation that it is somewhat higher than shown in the approved plans for an extension to No. 70. I have taken these factors into account as part of my appraisal. The third fence panel steps down slightly and the fourth rather more, with in each case a correspondingly smaller impact in terms of restricted outlook and increased enclosure.
10. Whilst I can appreciate the neighbour's perception of an unduly restricted outlook as a result of the overall height of the boundary fence, almost all development in adjoining gardens of houses in a linear development pattern has some visual impact on neighbours and I have to take this into account. In this case the situation is complicated because the natural slope of the land falls between Nos. 72 and 68 as well as away from the rear of the houses.
11. The fall in land level away from the houses does cause complications in terms of the relationship between the rear ground floor openings and the effective use of the part of the garden nearest the house. More often than not this requires some form of raised surface or decking and I note from the officer's report that in this case *'the fencing and patio is in scale, of a quality design and integrates suitably to the surrounding area character'*. (The reference to 'in scale' is only to the issue of character and appearance and not to the impact on No. 68).
12. The difficulty in this instance is due to the aforementioned fall in level in a north westerly direction along the linear pattern, but I consider that the adverse effect on outlook and the perception of enclosure is significantly offset by the substantial width and length of No. 68's garden. With a smaller garden with less of an open aspect away from the rear of the dwelling this balance would be less likely to inform a decision. And this issue of a favourable aspect as regards the principal aspect for No. 68 is in my view a key mitigating factor to be weighed

against the extent to which there is a restriction of outlook and a sense of enclosure caused by the higher than normal boundary fence.

13. There is the additional advantage that the fencing as erected prevents the overlooking of No. 68. Even in the absence of the raised patio, the higher land levels at No. 70 are such that some choices of garden layout and a different boundary treatment could result in overlooking without the need for planning permission. And even with the patio and fencing, on No. 68's side there will no doubt be opportunities for mitigation, including hard and soft landscaping.
14. Overall, and having acknowledged that there is an effect of a restricted outlook and increased enclosure, I take the view that the harmful impact of a boundary fence (to the extent that it is higher than the normally permitted 2m) is not so great as to justify a refusal of retrospective permission. Nor with a depth of 4.5m do I consider the length of the raised patio to be disproportionate to its setting or to the detriment of neighbours. These are matters of planning judgement with which the occupiers of No. 68 will no doubt take issue, but I consider that I have made an objective assessment having regard to all the matters raised.
15. Turning to the effect on light previously available to No. 68, there is no technical evidence supporting the contention that the higher than normal fence causes shadowing or a reduction in daylight. Because the rear of the properties faces north east I consider it doubtful that the fence has more than a very limited effect on the amount of sunlight and daylight received at the rear of No. 68 compared to the situation before the construction of the raised patio and the erection of the fencing.
16. In summary, with all matters considered, including the fence height effectively precluding any overlooking from No. 70 and the overall context of the land levels of the gardens of houses on this side of the Avenue, I conclude that the development is not in unacceptable conflict with the adopted policies.
17. These are Policy CP30 of the Enfield Core Strategy 2010; Policies DMD8 & DMD37 of the Enfield Development Management Document 2014, and Government policy in Section 12: 'Achieving Well-Designed Places' in the National Planning Policy Framework 2019. The Notice of Refusal also refers to Policies 7.4 and 7.6 of the then London Plan 2016, which have now been superseded by other similar policies in the London Plan, March 2021. However the revised London policies complement rather than add substance to the Borough's own policies.
18. I shall therefore allow the appeal. Normally I would impose a condition requiring the development to be in accordance with the approved plan for the avoidance of doubt and in the interests of proper planning. However, in this case there are aspects of the drawings that are potentially matters of contention as part of the ongoing legal dispute between the appellants and the neighbours at No. 68. Given these circumstances I have decided it would not be expedient to include the condition.

Martin Andrews

INSPECTOR