



Appeal Decision

Site Visit made on 12 October 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2021

Appeal Ref: APP/A4710/D/21/3277080

26 Crosshills Mount, Greetland, Halifax HX4 8HS

- 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 Steven Hawkes against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 21/00324/HSE, dated 7 March 2021, was refused by notice dated 13 May 2021.
 - The development proposed is the installation of decking.
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Decision

1. The appeal is allowed and planning permission is granted for the installation of a decking at 26 Crosshills Mount, Greetland, Halifax HX4 8HS in accordance with the terms of the application Ref 21/00324/HSE, dated 7 March 2021, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 20058/03, 20058/04 and 20058/05.
 - 2) Within 3 months of the date of this decision, the balustrade panels shown to be fitted with obscure glazing on the approved plans shall be installed. Thereafter, the obscure glazing panels shall be retained for the duration of the development.

Preliminary Matters

2. A development similar to that shown on the appeal plans was substantially completed at the time of my site visit. Some deviations were apparent between the development and the submitted plans – notably the use of clear glass to a balustrade along the southern edge of the decking. For the avoidance of doubt, this appeal is determined on the basis of the plans as submitted with the planning application.

Main Issue

3. The main issue is the effect of the development on the living conditions of neighbouring occupiers at 27 Cross Hill with particular regard to overlooking and loss of privacy.

Reasons

4. The site includes an extended semi-detached dwelling set on the brow of a hill with gardens to the front and rear. It is bordered by other residential properties on 3 sides and open land to the east. To the south the hillside falls away across a series of consecutively lower terraces of housing.

5. The decking is located close to the rear boundary of the appeal site at the end of a sloping garden area behind the appellant's house. The decked area extends from a line in the rear garden where the natural land level incline increases and descends to the top of a stone retaining wall forming a side enclosure to the rear garden at 27 Cross Hill.
6. The rear garden area of No27 lies at a significantly lower level. The dwelling at No27 is offset to the west. It is orientated such that the rear elevation, incorporating a conservatory and windows at ground floor level, address the garden area alongside the retaining wall.
7. The arrangement of the house and garden within the appeal site are such that, prior to the installation of the decking area, clear views over much of the neighbouring garden would be visible both in the outlook from the dwelling and within the rear garden area. Views to the rear of the buildings at No27 would also be afforded but be more restricted due to vegetation on the boundary with the neighbouring property at 24 Crosshills Mount. Nevertheless, some views would pre-exist from the lower garden area now covered by the decking.
8. The decking facilitates the easy use of the rear part of the garden that would previously have been more restricted on account of the slope. I have little doubt that the levelling of the area has resulted in a greater use of that part of the garden since its construction. However, in the context of the different levels of the successive hillside development, I find the elevated position has not necessarily increased the degree of overlooking.
9. Although a perception of increased overlooking may arise, actual views to the garden area of No27 from the upper part of the garden and rear outlook of No26 are now obscured by the presence of the decking. A fence screen along the western edge of the deck may also have reduced the scope of visibility to the back of No27 from within a large part of the appeal site.
10. On the decking itself, the presence of the proposed obscure glazed balustrade would limit some downward views. This could be secured through a planning condition. However, for most people stood on the decking – particularly those positioned close to its edge, clear views over the balustrade would remain of the neighbouring garden and the area to the rear of the house, including the conservatory. The primary difference is the facilitation of the use of that part of the site and the potential attendant increased incidence of overlooking.
11. However, in support of the appeal, the appellant indicates that an alternative to the decking could be installed without the need for planning permission to make best use of the lower part of the garden. Although such a structure or surface might ultimately be lower than the decking, it does not necessarily follow that it would have a more limited effect on the neighbours' living conditions.
12. Such a facility could be completed without any form of enclosure. Alongside similar views to the rear of the house, a lower or unenclosed sitting area could reinstate the wider views of the garden of No27 from the house and remainder of the appeal site. Moreover, it could result in greater levels of overlooking when compared to the existing structure due to lower trajectory views into the conservatory and rear windows. As a likely alternative to making best use of that part of the site, I find this is a realistic prospect and therefore a fallback position of some weight.

13. In the context of housing set at significantly different levels, I find the balance of any adverse effects arising from the increased use of the rear part of the garden against the reduced scope for overlooking from elsewhere in the site is limited. Nevertheless, there would be a minor conflict with Policy BE2 of the Replacement Calderdale Unitary Development Plan in this respect. However, planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.
14. Given the extent of overlooking previously experienced by the neighbouring occupiers and the real prospect of an alternative and uncontrolled scheme resulting in potentially worse effects, I conclude that there are sufficient grounds to lead me to find that the minor harm arising from the increased use of the area would be outweighed in the particular circumstances of the case.

Other Matters

15. The height of the decking above the retaining wall would be a prominent feature. However, in the context of development set on a hillside location where the height difference between adjacent developments can appear considerable, the effect is not significant. When taken with the distance from the dwelling at No27, I find that this would not constitute an overbearing or oppressive form of development.
16. The use of the decking might create some noise through people congregating there. Nevertheless, during normal domestic use, there is little to indicate that this would have any significant adverse effect on neighbours' living conditions in the setting of a residential area.
17. I note the concerns of the neighbouring occupier in respect to the condition of the retaining wall below the outer edge of the decking. However, there is little information before me to indicate the status of its structural integrity or that any changes to it have directly resulted from the installation of the decking. It is not therefore a matter of weight in the determination of the appeal.

Conditions

18. I have imposed a condition specifying the relevant drawings as this provides certainty. To secure the proposed screening through the use of obscure glazing panels, a condition requiring their installation and retention is necessary and reasonable.

Conclusion

19. I have found that there would be a minor conflict with the development plan as it seeks to protect the living conditions of neighbouring occupiers, including through the effects of overlooking and loss of privacy. However, in the face of a likely alternative scheme resulting in worse effects on privacy and which could not be controlled through planning condition/s, leads me to the conclusion that the appeal should succeed.

R Hitchcock

INSPECTOR