



Appeal Decision

Site visit made on 12 October 2021

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2021

Appeal Ref: APP/R1038/D/21/3274213

Clover Lea, Chapel Hill, Ashover, Chesterfield S45 0AT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mike Weightman against the decision of North East Derbyshire District Council.
 - The application Ref 21/00033/FLH, dated 10 January 2021, was refused by notice dated 2 March 2021.
 - The application sought planning permission for application to revise Condition 3 (Hedgerow on the western boundary) of planning approval 20/00921/FLH without complying with condition 3 attached to planning permission Ref 20/00921/FLH, dated 4 January 2021.
 - The condition in dispute is No3 which states that: Prior to the first use of the garage hereby approved, as such, a scheme of landscaping, including a timetable for its implementation, to allow for new boundary hedge planting/existing hedge growth and subsequent retention, as appropriate, shall be submitted to and be approved in writing by the Local Planning Authority.
Specifically, the submitted scheme shall show, as a minimum, the hedge on the eastern site boundary with Chapel Hill replanted where necessary and then kept, as a whole, at a minimum height of 2 metres above the height of the wall (when measured from the road side) and a new hedge planted on the western site boundary, allowed to grow and subsequently then be retained at a height 2 metres above the height of the boundary wall.
The agreed scheme shall then be implemented as agreed and be retained as such thereafter.
 - The reason given for the condition is: In the interests of enclosing the site in order to protect the amenity of residents of neighbouring properties.
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Decision

1. The appeal is allowed, and planning permission is granted for Application to revise condition 3 (Hedgerow on the western boundary) of planning approval 20/00921/FLH at Clover Lea, Chapel Hill, Ashover, Chesterfield S45 0AT in accordance with the application Ref 21/00033/FLH dated 2 March 2021 with the deletion of the wording in Condition 3 of "*and a new hedge planted on the western site boundary, allowed to grow and subsequently then be retained at a height 2 metres above the height of the boundary wall.*" , but subject to the remaining text and other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Procedural Matter

2. The original description of development was changed by the Council and accepted by both parties. I am satisfied that neither party are disadvantaged by this course of action.

Main Issue

3. The main issue is the effect that removing Condition 3 would have on the living conditions of the neighbouring occupiers at 'Leasowes' with regard to overlooking and privacy.

Reasons

4. The appeal site relates to the roof of the garage to the appeal property, which is set at a significantly lower level than the dwelling, and the garage roof can be accessed from the appeal property as part of a patio to the main dwelling, effectively creating a sun terrace, which allows the occupiers to enjoy the extended patio.
5. The locality is residential in nature, with significant changes in level, and the appeal property and 'Leasowes' are located significantly above Chapel Hill as well as numerous other properties. The surrounding properties vary extensively in design.
6. The Condition was imposed in order to protect the privacy of 'Leasowes' by installing a hedgerow to grow to a height above the wall. This would restrict possibilities of overlooking from the extended patio area into the front garden area of 'Leasowes'. Without the installation of the hedgerow, the Council considered the intrusion to be unacceptable and have a detrimental impact on the neighbouring occupier's level of privacy.
7. I appreciate that the raised area results in an increase in the opportunity for overlooking the neighbouring property. Notwithstanding this, the National Planning Policy Framework (the Framework) states that any conditions should only be imposed where they meet the six tests, as set out in Paragraph 56. The appellant has put forward a number of reasons as to why the disputed condition is unreasonable, and therefore should be removed.
8. The appellant had referenced the Planning Officer's comments on the previous application in relation to the issue of overlooking and having looked at the site from both the extended patio and the driveway of 'Leasowes' I find that the area that is overlooked is part of the front garden, away from the house itself. Whilst there may be some overlooking of the front garden area, this is not excessive, and would not cause material harm to the living conditions of the adjacent neighbour. As such I find that the section of the condition requiring the installation of a hedge to that western boundary to be unreasonable and unnecessary.
9. In summary on this issue, I find that with regard to the specific issue of the hedgerow on the western boundary, there is no conflict with Policies GS5 and H5 of the North East Derbyshire Local Plan (2005), policy LC5 of the North East Local Plan Draft Version and Policy AP1 of the Ashover Neighbourhood Plan, which amongst other matters, expects development to avoid significant loss of privacy and amenity for neighbouring properties.

Conclusion

10. For the above reasons and having had regard to all other matters raised, I conclude that the appeal should be allowed in respect of the re-wording of Condition 3.

Paul Cooper

INSPECTOR