

Appeal Decision

Site visit made on 2 December 2021

by John D Allan BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17TH December 2021

Appeal Ref: APP/B1415/D/21/3279231

Woodbine Cottage, 2 High Wickham, Hastings, TN35 5PB

- 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 Ms N Noboa and Mr D Morris against the decision of Hastings Borough Council.
 - The application Ref HS/FA/21/00309, dated 30 March 2021, was refused by notice dated 3 June 2021.
 - The development proposed is described as '*Installation of French Doors and construction of raised decking with privacy screen (Retrospective)*'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was retrospective and at the time of my visit I saw that the works to install a set of French doors and to construct a raised deck were complete.

Main Issue

3. The main issue is the effect of the development upon the living conditions at Nos 3 and 4 High Wickham with respect to privacy.

Reasons

4. The appeal property is a detached bungalow that occupies a recessed position relative to the road and on elevated land levels. At this point High Wickham turns through almost ninety degrees as it rises up to Hastings Country Park. The appeal property has no rear garden but backs immediately onto the side boundary of the rear garden to No 4 High Wickham. The side boundary of the appeal site runs common with the rear boundary of 3 High Wickham, a three-storey end of terrace Grade II listed building, which similarly has no rear garden but which is extended at single-storey to the rear and directly up to and abutting the boundary between both properties.

5. The appeal relates to an area of raised decking that has been constructed to the side of the dwelling and adjoining the boundary with No 3. It sits approximately 55cm above the original ground levels and behind a bin store that has been constructed to the front side of the dwelling following a planning permission in 2017 (Ref HS/FA/17/00492). The decking is accessed from a pair of patio doors on the side elevation of the dwelling that have replaced an original side window opening. The rear boundary of the decking is enclosed by a high solid wall that runs along the side boundary of the garden to No 4. The side boundary of the decking is enclosed by the end elevation of the single-storey extension to No 3 and a timber trellis panel measuring 1.8m high above the height of the decking's surface and extending 1.8m along the side boundary when measured from the rear corner.
6. Due to the retrospective nature of the works, I was able to access the decking and look towards Nos 3 and 4. The wall to the rear of the decking prevents any sight into the rear garden of No 4. Through the trellis screen, which is covered with some climbing potted creeping vegetation, it was possible to have sight of the nearest first floor window to No 4, which serves a stairwell. I was able to look from a first floor, rear facing bedroom window within No 4 back towards the decking area. This window is recessed in relation to the stairwell window and I was able to see the top of the patio doors to the side of the appeal property at an oblique angle. Due to the nature of the nearest window, the distances involved, and the angles of sight, I am not persuaded that use of the decking area impinges to any significant degree upon privacy within No 4.
7. The relationship between the decking and No 3 High Wickham is much more direct. The eaves height of the rear extension to No 3 is approximately around only 1m above the surface of the decking. When stood on the decking I was able to view over the gently sloping roof of the extension and directly towards rear first and second floor facing windows at close quarters. These are bathroom and bedroom windows respectively and I can understand the neighbour's desire to keep their window blinds permanently drawn given the prevailing circumstances. In addition, despite suggestions by the appellants of an evergreen screen, I was able to gain sight, from an elevated position, down and over the whole extent of a lower garden area to the side of No 3 which is enclosed and otherwise private. I share the Council's concern, and that expressed by the occupier of No 3, that the decking has facilitated use of an outside space that allows for direct and potentially prolonged periods of overlooking towards No 3. In my judgement this has resulted in previously existing levels of privacy at No 3 now being significantly compromised by use of the decking, particularly so for the garden to No 3 during the summer months when use of both outside spaces would be most frequent.
8. The appellants have argued that the level of the decking at 55cm above ground level is only 25cm above that which would have been allowed as permitted development. However, the difference between the two is not insignificant and it remains that the decking is of a height that requires planning permission. In addition, I have no doubt in my mind that it's erection at the current height has facilitated use of the area to the side of the appeal property that impacts upon the living conditions at No 3 in a manner different to that which would occur from use of the land at a lower level.

9. The appellants have suggested two alternative conditions to impose in order to attempt to safeguard the privacy at No 3. A condition to retain evergreen planters along the boundary to a height of 1.8m could not reasonably be relied upon to maintain privacy. The planters would be moveable and the efficacy of the screen would be dependent upon the health, species, and maintenance of the planting. Enforcement of such a condition would not be realistic. A condition requiring details of a solid privacy screen would materially change the nature of the proposal that is before me and would effectively impose a barrier between the properties that was not part of the original planning application.
10. I agree that due to the intimate relationship between Nos 2 and 3, there would always have been a degree of mutual overlooking between both properties. However, outlook from the side windows of the appeal property would be unlikely to result in sustained levels of sight towards No 3 and, in any event, I do not consider the presence of these glazed openings to be reasonable justification for allowing a development that in my judgement has made the situation worse. I am not persuaded by the appellants' argument that the development has improved the relationship with No 3 or that any fallback position would necessarily result in use of land to the side of the dwelling that would create equivalent levels of overlooking to that which currently exists.
11. Overall, I find that the development has an unacceptable impact upon the neighbour's enjoyment of their rear garden and rear living spaces through overlooking and loss of privacy and that this cannot reasonably be addressed through the imposition of conditions. There is therefore clear conflict with part (a) of Policy DM3 of the Hastings Local Plan - Development Management Plan 2015 which, amongst other things, requires new development to achieve a good living standard for neighbours by avoiding an adverse impact on privacy.

Other Matters

12. I have a statutory duty to have special regard to the desirability of preserving or enhancing the character and appearance of the Old Town Conservation Area, within which the site is located, and the setting of nearby listed buildings at 1, 3 and 4 High Wickham.
13. The works that have been undertaken are to the side of the dwelling and are deeply recessed such that they are barely detectable from the public domain along High Wickham. Although I have found that the works impact upon living conditions at No 3, they are barely noticeable as being any material change in the outlook from nearby or adjoining properties. The development has had no impact upon the character or appearance of No 2 that is discernible. The character and appearance of the conservation area has, as a minimum, been preserved. For the same reasons, the impact upon the setting of any of the nearby listed buildings is neutral. I am satisfied that there is no impact upon the conservation area or the setting of the nearby listed buildings that has altered the significance of these as individual heritage assets. These conclusions reflect those of the Council.
14. I have noted other concerns raised. The land to the side of No 2 is within the property's residential curtilage. Any noise or other suggested nuisance emanating from use of the decked area would be akin to that associated with use of any typical neighbouring residential garden. There is no evidence to

support suggestions that the security of neighbouring occupiers has been prejudiced by the works. Matters relating to CCTV installation, discharge of previous planning conditions, or traffic are not relevant to this appeal.

Conclusion

15. Despite my findings as they relate to the effect of the development upon living conditions at 4 High Wickham, I find that the decking is harmful to the living conditions at No 3 in terms of overlooking and loss of privacy. The failure of the development to achieve an appropriate high standard of amenity for the existing users of adjoining land means that there is conflict with the National Planning Policy Framework's objectives for achieving well-designed places. As such the development does not meet the environmental objectives for having achieved a sustainable form of development. Accordingly, and having regard to all other matters raised, the appeal is dismissed.

John D Allan

INSPECTOR