
Appeal Decision

Site visit made on 1 December 2021

by John D Allan BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th December 2021

Appeal Ref: APP/B1415/D/21/3283348

24 Chalvington Drive, St Leonards-On-Sea, TN37 7SB

- 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 Peter Tuatara against the decision of Hastings Borough Council.
 - The application Ref HS/FA/21/00206, dated 1 March 2021, was refused by notice dated 5 August 2021.
 - The development proposed is to install decking with steps to the side.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: - (i) the effect of the proposal on the living conditions at 22 and 26 Chalvington Drive with regard to privacy, and (ii) the effect of the proposal on human health and water quality with regard to the stability of the land.

Reasons

Living Conditions

3. The appeal property is a two-storey detached dwelling set within a modern housing estate. It has a fairly short rear garden that slopes very steeply away from the property's rear elevation. There is an existing semi-circular shaped patio area to the rear of the property which provides a fairly small and level usable amenity space. This projects to a maximum depth of around 4.8m and at this point it sits almost 0.9m above the sloping garden level below according to measurements provided by the appellant.
 4. The appellant's Block Plan and Drawing# V2.2 both show the proposed decking as a uniform rectangular space with a depth of 6.37m. It would be set 1.3m away from the garden's side boundary with No 26 and would abut the opposing side garden boundary with No 22.
 5. The boundary fence that runs between the appeal site and No 26 is staggered in height following the slope of the land and is reasonably tall above the ground
-

levels of the garden to No 24. I was able to see from the existing patio at the appeal site a balustrade to the furthest end of a raised deck area to the rear of No 26. The decking appeared to extend to a depth similar to the appeal proposal and to be set away from the common boundary between these two properties to a degree. Based on my observations, it appeared to me that sight over the appeal property's garden and back towards limited parts of the rear elevation of the house may be possible from the nearest and deepest part of the neighbour's decking. However, this would be extremely limited due to the height of the boundary fence, and achievable only with deliberate intent. In my judgement a reciprocal impact upon the living conditions at No 26 would be likely from the proposed patio at No 24. The effect would not impinge to any significant degree upon the use of the neighbour's rear amenity space in terms of overlooking and loss of privacy.

6. The circumstances relating to No 22 are materially different. The fence line between both properties is at a continuous height that follows the slope of the land. The proposed decking would extend right up to this boundary. Any person standing on the deeper parts of the decking nearest to No 22 would be seen above the height of the fence as having an imposing and unnaturally elevated presence. There would be an exaggerated difference in height between the surfaces of the adjoining garden spaces.
7. No 22 has a glazed conservatory extension to the rear and nearest the boundary with the appeal site. Use of the deeper parts of the deck, in immediate proximity to the boundary would allow direct views of a casual nature over the neighbour's garden, and readily back towards the living space that has been created within the conservatory extension. Regardless of the absence of any objection from the neighbouring occupiers, in my assessment this would have a significant impact upon the neighbour's enjoyment of their rear garden and rear living space through the potential for overlooking and loss of privacy. In this regard, there would be clear conflict with part (a) of Policy DM3 of the Hastings Local Plan - Development Management Plan 2015 (DMP) which, amongst other things, requires new development to achieve a good living standard for neighbours by avoiding an adverse impact on privacy. For these same reasons there would be conflict with the National Planning Policy Framework's policy for achieving well-designed places where it seeks to ensure development achieves a high standard of amenity for existing users of any particular place.

Land Stability

8. DMP Policy DM5 deals with land conditions and seeks to protect human health and water quality from land that is potentially subject to instability or contamination. There is no suggestion that the appeal site comprises land that is contaminated.
9. The rear garden to the appeal property is undeniably steep. However, it forms part of a reasonably small residential curtilage that is set within a contemporary housing estate. The proposed development is residential in scale and would be contained to the curtilage of the dwelling. Moreover, despite some cracks evident on the existing patio construction, there is no substantive evidence to suggest that the land immediately adjacent to the dwelling is unstable.

10. On balance, given the small-scale nature of the proposal and the information available to me, I am not persuaded that the erection of a raised patio would result in any harm to human health or water quality. There would therefore be no conflict with Policy DM5.

Conclusions

11. Notwithstanding my findings with regard to the second main issue, and the impact of the proposal upon the living conditions at 26 Chalvington Drive, I find that due to the depth and proximity of the proposed decking to the boundary with 22 Chalvington Drive, there would be unacceptable harm to the living conditions of these adjoining occupiers. I realise that the garden's slope makes it difficult to make effective use of the space, but this shortcoming does not justify the harm that I have identified. Accordingly, and having regard to all other matters raised, the appeal is dismissed.

John D Allan

INSPECTOR