



Appeal Decision

Site visit made on 7 March 2022

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th March 2022

Appeal Ref: APP/G4240/W/21/3285189

12 Hall Avenue, Stalybridge, SK15 3DF

- 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 Anthony Jeffers against the decision of Tameside Metropolitan Borough Council.
 - The application Ref 21/00039/FUL, dated 13 January 2021, was refused by notice dated 5 August 2021.
 - The development proposed is the change of use from vacant use to garden use, and the retention of existing decking.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from vacant use to garden use, and the retention of existing decking at 12 Hall Avenue, Stalybridge, SK15 3DF in accordance with the terms of the application, Ref 21/00039/FUL, dated 13 January 2021, and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans insofar as they relate to the area shown within the red line boundary: Site Location Plan; The Decking Plan 1; the Decking Plan 2; the Decking Plan and Sections; and the Decking Sections.

Procedural Matters

2. The description of the development on the application is for the change of use of the land only. However, in the appellant's final comments he confirms that he agreed with the Council that the retention of the existing decking should be included in the application, although he has suggested that the decking did not in fact need planning permission. Whether or not this is the case is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. I have therefore determined the appeal on this basis and in the above banner heading have used the description of the development as given on the decision notice and the appeal form.
3. The change of use of the land and the construction of the decking has already taken place and I have determined the appeal on this basis. It has been suggested by third parties that the plans do not accurately reflect the area of land that has been enclosed within the garden. On the plans provided by the appellant there appears to be discrepancy between the Site Location Plan which shows an angled boundary with the land to the north and the plans showing the layout of the garden and decking which show the boundary to be straight. For the avoidance of doubt, I confirm that my determination of the appeal is

based on the area of land as shown within the red line boundary on the submitted Site Location Plan. As such it does not include any additional land that may also have been added to the garden.

Main Issue

4. The main issue in the appeal is the effect of the development on the living conditions of the occupiers of Nos 33, 35 and 37 Chamberlain Road with particular regard to outlook and privacy.

Reasons

5. The appeal property is located on a steep hillside and as a result its rear garden slopes down significantly towards the properties on Chamberlain Road which are located further down the hillside. The garden has a number of tiered areas which comprise a mix of soft and hard landscaping. Furthest away from the house are two areas of decking connected by steps. These both have fences along the edge closest to the properties on Chamberlain Road that are around 1m in height. Between the lower area of decking and the boundary is a strip of land approximately 2m wide in which a row of evergreen shrubs has been planted, some of which are higher than the boundary fence.
6. It appears that the land subject to the change of use originally formed part of a roughly rectangular parcel of land between the rear gardens of the houses on Hall Avenue and Chamberlain Road. From what I saw at my site visit, much of the wider area appears to have been added to the gardens of the surrounding houses. This corresponds to the fact that a number of residents have said that they were given the opportunity to buy parcels of the land in 2008.
7. The Council has raised no objection to the change of use of the land as part of the garden for No 12 and they indicate that they consider that it makes more efficient use of the land to be used in this way. Nothing I have seen or read leads me to conclude otherwise.
8. The garden of the appeal property directly abuts that of No 35. This garden rises in tiers from the house and includes an area of decking adjacent to the common boundary. The garden of No 37 is shorter and an area of open land separates it from the boundary with No 12.
9. Due to the topography, even from the area of garden adjacent to the house the first floor windows on the properties at the rear are visible, but at this distance it is not possible to see into the rooms. Views of these houses and their gardens gradually increase when going down the garden so that when standing on the top area of decking it is possible to see the whole of the rear elevations of Nos 35 and 37, and the parts of their rear garden immediately adjacent to these houses. However, the majority of the rear gardens of these properties remain private even when standing at the edge directly looking at the properties, and views are more restricted when sitting down. Whilst the windows on the properties can be seen, the distance to them is such that there are no views into the rooms.
10. From the lower area of decking, it is possible to see a slightly larger area of the garden of No 35, but views of the garden of No 37 are not much greater due to the vegetation in this garden and its boundary fence. There are also some partial views into the garden of No 33 which are not possible from the top area of decking due to the intervening vegetation in the garden of No 14. However,

the floor level is such that when standing on the edge of the decking closest to the boundary, the majority of the rear gardens of the adjacent houses remain private, and in particular there are no views of the seating area of No 35 close to the boundary. Views into the rooms of the houses remain limited due to the distance. Furthermore, as with the upper level of decking when sitting down views into the gardens are more restricted.

11. As such, I am satisfied that the decking does not allow significant overlooking of Nos 33 – 37 or their rear gardens.
12. The fences along the edge of each area of decking can be seen from above the boundary fence, but they are not an excessive height and do not dominate the outlook from either the houses at the rear or their gardens. Set back from the common boundary they do not appear overbearing or create an unneighbourly sense of enclosure to the gardens. Moreover, in time the vegetation planted along the boundary will soften their appearance further.
13. Consequently, I consider that the development does not have a detrimental impact on the living conditions of the occupiers of Nos 33, 35 and 37 Chamberlain Road with particular regard to outlook and privacy. Accordingly, there is no conflict with Policy H10 of the *Tameside Unitary Development Plan (adopted November 2004)* which seeks to ensure that developments do not have an unacceptable impact on the amenity of neighbouring properties.

Other Matters

14. I note that the land used to have a number of trees and shrubs on it which provided privacy between the gardens. However, there is no indication that any of these were protected and so irrespective of whether the land formed part of the garden or not, their removal would not have required planning permission.
15. Concerns have been raised about the drainage of water from equipment in the garden and also the spotlights on the pergola but neither of these are matters that are before me at this appeal.
16. Third parties have stated that the decking has not changed since the previous appeal¹ on the site. However, the Officer's report sets out the various amendments that have been made since then.

Conclusion and Conditions

17. For the reasons set out above, I conclude the appeal should be allowed. As the development has already taken place, the only condition I consider necessary is one that for certainty defines the plans with which it should accord. Due to the discrepancy between the plans submitted outlined above, permission only relates to the land included in the red line boundary shown on the Site Location Plan.

Alison Partington

INSPECTOR

¹ Appeal Reference: APP/G4240/W/20/3251879