The Planning Inspectorate

Appeal Decision

Site visit made on 6 May 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 MAY 2022

Appeal Ref: APP/G4240/D/22/3292542
62 Stalyhill Drive, Stalybridge SK15 2TT

- 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 Noman Ehsan against the decision of Tameside Metropolitan Borough Council.
- The application Ref 20/00070/FUL, dated 21 January 2020, was refused by notice dated 19 November 2021.
- The development proposed was originally described as 'retention of the existing rear garden level and boundary walls to rear and side with alterations to the wall corner to provide vehicular and pedestrian visibility splays; render to both the boundary wall and existing single storey rear extension; indigenous hedging and landscaping.'

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application was made on a partly retrospective basis, and was considered as such by the Council. I have approached the appeal in the same manner, and saw on site that the works had been completed, with the exception of a proposed chamfered corner to the garden wall and the planting of a screening hedge to the rear boundary.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of neighbouring occupants, with respect to overlooking and privacy.

Reasons

4. The rear garden of the appeal site formerly sloped down to the rear following the general topography of the area. I understand that planning permission was granted in 2017[1] for a single storey rear extension, which was finished in render rather than materials to match the existing dwelling as required by the Council. Permission was subsequently granted in December 2019[2] for the retention of the rendered finish and for the construction of a garden boundary wall two metres in height. The Council indicates that the wall subsequently built stands at 2.4 metres in height, although the appellant states that the boundary wall in fact stands at 2.6 metres at the south-west corner. The ground level has also been raised behind the wall to provide a level rear garden area which has been laid with artificial grass. The Council indicates the ground level has risen by 0.7 metres at the rear of the garden, a figure not disputed by the appellant.

[1] Council Ref 17/00583/FUL
[2] Council Ref 19/00313/FUL

5. 12 Thistle Grove stands to the rear of the site, separated by an access road to garages. The rear garden of No 12 rises up from the rear elevation in line with the topography and is enclosed by standard panel fencing of around 1.8 metres in height. The appellant's drawing purports to show that the garden wall as built would not be visible from the rear windows or garden of No 12.

6. However, I visited both properties at my site visit and saw that the rear boundary wall as built stands clearly above the rear garden fence of No 12 in views from the rear ground floor windows. The appellant's drawing more accurately reflects the view from the rear patio, where the wall to the appeal site would appear more or less level with the top of the fence to No 12. However, from the centre of the garden, the wall would again be visible over the rear fence due to the higher position and closer range of the observer.

7. The appellant refers to the wall being the same 12 metre distance from No 12 as previous applications, and refers to the rear extension meeting the required separation distances of the Tameside Residential Design Supplementary Planning Document (SPD). I am not provided with a copy of the SPD, but the appellant accepts that it does not contain guidance on separation distances between gardens and neighbouring windows. Therefore, whether the relationship is acceptable is a matter of planning judgement in each case.

8. In this case, anyone standing in the garden of the appeal site would have clear, unobstructed views over the garden and rear windows of No 12. I saw this myself at the site visit when stood at the rear of the garden. The appellant argues that the levels of the garden are unchanged from the application granted in December 2019, wherein the Council found no harm to neighbours' living conditions. However, the delegated report for this application makes it clear that the Council did not regard the infill of the garden area at the time to form part of the application, and it stated that the height of the wall would follow the natural ground level.

9. From what I saw on site, were the ground level behind the boundary wall still at its previous level, the angle of view towards No 12 would be demonstrably shallower and the boundary wall and fence would preclude views of the garden and ground floor windows of the neighbouring dwelling. Moreover, the approved height of the wall at 2 metres would bring it down below the height of the rear fence of No 12 in views from the neighbouring property, which would reduce the perception of overlooking which the taller boundary wall creates. It is clear, therefore, that occupants of No 12 are liable to suffer from invasive overlooking as a direct result of the development. There are also clear views into the garden of No 14 next door, and No 16 beyond. Though these views are slightly more distant and at increasingly oblique angles, they still undermine the privacy of these neighbours.

10. The application proposes a perimeter hedge to reduce overlooking to the rear. However, a hedge would take time to establish itself and so would not immediately address overlooking issues. Moreover, the hedge could be cut down, removed or fail due to disease. As a result, it cannot be guaranteed that the hedge would remain in situ permanently or fully restrict overlooking. Therefore, I do not consider this would overcome the harm identified.

11. The Council also refers to the effect of the proposal on the next door property at 63 Stalyhill Drive. I saw that the gardens of the two dwellings were at a comparable level, though that to No 63 is considerably shorter than the appeal

site. They are separated by a moderate height panelled fence, with a mature tree and hedge forming part of the boundary treatment. Views are possible from the appeal site garden to the covered seating area to the rear of the garden of No 63, and vice versa. However, from what I saw of the garden levels, some level of mutual overlooking is likely to have existed beforehand, and views would be limited to the rear of the neighbouring garden. The existing evergreen hedge, which appeared to be within the garden of No 63 and so under the control of the neighbour to retain, provides screening of the dwelling itself from the appeal site. For these reasons, I find that the appeal scheme does not have a significant harmful effect on the occupants of No 63 in terms of overlooking.

12. However, based on the evidence before me, the raised rear garden level directly facilitates overlooking of neighbouring dwellings to the rear of the site which would not otherwise occur, resulting in a harmful loss of privacy for neighbouring occupants. This conflicts with Policy H10 of the Tameside Unitary Development Plan (November 2004) which requires that no unacceptable impact on the amenity of neighbouring properties occurs through, among other things, loss of privacy. There would also be conflict with the aims of the National Planning Policy Framework to create places that have a high standard of amenity for existing and future users.

Other Matters

13. The Council did not refuse the application in respect of the design of the wall or its effect on the character and appearance of the area, nor in respect of the proposed chamfered wall or the implications of this for highway safety. However, the absence of harm means these are neutral considerations weighing neither for nor against the proposal in the planning balance.

14. I note the appellant's desire to create a usable and safe garden space for his family. However, any benefit in this respect would be modest in scale and private in nature. This would not outweigh the public harm identified in respect of neighbours' living conditions.

Conclusion

15. I have found that the appeal scheme causes significant harm to the living conditions of neighbouring occupants, through loss of privacy. This results in conflict with the development plan, taken as a whole. There are no material considerations which would outweigh this conflict.

16. Therefore, I conclude that the appeal should be dismissed.

K Savage

INSPECTOR