
Appeal Decision

Site visit made on 14 June 2022

by Sandra Prail MBE, M.B.A., LLB (Hons), Solicitor (non practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 July 2022

Appeal A Ref: APP/B1415/C/21/3284071

20 Winchelsea Lane, Hastings, East Sussex, TN35 4LG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Hastings Borough Council.
- The appeal is made by Peter Gould.
- The notice was issued on 28 September 2021.
- The breach of planning control as alleged in the notice is without planning permission the erection of decking to the front (north-west) and side (north east) of the building including steps leading to the garden , the erection of a fence in excess of 2 m in height on the north-east boundary adjacent to number 24 Winchelsea Lane and the erection of a ramp leading down to the rear garden. The approximate positions of the decking and steps are coloured blue, the ramp is coloured brown and the fence is coloured green on the plan attached to the notice.
- The requirements of the Notice are (i) remove all sections of decking to the front (north west) and side (North east) and steps leading up to the decking as shown coloured blue on the plan attached to the notice, (ii) remove the ramp leading from the front elevation leading down to the garden as shown coloured brown on the plan attached to the notice, (iii) reduce the height of the fence as shown coloured green on the plan attached to the notice to no more than 2m in height, (iv) return the land to its former state prior to works noted at section 3 of the notice that is the works alleged to be in breach of planning control.
- The period for compliance with the requirements is 60 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld

Preliminary matter

1. At my site visit I observed that the fence the subject of the notice had been removed. I must consider the development as it existed at the time of issue of the notice and I shall address the fence accordingly.

The appeal on ground (a) and deemed planning application

Main Issue

2. The main issue in the determination of this appeal is the effect of the development on the living conditions of occupiers of neighbouring properties, in particular 24 Winchelsea Lane, with particular regard to outlook and privacy.

Living conditions

3. The appeal site is a residential property sitting in a predominantly residential area. The surrounding area is sloped. The appeal site sits considerably higher than its neighbour no 24. The unauthorised development comprises decking to the front and side of the building including steps, fence and ramp.
4. An application for (retrospective) planning permission to extend the existing concrete apron to front and side of bungalow with timber decking, steps and ramp down to garden, 1.8m fence on north east boundary was refused and dismissed on appeal in October 2020.
5. The development plan (including the Hastings Development Management Plan 2015 (The Hastings Local Plan)) mirrors the National Planning Policy Framework (the Framework) in seeking to ensure that development does not cause unacceptable harm to neighbours. Policy DM3 provides that permission will be given for development where the use of the scale, form, height, mass and density of any building reduces or avoids any adverse impact on the amenity (privacy, over-shadowing, loss of daylight) of neighbouring properties.
6. Turning first to address the fencing. I agree with the previous Inspector on appeal that although the majority of the fencing is alongside the dwelling limiting views of it from no. 24 it nevertheless is appreciably closer to the boundary than the dwelling and its height and solid form create an oppressive and dominating effect on the outlook from parts of no. 24 and its garden.
7. Decking extends a concrete apron around the building creating a high structure raised above neighbouring ground level and accessed from the garden via steps and a ramp. The ramp protrudes above a low boundary fence at ground level. I acknowledge that the contours of the land mean that there is a degree of mutual overlooking between the appeal site and its neighbours. But the views into the windows and garden of no 24 from users of the ramp and adjoining decking are close range and direct into the garden of no. 24 and towards its windows. Its close proximity and elevated position have a dominant influence on the ability of neighbours to enjoy garden space for recreation and quiet enjoyment and views towards habitable room windows intrude upon privacy. The development causes undue harm to the living conditions of current and future occupiers of no.24 and is contrary to the Framework and relevant development plan policies (including policy DM3).
8. I have considered whether the identified harm could be mitigated by conditions. I have considered the screening condition proposed by the Council in the event that the appeal is allowed and Planning Policy Guidance. But like the previous Inspector I consider that the installation of an obscure glazed screen alongside the ramp would add to the height of the structure and viewed alongside the fence would exacerbate the overbearing presence and harm to outlook.
9. I have considered the Appellant's arguments concerning the facilitation of disabled access to the lower part of the garden. I am not satisfied on the evidence before me that this could not be achieved by other means that do not create the identified harm.

10. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

11. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Sandra Prail

INSPECTOR