



Appeal Decision

Site visit made on 25 October 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Appeal Ref: APP/Q5300/W/22/3290245

10 Oak Avenue, Enfield, London EN2 8LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by C & V Komodromos against the decision of the Council of the London Borough of Enfield.
 - The application Ref 21/00733/VAR, dated 26 February 2021, was approved on 10 December 2021 and planning permission was granted subject to conditions.
 - The development permitted is described as 'Variation of condition 2 of 19/00645/HOU to allow stairs to garden access relocated, rear patio lower by 160mm and rear doors amended (amendment of drawing P.01)- Retrospective'.
 - The condition in dispute No 4 which states that: *the use of the terrace shall not commence until the privacy screening, as shown on the approved drawings, has been constructed. The privacy screening shall be permanently retained thereafter.*
 - The reason given for the condition is: *in order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements.*
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Decision

1. The appeal is allowed and planning permission Ref 21/00733/VAR dated 26 February 2021 for the variation of condition 2 of 19/00645/HOU to allow stairs to garden access relocated, rear patio lower by 160mm and rear doors amended (amendment of drawing P.01)- Retrospective, at 10 Oak Avenue, Enfield, London EN2 8LB, granted by the Council of the London Borough of Enfield is varied by deleting condition 4, and deleting condition 2 and substituting it for the following condition:

The development hereby permitted shall be in accordance with the following approved plan with the exception of the provision of the 1.8m trellis from patio level: Proposed Plans & Elevations, Dwg No P.02 Revision E.

Application for costs

2. An application for costs was made by C & V Komodromos against the Council of the London Borough of Enfield. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether condition 4 is necessary to safeguard the living conditions of occupiers of No 12 Oak Avenue with regards to overlooking.

Reasons

4. 10 Oak Avenue is a two-storey detached dwelling with a large rear garden and detached properties to either side. The land levels of Oak Avenue mean that the appeal property is at a higher elevation than No 12 to the south. A planning application¹ was approved for the demolition of an existing rear conservatory and erection of a single storey side/rear extension. This included a patio accessed from the extension which has stairs leading down to the rear garden which were located to one side. A subsequent application, subject to this appeal, was granted to allow changes that were implemented contrary to the planning permission, which included different patio doors, the position of the staircase to the centre of the patio and to lower the height of the patio surface by 160 millimetres.
5. The crux of the dispute relates to a 1.8m high privacy screen, which was shown on the Proposed Plans and Elevations drawing (Dwg No P.02) on the side of the patio facing No 12. This was evidently added to the submitted plans in response to the concerns of the Council that occupiers of No 12 would be overlooked and suffer a reduction in privacy. The screen was added as a result. A condition specifying that the use of the terrace does not commence until the screen is installed, and is retained thereafter, was included on the variation application subject to this appeal but not on the original planning permission.
6. However, from my observations on the site visit, views of the neighbouring garden are limited without the screen in place. Despite the drop in land levels, views of No 12 are obscured through thick and mature foliage on either side of the boundary fence. Moreover, the lowering of the patio by 160mm serves to reduce the level of overlooking possible over the original grant of permission. As such, the erection and retention of the privacy screen is not necessary.
7. I have had regard to the concerns of the occupier of No 12 and appreciate their concern in this matter. However, the patio is part of an approved planning application. This initial approval would still be implementable, and the supplied plans show there was no privacy screening proposed with the level 160mm higher than the appeal before me.
8. For the reasons given above, I conclude that the removal of the subject condition would not harm the living conditions of occupiers of No 12 with regards to overlooking. Accordingly, the relevant tests in paragraph 56 of the National Planning Policy Framework and the Planning Practice Guidance have not been met and the condition not necessary. There are no relevant development plan policies before me for which the development would conflict.

Conditions

9. Given that the development has been completed, the originally imposed condition in respect of the standard time limit is not necessary and has not been reimposed. The original Condition 3 in respect of matching materials is reimposed for clarity and in the interests of the character and appearance of the host building and local area.

¹ 19/00645/HOU

Conclusion

10. Condition 4 would not meet the test of being necessary, while condition 2 is required to be amended as the approved plan contains the privacy screen. Therefore, I conclude that the appeal should be allowed by deleting the condition in question and amending the approved plans condition with regards to the privacy screen only.

C McDonagh

INSPECTOR