The Planning Inspectorate

Appeal Decision

Site visit made on 20 December 2022

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2023

Appeal Ref: APP/X4725/D/22/3308950
16 Milthorp Carr Road, Wakefield WF1 2ZH

- 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 and Mrs Martin Clarkson against the decision of Wakefield Metropolitan District Council.
- The application Ref 22/00883/FUL, dated 22 April 2022, was refused by notice dated 8 September 2022.
- According to the Application Form, the appeal development includes the "levelling of the back garden" and the creation of "a fence which varies from 180cm to 194cm around the perimeter of our back garden".
- The appeal development is described by the Council as "Engineering works to raise ground levels of rear garden".

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In Part E of the Appeal Form it is stated that the description of development has not changed but, nevertheless, a different wording from the Application Form[1], matching that used on the Decision Notice has been entered. Both main parties have now provided written confirmation that this revised description of development was agreed. It appears however that whilst the appellant agreed to this change in description, they did so on the basis that the revised description "*does not incorporate the full extent of the work".* As a result, I consider that the appeal application did seek permission for the fencing, including the 'privacy panes' which surround the garden, as described in their original Application Form, and I have considered these works in my decision.

3. The appeal development has already taken place and I was able to see it on my site visit.

4. Within the context of an appeal under section 78 of the Act it is not within my remit to formally determine whether the appeal development does or does not require planning permission as claimed by the appellant. If the appellant wishes to ascertain whether the is lawful, they may make a separate application under the relevant section of the Act.

[1] Attached to this Decision as Appendix 1.

Main Issue

5. The main issue is the effect of the appeal development on the living conditions of the occupiers of 20 Lancaster Avenue (No 20) and 22 Lancaster Avenue (No 22) with specific regard to loss of privacy and amenity.

Reasons

6. The appeal site is a relatively new house on the 'Snowhill, Wakefield' development. Owing to changing levels across the development site, houses on Milthorp Carr Road are at a higher level than those on Lancaster Avenue to the rear. As built, the ground level fell from the rear of the house, towards the rear boundary which sat above a retaining wall. As a result of that fall and retaining wall, properties on Lancaster Avenue to the rear have relatively flat gardens. The appeal development has levelled the garden of the appeal site, resulting in a raised ground level at the rear boundary, as well as taller fencing, with a more solid appearance in comparison to that originally approved on the development and installed at the site.

7. The levelling of the garden has raised the ground level of the rear garden by an appreciable and obvious amount. Although the appellant and Council disagree on the exact measurement, the additional height was readily apparent from my site visit, where the retaining wall, original fencing and appearance of adjoining properties' gardens allowed me to see the relative ground levels.

8. Without the additional, taller fencing, this raising of ground levels would clearly result in harm to the living conditions of the occupiers of No 20 and No 22, by reducing their privacy, allowing views at a greater height, close to the shared boundary and by reducing the effective height of the fencing. Even accepting that the location of planted beds would reduce the amount of time anyone would spend immediately next to the fence, the obvious raising of the ground levels increases the perception of overlooking, an effect almost as harmful as overlooking itself to my mind.

9. New fencing has been installed to mitigate this effect, and again, its additional height is obvious, as the original fencing remains in situ and continues to the rear of adjoining properties.

10. I accept that there was already a height difference between the appeal site and the gardens of No 20 and No 22, and that the length of the gardens, orientation and relationship of the properties to each other means that the fencing would not cause unacceptable overshadowing or loss of light.

11. However, being taller and more substantial than that originally installed, essentially allowing no light to pass through it, the fencing has an overbearing and dominating appearance. In my opinion, the obvious visual comparison between the appeal development and the levels and fencing of its adjoining neighbours adds to this harm.

12. Given both parts of the appeal development are the subject of the planning application, I do not consider that the harm arising from the fencing is outweighed or mitigated by the harm it might reduce from the raising of the ground level at the rear boundary.

13. I note the offer from the appellant of a condition which would reduce the height of the fencing and extend the planter along the rear boundary of the site. Whilst a reduction in the height of the fence may mitigate some of its harm, I do not consider that the condition as a whole, notably the requirement to install and retain a planter, would meet the tests in the National Planning Policy Framework (the Framework) or the Planning Practice Guidance (the PPG) specifically, the requirement to be enforceable. I am also concerned that such a condition could prejudice the interests of interested parties by evolving the appeal development beyond that on which they were consulted.

14. As such, I find that the appeal development does cause harm to the living conditions of the occupiers of No 20 and No 22 with specific regard to loss of privacy and amenity. It therefore conflicts with Policy CS10 of the Wakefield Metropolitan District Council Local Development Framework Core Strategy, adopted 2009 which seeks to ensure that development is of high quality and appropriate to its location. It also conflicts with policies D9 and D10 of the Wakefield Local Development Framework and guidance in the Wakefield District Residential Design Guide Supplementary Planning Document, all of which seek, amongst other things, to ensure that development does not harm residential amenity. It also conflicts with the aim of the Framework to achieve well-designed places with a high standard of amenity.

Other Matters

15. The appellant has suggested that any harm is at most modest and would be outweighed by their rights to practically enjoy their living space, as set out in Article 1 of the First Protocol and Article 8 of the Human Rights Act 1998. However, those are qualified rights; and any interference with them which might arise as a result of any future enforcement action would be in accordance with the law and in pursuance of a well-established and legitimate aim, as set out in the development plan.

Conclusion

16. For the reasons given above I conclude that the appeal development conflicts with the development plan and there are no material considerations which indicate that a decision be taken other than in accordance with it.

17. The appeal should therefore be dismissed.

S Dean

INSPECTOR

Appendix 1 - Description of Proposed Works from Application Form

"Removal of the small patio and path which was installed by the builders - Strata Homes. Replacement of most of the lawn which was laid by Strata Homes within the fencing which marked the curtilage of the property in the back garden.

Levelling of the back garden to roughly approximate to the level of the ground immediately adjacent to the rear elevation of the property.

The levelling is achieved via the insertion of sleepers lining the area adjacent to the back fence, down the side behind the garage and down some of the line of fence demarking the border with our neighbours to the north. As a result of the slope which was being removed, the number of sleepers required varied from none (by the house) to three at the back of the garden. The third row of sleepers at the back of the garden also formed the back part of that planter. Additional top soil was used to level the garden inside the area created by the sleepers.

Laying of two main paved areas - one outside the patio doors at the top of the garden and one behind the detached garage belonging to the property. Laying of a path to connect these two paved areas which also provided a flat surface on which to put a bin store. Paving constructed of porous Indian stone. The paved area was shaped in such a way that the three inspection covers dotted around the old lawn were incorporated in the design while still being accessible if required.

Creation of planters down two sides of the garden with a third planter adjacent to the garage using railway style wooden sleepers. Laying of a new natural turf lawn on properly prepared ground for the non-paved areas.

Attaching privacy panes to the exiting fence which cover the gaps which existed prior to their installation. These panes provide additional privacy for all concerned and have a positive impact on residential amenity as a result. In particular the first floor bedroom windows of the houses opposite are no longer completely visible from our kitchen/diner area.

Please note that these panes are standard 180cm in height and therefore create a fence which varies from 180cm to 194cm around the perimeter of our back garden. The reason for the difference in height is that the garden slope has not been totally eradicated, that the fence panels sit on top of sleepers at certain points and on a plinth around the paved area at the bottom of the garden.

These panes also have the impact of raising the fence height when viewed from the Lancaster Avenue side of the development. However, as a result of land contouring, there is already a change in fence height between our neighbours next door but one to the north and to our next door neighbours to the north. The length and general dimensions of the impacted gardens on Lancaster Avenue are such that the additional height does not have an overbearing effect."