



Appeal Decision

Site visit made on 7 December 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10/02/2023

Appeal Ref: APP/G5180/D/22/3304572

7 Beagles Close, Orpington BR5 4PS

- 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 Carragher against the decision of London Borough of Bromley.
 - The application Ref DC/22/01707/FULL6, dated 23 April 2022, was refused by notice dated 30 June 2022.
 - The development proposed is close boarded fencing and a raised patio area.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development has already been carried out. Therefore, I have considered the appeal on the basis that planning permission is sought retrospectively albeit I have removed the words 'Retrospective planning application for the retention of...' from the description of the proposal as they are not a description of development.
3. The reason for refusal on the Council's decision notice includes reference to a 'harmful visual impact towards the neighbouring properties'. The Council's delegated report states that in design terms the proposal does not appear out of character with the area and that the visual impact relates to the effect on outlook for neighbouring residents. I have taken this into account in defining the main issue.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of neighbouring occupiers with particular regards to outlook and privacy.

Reasons

5. The close boarded fencing and raised patio area are visible to varying degrees from the gardens and rear facing windows serving surrounding dwellings. Even so, the maximum height of the development together with the relative distances between the nearest neighbouring windows and the parts of neighbouring gardens most likely to be used for sitting out, ensures that the development does not result in any harmful enclosing impacts on neighbouring properties. Therefore, suitable levels of outlook are provided for the occupiers of neighbouring dwellings.

6. I accept that some mutual overlooking of gardens often occurs between properties within a residential area. However, on my site visit I saw that the raised patio area facilitates views of a large portion of the rear garden serving No 8 Beagles Close given its height relative to the top of the boundary fence with this neighbouring property. Furthermore, when I stood at the front edge of the raised patio, I was afforded close-up views of the patio area to the immediate rear of the dwelling at No 8 as well as of the rear windows serving this neighbouring dwelling. These views are closer and more direct than those that would otherwise be afforded between these properties. For these reasons, the development has a detrimental impact on the privacy of the occupiers of this neighbouring dwelling.
7. The appellant suggests that privacy screens could be erected along the sides and front portion of the raised patio. However, the planters that were in situ to the side of the raised patio adjacent to the boundary with No 8 at the time of my visit did not prevent me from obtaining the identified views. Even if the planting becomes more substantial over time, there is nothing before me to suggest the planters could not easily be moved. Therefore, they do not provide a sufficient level of certainty that the privacy of neighbouring occupiers would be protected in the long term.
8. In the absence of precise details of fixed privacy screens, I cannot be certain that they would be both of an acceptable appearance and of a height and position which would overcome the harm identified. Any new fencing at garden level would need to be of a substantial height to prevent the overlooking impacts identified with the potential that this would be overbearing for occupiers of No 8 and also visually unappealing.
9. The proposed fencing, together with existing planting within neighbouring properties ensures that acceptable levels of privacy are provided for most of the neighbouring properties on Loxwood Close and Alma Road. However, in the case of No 5 Loxwood Close, its rear garden and the windows to its rear elevation are particularly close and visible in views over the proposed fence from the raised patio. The modest depth of this neighbouring garden emphasises this overlooking impact. Even if the privacy of occupiers of No 5 could be protected through a condition requiring additional screening to be attached to the top of the fence, this does not overcome the overall harm to the privacy of neighbouring occupiers when No 8 Beagles Close is also factored in.
10. There is conflicting evidence from third-parties in respect of whether levels on the appeal site have been raised above previous levels to create the raised patio area. The evidence provided by the appellant, in terms of the historic aerial image and the photograph of a concreted area surrounded by soil and close boarded fencing, is inconclusive as it does not provide any surrounding context in terms of the wider garden levels or how these related to neighbouring properties. In any case, I have no remit to ascertain the lawful position in terms of levels on the site for an appeal made under s78 of the Act. Furthermore, the appellant has acknowledged that the raised patio area is larger and extends further into the garden than any previous situation. Therefore, I have assessed the appeal proposals on their own merits.
11. I conclude, the development results in significant harm to the living conditions of neighbouring occupiers with particular regard to privacy. In that regard, the

proposal conflicts with the requirements to respect the privacy of neighbouring occupiers and to be compatible with surrounding development in Policies 6 (Residential Extensions) and 37 (General Design of Development) of the London Borough of Bromley Local Plan (2019). For the same reasons, the proposal also conflicts with Paragraph 130 of the Framework which amongst other things requires that developments create places with a high standard of amenity for existing and future users.

Other Matters

12. The appellant contends that the development has resulted in social, economic and environmental benefits through the provision of the raised patio area for the use of occupiers of the host dwelling, within a previously under-utilised part of the garden and with associated spend in its construction. However, given the nature and scale of the development any such benefits are only of a very limited scale and do not justify the significant harm I have identified under the main issue.
13. Whether or not previous vegetation within the rear garden of No 8 Beagles Close would have provided adequate screening does not justify the harm resulting from the proposal having regard to the existing relationships between the proposed development and neighbouring properties.

Conclusion

14. The development results in significant harm to the living conditions of neighbouring occupiers with particular regard to privacy. The proposal therefore conflicts with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. The appeal is therefore dismissed.

M Russell

INSPECTOR