



Appeal Decision

Site visit made on 3 May 2023

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2023

Appeal Ref: APP/P1045/W/22/3313129

21 Imperial Road, Matlock, Derbyshire DE4 3NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Ms Frances Barnard against the decision of Derbyshire Dales District Council.
 - The application Ref 22/00648/VCOND, dated 27 May 2022, was refused by notice dated 25 July 2022.
 - The application sought planning permission for side and rear extension without complying with a condition attached to planning permission Ref 16/00835/FUL, dated 12 January 2017.
 - The condition in dispute is No 1 which states that: *Within 21 days of this Decision Notice, full details of the height, design and positioning of the boundary fence to be erected on the western boundary, shall be submitted to and approved in writing by the Local Planning Authority. The fence shall then be erected in accordance with the approved details, prior to the occupation of the dwellinghouse and thereafter retained as such, unless otherwise agreed in writing by the Local Planning Authority.*
 - The reason given for the condition is: *To protect neighbouring amenity in accordance with Policy H2 of the Adopted Derbyshire Dales Local Plan (2005).*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission has been granted for an extension to the appeal dwelling subject to a condition relating to boundary treatment. Although the reason given for the condition does not specifically identify a property, it is clear from the Officer's Report¹ that it was imposed to protect the living conditions of the occupiers of the neighbouring property to the west, 10 Woolley Road. The appellant is seeking to remove this condition.
3. The main issue is whether the condition is reasonable or necessary in the interests of the living conditions of the neighbouring occupiers at 10 Woolley Road with particular regard to privacy.

Reasons

4. The appeal property is a detached bungalow which is situated on the western side of Imperial Road. The surrounding area is predominantly residential and features varying land levels. To the rear of the appeal site is 10 Woolley Road,

¹ LPA Ref: 16/00835/FUL

which is situated at a lower level and orientated in a different direction to the appeal property.

5. The extension to the appeal dwelling and the raised platform are set away from the western boundary of the appeal site, and only extend across part of the length of the garden. Although views from within the extension towards the neighbouring property at No. 10 would be limited due to the acute angle between them, the raised platform would be closer to this neighbouring property. Given the proximity and the elevated position of the appeal dwelling's platform area, compared to this neighbouring property, the boundary fence along the western edge of the appeal site is necessary to prevent views down to No. 10's garden area.
6. The appellant considers that this boundary treatment no longer serves a useful purpose and reference is made to a boundary fence and planting by the neighbouring property at No. 10. However, the fence at the neighbouring property has been erected at a lower level than the platform area at the appeal property. Furthermore, the intermittent spacing of the planting does not provide a continuous screen along the boundary between these two properties. As such, the removal of the boundary treatment secured by the disputed condition would result in unacceptable overlooking and I consider the condition to still be reasonable and necessary.
7. Reference has been made by the appellant to the pre-existing land levels between the appeal site and this neighbouring property. I note prior to the appeal development that there would have been views of the neighbouring garden at No. 10 from the appeal site. From the evidence before me, and my site observations of the close relationship between the two garden areas, the raising of part of the appeal property's rear garden in the approved development, above the level that previously existed, has significantly increased the potential for overlooking.
8. I therefore conclude that the disputed condition is reasonable and necessary in the interests of protecting the living conditions of the occupants of 10 Woolley Road with particular regard to privacy. The removal of the condition would result in a conflict with Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017) (Local Plan), which seeks, amongst other matters, for development to achieve a satisfactory relationship to adjacent development and to not cause unacceptable effects by reason of overlooking. The decision notice makes reference to Policy HC10 of the Local Plan, but this is not relevant to living condition matters. The removal of the condition would also be contrary to Paragraph 130 of the National Planning Policy Framework, which seeks a high standard of amenity for existing and future users.

Other Matters

9. I note the personal observations made by the appellant, but I can confirm that I have dealt with this appeal based on the planning merits of the case. I have taken account of all other matters raised, including the appellant retaining an access to the original ground level of the rear garden to enable maintenance of the approved boundary treatment, but this would not alter my conclusion in relation to the main issue.

Conclusion

10. For the reasons given above, I conclude the appeal should be dismissed.

F Rafiq

INSPECTOR