



Appeal Decision

Site visit made on 22 May 2023

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th June 2023

Appeal Ref: APP/A4710/D/23/3318298

8 Ryestone Drive, Ripponden, Sowerby Bridge HX6 4JW

- 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 Adam Latimer against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 21/00388/HSE, dated 21 March 2021, was refused by notice dated 20 December 2022.
 - The development proposed is described as 'external decking to optimise unusable garden space to the rear of the property, implementing screening to improve privacy for both our and neighbouring gardens, on permitted development land.'
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Adam Latimer against Calderdale Metropolitan Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. The Council determined the application in relation to policies contained within the Amended Replacement Calderdale Unitary Development Plan 2009 (UDP) on 20 December 2022. Subsequently, the Council formally adopted the Calderdale Local Plan 2018/19 – 2032/33 (2023) (CLP) on 23 March 2023. This now forms the statutory development plan for the area substituting the UDP. Both parties were invited to make comments on the new local plan policies applicable to the development proposal during the appeal process, but no comments were forthcoming. For the avoidance of doubt, I have determined the appeal based on the development plan (CLP).
4. Since the development has been carried out, retrospective planning permission has been sought. I have determined the appeal accordingly.

Main Issues

5. The main issues in relation to this appeal are the effect of the proposed development upon i) the living conditions of the occupiers of 6 Ryestone Drive and 1, 1a and 2 Stones Bank with regard to a loss of privacy of gardens and ii) the character and appearance of the area.

Reasons

Living Conditions

6. The appeal site comprises a detached dwelling in an established residential area located on a hillside to the south-east of the A58 Rochdale Road. Land

- levels change significantly to the rear of the appeal site with the neighbouring dwellings at Stones Bank at a substantially lower level.
7. Views are possible from the rear garden of the appeal site down into the gardens of 1, 1a and 2 Stones Bank. However, this is largely only achievable when standing immediately adjacent to the existing rear boundary fence and making a concerted effort to look over. When within the general garden area, the existing rear boundary fence provides screening of the neighbouring dwellings and their gardens below.
 8. Although the decking does not change the use of the garden for domestic purposes, the raised position and size of the space which is afforded panoramic views, provides an attractive place for occupants to congregate or sit out for sustained periods. The decking sits on sloping ground such that in some areas it is only a few inches above ground level, while at others it is several feet above. In providing level platforms, it has created a more useable space close to the rear boundary, providing lasting and more open elevated views into the neighbouring gardens of 1, 1a and 2 Stones Bank below.
 9. Notwithstanding the existing and proposed site section drawings, it is clear that the degree of overlooking has materially worsened, to the detriment of the privacy of neighbouring occupiers. This is particularly the case for the occupants of No 1a, as there was no other apparent garden space that could be utilised privately. The perception of being watched from above would also be heightened for all of the occupants of the Stones Bank dwellings, resulting in a feeling of discomfort in their outside space. This would be exacerbated when nearby trees are not in leaf.
 10. The impact of the development is however, most pronounced for the occupants of No 6 Ryestone Drive, given that a direct and unobstructed view of their rear terrace and balcony is possible from both the lower deck and the top of the steps on the upper deck, immediately adjacent to the boundary. Occupied by outdoor furniture, these areas are clearly used by the occupants of No 6 for sitting out and socialising. Such obvious and immediate overlooking would have an adverse and unacceptable impact on the privacy of the occupants of No 6.
 11. Whilst the additional raised fence to the rear boundary has reduced the views from the lower portion of the deck, it has resulted in the significant enclosure of this space. Occupants are more likely to use the wider upper deck, from which they could gain open views of the surrounding rural landscape. The raised rear fence does not however, prevent views to either side into the rear garden of No 6 or views down onto the gardens of the Stones Bank properties.
 12. The development is therefore, harmful to the living conditions of neighbouring occupiers by virtue of its adverse and unacceptable impact on their privacy when using their gardens. Accordingly, the development is contrary to Policy BT2 of the CLP which seeks to ensure that development proposals do not result in a significant adverse impact on the privacy and private amenity space of adjacent residents. It would also conflict with paragraph 130 of the National Planning Policy Framework (the Framework) which seeks to ensure a high standard of amenity for existing users.

Character and Appearance

13. Public views of the development are available from the driveway that provides vehicular access to the dwellings at Stones Bank, as well as private views from

these properties. It is the raised fence which is most prominent in such views, although the decking would become more visible when in use.

14. The raised fence has been erected to try to overcome overlooking issues from the decked areas but in this regard, it has been sited to perform a specific function, rather than to add to the quality of the appeal site or its surroundings. In upward views from the driveway and the Stones Bank dwellings, the fence appears arbitrarily located and incongruous, jutting significantly above the height of the existing rear boundary fences to either side. The harm is however moderate, given that the raised fence is seen in the context of the large timber crib retaining wall, existing fences and rear elevations of existing buildings. It is also weathering to match the colour of nearby structures.
15. The development adversely affects the character and appearance of the area. As such it conflicts with Policy BT1 of the CLP and paragraph 130 of the Framework both of which seek amongst other things to ensure high quality development that respects or enhances the character and appearance of surrounding built development.

Other Matters

16. The first-floor rear elevation is devoid of windows such that there are no clear views over the neighbouring garden from the appeal property as the appellant suggests. Openings in the side elevation face away from the gardens below.
17. Reducing the ground level is suggested as an alternative viable option to enable the full use of the garden. No details are before me such that I can be clear whether such engineering operations would not require planning permission, or what the impact on the living conditions of neighbouring occupiers in respect of privacy would be. Thus, there is no evidence that an alternative scheme would result in a more harmful impact than the proposal before me. It seems to me conversely, that a reduction in land level would have the benefit of enabling the original boundary fences to provide a better degree of screening than is presently the case, improving the privacy conditions for neighbouring occupants, as well as the appellant. Even if lowering the ground level is a realistic fallback position, it is likely to be considerably different and the degree of harm less than the existing development.
18. I note the concerns of interested parties in relation to the overlooking of principal windows to habitable rooms and loss of light from the development. The Council did not refuse the application on these grounds. As I am dismissing the appeal on the main issues, I have not been required to address these matters further.

Conclusion

19. For the reasons given above, the proposal conflicts with the development plan and there are no material considerations that would outweigh that conflict. Accordingly, the appeal is dismissed.

M Clowes

INSPECTOR