



Appeal Decision

Site visit made on 27 April 2023

by D Cleary MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2023

Appeal Ref: APP/A0665/D/23/3317052

Orchard House, Green Lane, Kelsall, Chester CW6 0QA

- 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 Mrs Allie Bailes against the decision of Cheshire West and Chester Council.
 - The application Ref: 21/02243/FUL, dated 14 April 2021, was refused by notice dated 30 November 2022.
 - The development is the construction of raised deck/terrace area.
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Decision

1. The appeal is allowed and planning permission granted for the construction of a raised deck/terrace area at Orchard House, Green Lane, Kelsall, Chester CW6 0QA in accordance with the terms of the application, Ref: 21/02243/FUL, dated 14 April 2021, subject to the following conditions:
 - 1) The development hereby permitted shall be retained in accordance with the following approved plans and documents referenced:

TQRQM21182221304277 - Location Plan – Orchard House; and,

Orchard House Reference Number 21/02243/FUL – Photograph 1, Photograph 2 and Photograph 3
 - 2) Within three months of the permission hereby approved, details of a privacy screen to be installed along the western boundary of the terrace, including a timetable for its installation, shall be submitted to, and approved in writing by, the Local Planning Authority. The privacy screen shall be installed in accordance with the approved details and shall thereafter be retained.

Procedural Matters

2. On my site visit I observed that the development had taken place and was complete.
3. The Council altered the description of the development in their decision notice. This description is clearer and more succinct than that given on the application form. I have therefore used this description in the banner heading and formal decision, albeit removing the word retrospective.

Main Issue

4. The main issue is the effect of the development on the living conditions of the occupiers of The Hollies, with particular regard to privacy.

Reasons

5. The appeal site is a large detached property located within a generous plot. Properties along Green Lane are similarly large dwellings set in large plots with sizeable rear gardens. Land levels drop east to west and as such the adjacent dwelling, The Hollies, is located at a lower land level than the appeal dwelling. The site boundary comprises a close board fence with an upper level of trellising. A series of mature trees are located along the site boundary, while a row of 6 conifers have recently been planted which, at present, do not project above the height of the trellis. A brick terrace, the subject of this appeal, has been erected to the rear of the dwelling which is set in approximately 2m from the side boundary with The Hollies. The platform height of the deck is approximately at the same level as the close board fence, excluding trellis.
6. I observed on my site visit, that the presence of mature landscaping along the site boundary helps to screen some views of the wider rear garden of The Hollies. Given the size of the garden and presence of these trees, I do not consider the degree of overlooking on the wider garden area to be significant. However, due to the land level changes, I observed when standing that there are direct views over the fence line to a patio area immediately to the rear of the Hollies and into a side facing window. In my view the degree of overlooking is significant and has an unacceptable effect on the living conditions of the occupants of that property.
7. The appellant has suggested that a condition relating to landscaping could mitigate the overlooking issue that I have identified. Such landscaping would take some time to become effective, and I do not have sufficient information to determine at what height any landscaping would be effective. A condition to this end would therefore lack precision and, in any event, would be difficult to enforce.
8. A further condition has been suggested for a privacy screen to be erected along the western side of the terrace. Such a screen, provided it is of sufficient height and opacity, would address the concern with regard to overlooking to the patio and windows of the Hollies. I am satisfied that such a screen could be provided without resulting in other knock-on design and amenity issues due to the likely modest nature of any addition, along with its spacing from the neighbouring property.
9. I conclude that the development has an unacceptable effect on the living conditions of occupiers of the Hollies with particular regard to privacy. However, I am satisfied that issue could be satisfactorily addressed through appropriate mitigation. Therefore, subject to conditions, the development would comply with Policy SOC5 of the Cheshire West and Chester Local Plan (Part One) Strategic Policies (2015), and Policies DM2 and DM21 of the Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies (2019). Amongst other things, these policies expect development to

not have an adverse effect on the living conditions of occupiers of existing properties.

Other Matters

10. I note the representations received by the Parish Council and those of neighbouring residents. The comments raised principally concern the main issue of overlooking which I have addressed above, including potential mitigation solutions. With regard to the effect of the development through overshadowing, loss of light, noise and disturbance, and external lighting, these are matters which have not been raised as a concern by the Council and I have no reason to disagree.

Conditions

11. Because permission is being granted retrospectively it is not necessary to attach the standard time limit condition, or any materials condition. The photographs (detailed within the document titled Orchard House Reference Number 22/02243/FUL) provide an accurate record of what has been built, I shall therefore impose a condition to ensure that the development remains in accordance with these details, for the avoidance of doubt. However, the submitted site plan reference "New Deck", shows the terrace in the wrong location and therefore I have not conditioned the development be retained in accordance with this plan.
12. A condition requiring details of a privacy screen to be submitted for approval is considered to be necessary to address the main issue. The Council have suggested wording of such a condition and, subject to minor amendments in the interests of effectiveness, I am satisfied that this meets the relevant tests for conditions.

Conclusion

13. For the above reasons, I conclude that the appeal should be allowed.

D Cleary

INSPECTOR