



Appeal Decision

Site visit made on 13 July 2023

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Appeal Ref: APP/R0660/D/22/3312216

152 Grove Park, Knutsford, Cheshire WA16 8QD

- 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 conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr & Mrs Philipson against the decision of Cheshire East Council.
- The application Ref 22/1351M, dated 30 March 2022, was refused by notice dated 29 September 2022.
- The application sought planning permission for the retention of rear garden terrace more than 0.3m above natural ground level without complying with conditions attached to planning permission Ref 21/0650M, dated 10 September 2021.
- The conditions in dispute are Nos 2 and 3 which state that:
 - (2) *The development hereby approved shall be carried out in total accordance with the approved plans: 1740 11 A (Existing and Proposed Ground Floor Plans) and 1740 25 A (Existing and Proposed Elevations) received by the Local Planning Authority on 19 July 2021 and 1740 01 Location Plan received by the Local Planning Authority on 8 February 2021. Notwithstanding details on drawing 1740 25 A, the full height of the screen shall be obscured glazed to a minimum level as stated under condition 3 to this notice.*
 - (3) *Prior to first use of the balcony/garden terrace hereby approved a privacy screen shall be erected to the full length of the south side of the balcony/terrace. The screen shall be 1800mm in height from the base/floor level of the terrace/balcony hereby approved and shall fully glazed in obscured glass to a minimum of grade 3 privacy level. Notwithstanding details on drawing 1740 25 A, the full height of the screen shall be obscured glazed to a minimum level as stated above. The privacy screen shall be maintained as such thereafter for the lifetime of the development.*
- The reasons given for the conditions are:
 - (2) *For the avoidance of doubt and to specify the plans to which the permission/consent relates.*
 - (3) *To protect the amenity of neighbouring property.*

Decision

1. The appeal is dismissed.

Preliminary Matter

2. I am aware that the Macclesfield Borough Local Plan, the relevant policies of which were referenced within the Council's decision notice, has now been superseded and no longer forms part of the development plan. I have not therefore relied upon those policies in my decision.

Background and Main Issue

3. Planning permission was granted for the retention of the rear terrace at the appeal property, subject to a number of conditions. Of relevance to this appeal are conditions 2 and 3 which, amongst other things, concern the introduction of

an obscurely glazed privacy screen to the south side of the terrace. Through this appeal, the appellant seeks to remove the requirement for the privacy screen, seeking instead to increase the height of part of the existing boundary fence.

4. The main issues are therefore the effect that varying condition 2 and removing condition 3 would have on the living conditions of occupiers at 154 Grove Park, with particular regard to privacy, and the character and appearance of the area.

Reasons

Living conditions

5. The appeal property is a detached dwellinghouse which has a rear terrace at ground floor level which is raised above the rear garden due to the sloping topography of the site.
6. At the time of my site visit I was able to obtain views over the existing boundary fence into the garden of No 154 from various parts of the terrace, despite the orientation of the two sites. I was also able to gain views through the upper trellis sections of the boundary fence regardless of the existing vegetation along it.
7. The required siting of the approved privacy screen would significantly restrict overlooking to No 154 from the terrace due to its size, position and design. A pleasant and wide outlook across Sanctuary Moor to the rear would remain from various viewpoints on the terrace even with the screen in place, as well as from the appeal property and garden, and the screen would not result in a detrimental loss of light, nor would it result in a harmful sense of enclosure for occupiers.
8. Rather than erect the privacy screen, this appeal seeks to increase the height of one boundary fence panel adjacent to the terrace, to the same height as a higher adjoining panel. Given the short length of the panel proposed to be increased and its position relative to the terrace, it would not provide sufficient screening which would prevent all overlooking to the garden of No 154, including areas where its occupiers would expect a high degree of privacy. It is very clear to me that this alternative would not have a similar effect to the approved obscured privacy screen.
9. It also appears that the proposed fence panel extension would consist of trellising, in keeping with the existing boundary design. This would not prevent overlooking given its open design. The existing planting which is entwined around the trellising and covers much of this stretch of fence does not prevent all overlooking and, furthermore, it is not evergreen.
10. Therefore, at certain times of the year when the planting is not in full leaf it would provide very limited coverage and thus views into the garden would be greater still. Moreover, even if vegetation were established year-round, notably the laurels which have been planted, their retention could not be guaranteed.
11. However, the design of the proposal is vague throughout the appeal submissions. Therefore, even if the fence extension were to be a closed fence panel, as noted it would not be in a position or of a length sufficient to prevent all overlooking.

12. I appreciate that some mutual overlooking from rear and side facing windows or small balconies is commonplace and somewhat anticipated in residential areas, and indeed occurs in this case between the appeal dwelling and No 154. However, the raised terrace is of a generous size and provides sufficient space for items of furniture and seating. It is located off the kitchen diner. The space and the accessibility of the terrace from a main habitable room would likely encourage prolonged periods of stay, unlike that of smaller balconies and windows serving other rooms, particularly bedrooms on upper floors. Therefore, the opportunities to overlook are greater and more detrimental in this instance.
13. It has been suggested that the rear garden of No 154 has been raised without permission and this has exacerbated overlooking. The lawfulness of these works is not a matter for me. Nevertheless, even if the garden sloped away as it would have previously, I am not convinced that this arrangement would prevent overlooking from the terrace to all parts of the garden given the boundary design and close relationship.
14. Taking all the above into consideration, varying condition 2 and removing condition 3 would result in harm to the living conditions of occupiers at No 154 and thus would conflict with Policy SE1 of the Cheshire East Local Plan, Local Plan Strategy 2010-2030 (July 2017) (the CELPS) which aims to ensure an appropriate level of privacy for existing residential properties.
15. I have not been provided with a copy of Policy HOU10 of the Cheshire East Site Allocations Development Plan Document. Nevertheless, based on the details provided by the appellant, it seems to me that this proposal would conflict with Policy HOU10 as it would result in unacceptable harm to the amenity of neighbouring properties in terms of loss of privacy.
16. Accordingly, conditions 2 and 3 in their current format are reasonable and necessary.

Character and appearance

17. The proposed alteration to the fence panel would result in a stretch of fence which would be of a very generous height. Despite this, it would only be for a short length and, in this location, it would not be readily apparent from the public realm. The substantial height would also be predominantly experienced from the appeal site rather than No 154, given the varied land levels in both sites. Taking into consideration the step down along the fence and the arrangement of the appeal garden, it would not be a dominating or an incongruous feature.
18. Consequently, the variation of condition 2 and removal of condition 3 would not result in harm to the character and appearance of the area and thus would not conflict with Policy SE1 of the CELPS which aims to ensure that development proposals make a positive contribution to their surroundings. The lack of harm in this regard is a neutral matter.

Other Matters

19. Within its submission the appellant put forward an alternative proposal to install a freestanding screen adjacent to the boundary fence. However, it is important that I make my decision based upon the same details which were before the Council.

20. I note the concerns regarding the Council's handling of the planning application however this is not a matter for me within the context of this appeal.

Conclusion

21. The proposal conflicts with the development plan and there are no other considerations which indicate a decision should be made other than in accordance with it. Therefore, the appeal should be dismissed.

H Ellison

INSPECTOR