



Appeal Decision

Site visit made on 20 September 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28TH SEPTEMBER 2023

Appeal Ref: APP/U1430/C/23/3320233

Land at 19 Starrs Mead, Battle, East Sussex TN33 0UB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jeremy Pickard against an enforcement notice issued by Rother District Council.
- The notice was issued on 7 March 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a rear raised garden terrace extending from an existing raised access and steps, with decorative privacy panels installed on the west boundary of this raised terrace, in the approximate position shown coloured blue on the attached plan.
- The requirements of the notice are: 1) Demolish, dismantle and remove the raised garden terrace extending from an existing original raised access and steps. 2) Remove the privacy screens installed on the western boundary of the land on the erected raised terrace. 3) Reinstate the original access and steps removed to facilitate the unauthorised development in the approximate position shown coloured blue on the attached plan. 4) Remove all waste, debris, equipment, tools and materials from the Land arising from compliance with the above requirements.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Ground (a) and the Deemed Application for Planning Permission

Main Issues

1. The main issues relevant to the ground (a) appeal and the deemed application for planning permission are:
 - The effect of the breach of planning control on the living conditions of neighbouring residents, with particular regard to the privacy of residents at 18 and 23 Starrs Mead and the outlook of residents at 18 Starrs Mead; and
 - The effect of the breach of planning control on the character and appearance of the area.

Reasons

Living Conditions

2. The appeal property is a detached house with front and rear gardens. Land levels across the appeal site and its near surroundings slope downwards from south to north and from east to west. The prevailing land levels of the rear

garden are significantly lower than those of the front garden and the internal ground floor level of the dwelling.

3. The raised terrace the subject of the notice extends a pre-existing raised terrace which provided external access between the rear of the garage and the appeal dwelling, and steps leading down into the rear garden. The extended raised terrace the subject of the notice occupies the space between the pre-existing raised terrace and the western side boundary of the appeal site, which is shared with 18 Starrs Mead.
4. Decorative screening, referred to as 'privacy panels', has been installed along the western boundary of the extended raised terrace, through which partial views of the house and garden at 18 Starrs Mead can be seen. There are views over the top and around the decorative screening, into the garden and of the conservatory at 18 Starrs Mead. I noted that the conservatory at 18 Starrs Mead has blinds fitted, otherwise views of the inside would be possible from the raised terrace extension.
5. Houses within Starrs Mead have been built close together. This, coupled with sloping land levels, mean there is a degree of mutual overlooking between the rear facing windows of the appeal dwelling and 23 Starrs Mead. There would also have been a degree of overlooking from the original raised terrace before it was extended.
6. Before it was extended, the pre-existing raised terrace would have likely been best suited to have been used as a walkway between the garage, house and staircase leading to the garden. The appellant states that it was used as a seating area. I do not doubt that the pre-existing raised terrace would have been used occasionally as a narrow seating area, but it would not have been used for such purposes to the same extent as the extended raised terrace is capable of. This is because it would have a restricted size and layout for such purposes.
7. The raised terrace extension provides an outside area for multiple people to stand and sit, which is capable of exacerbating overlooking from the appeal site into 18 and 23 Starrs Mead. It increases opportunities for overlooking into the gardens and houses at those neighbouring properties.
8. Compared to the pre-existing raised terrace, views from the extended raised terrace into the garden and conservatory of 18 Starrs Mead are particularly harmful to the living conditions of the residents of that property on account of the unacceptable reduction in their levels of privacy. It would be unreasonable to expect the residents of 18 Starrs Mead to keep blinds rolled down within their conservatory to prevent such levels of overlooking, even if this would be the preference of current residents.
9. Views into the house at 23 Starrs Mead from the extended raised terrace are similar to those from the ground floor windows of the appeal dwelling. The impact of the breach of planning control on the privacy of residents of that neighbouring dwelling is therefore limited, but that does not mean opportunities for such views should be encouraged. The extended raised terrace provides greater opportunities for unacceptable levels of overlooking from the appeal site into 23 Starrs Mead and increases the sense of perceived overlooking experienced by residents at that property.

10. The harm caused to the privacy of residents of 18 and 23 Starrs Mead by the breach of planning control could not be reasonably mitigated through conditions attached to a grant of planning permission. Conditions could be attached requiring the approval of further details of boundary treatment or privacy screening, but the extent of boundary treatment and/or privacy screening needed to sufficiently mitigate the harm would appear likely to cause other unacceptable impacts. Notwithstanding my other findings below, such impacts would likely include unacceptable reductions to neighbouring residents' outlook and/or unacceptable harm to the character and appearance of the area. Infilling parts of the existing decorative screening would be insufficient to mitigate the harm on account of the small size of that screening.
11. It would be unreasonable to attach a condition to any grant of planning permission which requires the dimensions of the extended raised terrace to be reduced. I have been provided with suggested amended dimensions by the appellant, but I am unconvinced this would sufficiently reduce the harm caused by the extended raised terrace. Even if it was reduced in width as suggested, the extended raised terrace would encourage standing and sitting at a level which would increase opportunities for unacceptable overlooking into neighbouring properties.
12. The safety railing and decorative screen along the boundary adjacent to 18 Starrs Mead is higher than the pre-existing boundary fencing. I note that thick planting previously existed along this boundary. The design, height, and extent of the safety railing and decorative panels along this boundary are such that there is a negligible impact on the outlook enjoyed by residents of 18 Starrs Mead. The breach of planning control is not unreasonably overbearing.
13. To conclude, the extended raised terrace has an unacceptable impact on the living conditions of the residents of 18 and 23 Starrs Mead on account of the harm it causes to their privacy. That harm could not be sufficiently mitigated through conditions attached to a planning permission. It does not cause unacceptable harm to the outlook of any residents. It is contrary to Policies OSS4 and EN3 of the Council's Local Plan Core Strategy (2014) and Policy DHG9 of the Council's Development and Site Allocations Local Plan (2019) (DSALP). These require, amongst other things, development to be of high design quality which does not harm the amenities of adjoining properties in terms of overlooking.

Character and Appearance

14. I was unable to see the unauthorised development from the public highway. Views of the extended raised terrace, its railings and decorative screens are only possible from a small number of neighbouring dwellings and are seen in the context of their residential setting.
15. Although the decorative screens are not a feature of the area and are taller than boundary fencing, they are not uncharacteristic for a residential area with varying land levels. They are seen and experienced alongside the tall rear and side elevations of the garage at the appeal site. On account of their limited size, they do not appear out of place, incongruous with the appeal dwelling, or harmful to the character or appearance of the area.
16. The breach of planning control is not therefore contrary to Policy DEN1 of the DSALP, which seeks to maintain landscape character.

Conclusion on Ground (a) and the Deemed Application for Planning Permission

17. The breach of planning control harms the living conditions of residents at 18 and 23 Starrs Mead on account its unacceptable impact on the privacy of those residents, and conflicts with the development plan taken as a whole. There are no material considerations which indicate my decision on the appeal under ground (a) and the deemed application for planning permission should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal under ground (a) should not succeed and the deemed application for planning permission should be refused.

Ground (f)

18. To succeed under this ground of appeal the appellant would need to demonstrate that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
19. The requirements of the notice seek to achieve the removal of the unauthorised development, and for the affected land to be returned to its state before the breach of planning control took place. Its purpose is to remedy the breach of planning control, rather than any injury to amenity.
20. As referred to above, it has been suggested that a reduction in the width of the extended raised terrace and/or screening could mitigate the harm caused by the breach of planning control. Such alterations would not remedy the breach of planning control.
21. It has been claimed that planning permission would not be required for decking to cover the pre-existing raised platform and logs stored on the ground. Be that as it may, the decking forms part of the single operation carried out to construct the extended raised terrace. That development is in breach of planning control, and it is reasonable for the notice to require the removal of all of that decking to remedy the breach.
22. The third requirement of the notice requires the 'original access and steps' to be reinstated. These appear to remain in place beneath the unauthorised development. It would be more appropriate for this requirement to require the land to be restored to its condition before the breach took place, consistent with section 173 of the Act, rather than to require the reinstatement of any access and steps which may or may not have been removed. I shall vary the notice accordingly.
23. The fourth requirement of the notice seeks to have all waste, debris, equipment, tools and materials which arise from compliance with the notice's other requirements to be removed from the land. This would not require the removal of logs, or any other domestic items stored beneath the extended raised terrace. There is no reasonable need for any such equipment or tools to be removed from the land, as these would be minor in nature and may well be ordinarily stored at the appeal site. I shall therefore vary this requirement to delete those elements. Otherwise, the fourth requirement is reasonable and necessary to restore the land to its former condition and remedy the breach of planning control.
24. The appeal under ground (f) therefore succeeds insofar as I shall vary the third and fourth requirements of the notice, as outlined above.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

26. It is directed that the enforcement notice is varied by:

(i) deletion of the text 'Reinstate the original access and steps removed to facilitate the unauthorised development in the approximate position shown coloured blue on the attached plan' at Section 5 of the enforcement notice and its substitution with the text 'Restore the land in the approximate position coloured blue on the attached plan to its condition before the breach of planning control took place'; and

(ii) deletion of the text 'equipment, tools' at Section 5 of the enforcement notice.

27. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

L Douglas

INSPECTOR