



Appeal Decision

Site visit made on 13 October 2023

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th October 2023

Appeal Ref: APP/M2270/D/23/3327459

74 High Street, Rusthall, Tunbridge Wells, Kent TN4 8SG

- 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 Kazim Kaplan against the decision of Tunbridge Wells Borough Council.
 - The application Ref 23/01232/FULL, dated 2 May 2023, was refused by notice dated 20 July 2023.
 - The development proposed is described as 'Raised patio and steps'.
-

Decision

1. The appeal is allowed and planning permission is granted for the raised patio and steps at 74 High Street, Rusthall, Tunbridge Wells, Kent TN4 8SG in accordance with the terms of the application, Ref 23/01232/FULL, dated 2 May 2023, subject to the following conditions:
 1. The development hereby permitted relates to the following approved plans: 'Site Location Plan' (drawing no. 280423/01); 'Proposed Block Plan' (drawing no. 280423/02P); and 'Proposed Plans and Elevations' (drawing no. 280423/03).
 2. Within two calendar months of the date of this decision, the 1.8m high close board screening fence shown on the approved drawing 'Proposed Plans and Elevations' (drawing no. 280423/03) shall be erected in line with the approved plans. This fence shall remain in place for as long as the patio hereby approved exists and shall not be removed. It shall also be maintained in a condition that does not impair its functionality as a screening fence.

Preliminary Matters

2. The description of development in the banner heading above is taken directly from the original planning application form.
3. The works that are subject of this appeal have largely been undertaken (i.e. the creation of the raised patio and steps), as such I am considering these aspects of the appeal retrospectively. The submitted plans also include the erection of a 1.8m high fence to be attached to the raised patio, at the time of my site visit this element of the development had not been complete, I am therefore, considering this as a proposed part of the development.

Main Issue

4. The main issue is the effect of the development on the living conditions of neighbouring residents.

Reasons

5. The appeal property is a two-storey semi-detached dwelling located on Rusthall High Street, near its junction with Southwood Road. A single storey extension has recently been undertaken to the rear of the property, which I understand followed the grant of prior approval (application ref: 22/03537/PNEXT).
6. The appeal property's rear garden slopes down from the main house on a rather gradual gradient. A close boarded wooden fence (approximately 1.8m in height) runs along the eastern boundary of the garden, beyond which lies the rear gardens of properties on Southwood Road and no. 72 High Street.
7. The relatively tight grain of development in this area, results in neighbouring dwellings sharing a rather close relationship. As such, there is already some degree of overlooking of garden spaces between dwellings, particularly from windows serving the upper floors of properties.
8. The patio area is raised approximately 1m above ground level and measures approximately 1.25m in depth. The patio provides access from the dwelling's rear French doors to external steps at the side of the patio, which lead down to the main garden area. Due to the limited size of the patio and its position in relation to the doors, its functionality is severely limited (e.g. not suitable for accommodating patio furniture nor practical for use as amenity space). It therefore appears that the patio is primarily used as a thorough-fare from the dwelling to the wider garden below.
9. Elevated, close range, views over much of the garden of the adjoining property of 72 High Street (no. 72) are available when stood on the patio. Due to its elevated nature and the current boundary arrangement, the presence of someone stood on the patio would also have a rather domineering feel when viewed from the garden space of no. 72. However, the appeal scheme proposes to erect a 1.8m high fence at the edge of the patio near the boundary with the adjacent dwelling. Subject to the fence being installed and retained, I am satisfied that the development would not result in a harmful level of overlooking or domineering impact on the neighbouring garden area.
10. The proposed fence would be notably higher than the ground level of the neighbouring garden. However, the fence would be short in length (approximately 1.25m). The fence would be set slightly off the shared boundary and would be positioned along a very short section towards the end of the rear garden of no.72, away from the neighbouring dwelling's main living space. As such, I do not share the Council's concerns that the fence would result in harmful shadowing of the neighbour's garden or overbearing impacts.
11. Even with the incorporation of the proposed screening fence, partial views of several adjoining gardens (serving properties along Southwood Road) would remain available from the raised patio. However, very similar views could be obtained from the French doors within the recently completed extension to the appeal dwelling. Additionally, as previously indicated, there is already a significant level of mutual overlooking of garden spaces between properties in the area, due to their close relationships. Given that the use of the patio is likely to be highly transitional in nature I do not consider that the proposal is likely to result in any prolonged or harmful overlooking to these neighbouring residential properties.

12. From my observations on site and the evidence before me, the appeal scheme does not raise any other significant impacts on the living conditions of neighbouring residents.
13. Overall, I am satisfied that the appeal scheme does not harm the living conditions of neighbouring residents. I therefore find the proposal to accord with Policy EN1 of the Tunbridge Wells Local Plan (adopted 2006). The policy, amongst other matters, seeks for new developments to protect the amenities of neighbouring residents. The appeal scheme also adheres to the aims of the National Planning Policy Framework in respect of providing suitable standards of amenity for existing and future users.

Other Matters

14. A neighbouring resident has objected to the proposal, raising concerns over the height of the appellant's rear extension and the impact it has on light to their property. The objection highlights that the patio and steps were not shown on the appellant's original prior approval application (ref: 22/03537/PNEXT). It is further indicated that had the neighbour been aware of this, an objection to the previous application would have been made.
15. Whilst I note the neighbour's concerns, the proposal before me relates only to the patio area, associated steps and fence. As indicated above, I am satisfied that subject to the incorporation of the proposed fencing the appeal scheme would not cause harm to the living conditions of any neighbouring residents. The Council has raised no other concerns with the proposed development and from my own observations, I have no reason to find otherwise.

Conditions

16. Given the retrospective nature of the proposal, it is not necessary to include a condition detailing a time limit for the commencement of the development. However, a condition specifying the approved plans/drawings is necessary in the interest of clarity and certainty.
17. Additionally, it is necessary to include a condition that the proposed privacy screen/fencing is suitably installed and maintained thereafter. This is needed to safeguard the living conditions of neighbouring residents.

Conclusion

18. For the reasons outlined above and having regard to the development plan, as a whole, and all other material considerations, the appeal is allowed.

Lewis Condé

INSPECTOR