



Appeal Decision

Site visit made on 8 January 2024

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st February 2024

Appeal Ref: APP/N4205/D/23/3329263

103 Templecombe Drive, Bolton, BL1 7TD

- 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 Mona Patel against the decision of Bolton Metropolitan Borough Council.
- The application Ref 15358/23, dated 28 January 2023, was refused by notice dated 26 June 2023.
- The development proposed is raised decking.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development above is taken from the Council's decision notice. I have used it in preference to that used on the planning application form, as it provides a more concise description of the development. I have omitted the word "retrospective", as it is not in itself descriptive of development. Nevertheless, the development which is the subject of the appeal has already been carried out, and I was able to view it during my site visit.
3. The Government published revised versions of the National Planning Policy Framework ("the Framework") on 5 September 2023, replacing the July 2021 version extant when the application was determined, and again on 19 December 2023. The changes did not have any significant bearing on the main issues in this appeal, and it was therefore not necessary to seek comments from the main parties on the amendments.

Main Issues

4. The main issues are the effect of the development on:
 - Living conditions for occupiers of the neighbouring dwellings at No 105 Templecombe Close and No 11 Pitcombe Close; and
 - Protected trees.

Reasons

Living conditions

5. No 103 Templecombe Drive is a modern extended detached house, within an estate of similar detached and semi-detached dwellings. No 105 Templecombe Close ("No 105") is the neighbouring detached house to the east, while No 11 Pitcombe Close ("No 11") lies to the north-east. The western side of the appeal property adjoins open countryside. The topography of the area is broadly

sloping down from south to north, such that the rear garden of the appeal property falls away from the house, and No 11 is at a considerably lower level than the appeal property.

6. The entire rear garden of the appeal property (including an area at the side of the house) has been covered with timber decking; along the garden boundaries it is surrounded by a timber fence which rises approximately 0.85m above the finished floor level of the decking. Next to the house the decking is close to ground level but, because of the slope of the land, it is rather higher at the far end of the garden (the appellant suggests that it is around 2' above the ground level, although my observations on site suggested that the Council's estimate of approximately 1.1m is more realistic).
7. The Council's 2012 *House Extensions* Supplementary Planning Document ("the SPD") provides guidance for domestic extensions, which can be reasonably interpreted as applying to other schemes such as the installation of decking. It seeks to minimise harmful impacts of development on neighbouring properties; among other things it advises that "a reasonable degree of privacy within the home remains a cherished objective for most people, particularly as far as their lounge, dining room, and main bedrooms are concerned".
8. I saw on my site visit that the height of the decking above the ground, combined with the low height of the surrounding fence, means that it allows views into the adjoining gardens and dwellings. This was particularly apparent in the case of No 11 where, because of the height differential and the openness of the boundary, clear views over the rear garden and into the kitchen/dining room and a first-floor bedroom were possible from a distance of only around 7.6m (by the Council's measurement). The appellant suggests that the slope of the land means that even before the decking was installed there was a mutual lack of privacy between the appeal property and No 11, but this is not conclusively shown by the photograph provided. In my view the height and proximity of the decking to No 11 means that it has resulted in a substantial loss of privacy at the rear of that house.
9. The appellant consulted the occupiers of No 11 before carrying out the work, and states that they "fully supported" the development. I note also that there is no record of those neighbours objecting to the scheme during the planning application consultation. However, I have a duty to consider the potential impact on future neighbouring occupiers as well.
10. It is also possible to see from the decking into the rear garden and ground-floor windows of No 105. The most-affected room in that house is a conservatory, which is not considered a "principal room" in the SPD's terms, although views into the kitchen/dining room are also possible. These are screened to some extent by the hedging plants on No 105's side of the boundary fence; the hedge was not in leaf at the time of my visit which somewhat limited their effectiveness but photographs provided by the appellant show that they have a greater effect at other times of the year. All the same, the overlooking which the decking has permitted has resulted in a loss of privacy within the rear garden of No 105 which, though not as severe as that affecting No 11, is harmful nonetheless.
11. The appellant has suggested that she would be prepared to raise the height of the boundary fence between the appeal property and No 105. This would reduce the effect of overlooking, though at the same time it would be likely to have a

detrimental impact either in terms of limiting outlook for the neighbouring occupiers, overshadowing their rear garden, or both. The changing ground levels mean that any increase in the height of the boundary fence at the northern side of the appeal property would be likely to make it unacceptably overbearing when seen from the rear of No 11.

12. I therefore conclude that the decking has led to a loss of privacy causing unacceptable harm to living conditions for occupiers of the neighbouring dwellings at No 105 Templecombe Close and No 11 Pitcombe Close. The development therefore conflicts with Policy CG4 of the 2011 Bolton Core Strategy ("the BCS") which seeks to ensure that new development is compatible with surrounding uses by, among other things, ensuring that it protects amenity including privacy.

Trees

13. The appeal site is within an area covered by a Tree Preservation Order made in 1986¹ ("the TPO"). The Council's officer report indicates that a pair of protected oak trees (identified as numbers 17 and 18) in the TPO stood within the rear garden of appeal site.
14. Planning permission had been granted in 2019 for the extension of the appeal property ("the 2019 permission")². A tree schedule provided to me (which appears to have formed part of the 2019 application material) describes one oak as being "suppressed" and the other having "stem damage with poor form", although that scheme did not include the removal of the two oak trees. The 2019 permission was subject to pre-commencement conditions requiring an arboricultural method statement and details of tree protection to be submitted to the Council for written approval. The appellant's husband contacted the Council on 20 December 2019 seeking approval for the removal of the two oaks following a Council officer's visit to the property earlier in the month. A different Council officer replied on 2 January 2020 advising that if the two oak trees were to be removed, a landscaping scheme including details of replacement tree planting would be required. The appellant, however, reports that "the removal of the trees took place before end of year 2019".
15. Though the appeal property is within a modern development, I saw on my site visit that there are numerous mature trees (individually and in groups) around the edge of the estate which help to green and soften the environment, and which make a positive contribution to the quality of the area. Notwithstanding what the appellant describes as "miscommunication" within the Council (although the evidence before me does not clearly demonstrate that that is in fact what has happened), it is clear that two protected trees have been removed, and this appears to have been in breach of the 2019 permission. The decking which has been erected extends across the entirety of the side and rear garden, and it means that there is therefore no space to incorporate appropriate tree planting to replace the protected trees.
16. I conclude that there has been a loss of protected trees without adequate provision being made for their replacement. The development therefore conflicts with Policy CG1 of the BCS which seeks to achieve a "cleaner and

¹ The Bolton (Springfield Road, Sharples) Tree Preservation Order 1986

² LPA Ref: 06908/19

greener Bolton” by, among other things, protecting trees for their biodiversity and character value.

Other Matters

17. In determining this appeal, I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity. The appellant’s evidence explained that the development is intended to increase her independence and quality of living, including by providing wheelchair access to the whole of the rear garden, as a response to her disability needs.
18. The decking which has been installed provides a level route from within the house across the whole of the rear garden; it is apparent from photographs provided by the appellant that it is likely to have vastly improved her access to the rear garden and as such is a considerable benefit to her. At the same time, however, the decking which has been installed has resulted in a significant harmful loss of privacy for neighbours, and the removal of protected trees without any replacement planting has had a detrimental effect on the quality of the area. Both these harms are likely to be long-lasting.
19. It is also likely that an alternative scheme could have been prepared which would allow the appellant to make much greater use of the garden, thereby accommodating her mobility needs, while at the same time avoiding the harm which I have found has arisen from this development. This appears to be acknowledged in the appellant’s statement that she is “revaluating the decking and [...] considering lowering it closer to ground level”. This is of course a matter which the appellant should address with the Council, and depending on the precise details (including the area to be covered and the height of the decking above ground) it may well need a further application for planning permission.
20. Nevertheless, in terms of this appeal, the need to improve the appellant’s access to and enjoyment of her garden does not outweigh the harmful effect of the decking (as built) on neighbours’ living conditions and in respect of protected trees. I conclude that it is proportionate and necessary to dismiss the appeal.

Conclusion

21. There are no material considerations, including those of the Framework, which indicate that the decision should be made other than in accordance with the development plan.
22. For the reasons given above, the appeal is therefore dismissed.

M Cryan

Inspector