



Appeal Decision

Site visit made on 27 March 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 April 2024

Appeal Ref: APP/C1435/D/23/3329339

New Farm House, Stocklands Lane, Hadlow Down, Uckfield, East Sussex TN22 4EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Michael Truman against the decision of Wealden District Council.
 - The application Ref is WD/2023/1614/FR.
 - The development proposed is a raised wooden deck 6m x 3.4m with glass balcony enclosing the entire area.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The proposed development has already been completed. The appeal before me has therefore been assessed on a retrospective basis.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of neighbouring residents, with particular regard to privacy and noise.

Reasons

4. The side of the deck is positioned close to the side boundary with the neighbouring property, Spindle Tree Cottage. The boundary is delineated by a wooden fence and hedging. Despite these boundary features, the raised nature of the deck enabled me on my site visit to see parts of the neighbour's rear patio, seating area and other parts of their garden area. This would be harmful to the neighbour's privacy when using these parts of their rear garden.
5. Furthermore, the neighbour would also be acutely aware of any activity taking place on the deck when using their own rear patio. This would give rise to a sense of overlooking, particularly if users of the deck were standing up or moving around. This would further contribute to the erosion of privacy levels in the neighbour's rear garden environment.
6. Whilst the deck is not overly large, it would allow a number of people to congregate on it, to, for example, dine or be entertained. Such activities would be likely to introduce noise at a high level, where there was previously none. This would likely be heard from within the neighbour's rear garden environment or possibly from within the property if rear windows were open.

7. Such noise would be likely to be more audible from the deck than from garden level, where the fencing and hedging would provide a greater degree of noise attenuation. I accept that noise could be audible from open windows within the host property. However, noise created within a property would be attenuated by the walls and roof in the first instance.
8. For these reasons, I conclude that the proposal would have a harmful effect on the living conditions of neighbouring residents. I therefore find conflict with Saved Policies DC19, EN27 and HG10 of the Wealden Local Plan 1998 and Policies WCS14 and SPO13 of the Wealden Core Strategy Local Plan 2013 which, amongst other things, collectively seek to create high quality living environments for everyone and avoid developments having harmful effects on the living conditions of existing residents and neighbours.
9. The proposal is also contrary to Section 10 of the Wealden Design Guide 2008, which similarly seeks to ensure that residential alterations and extensions avoid causing harmful effects such as overlooking and noise.

Other Matters

10. I am sympathetic to the appellant's reasons for building the deck and whilst it would meet their personal circumstances, Planning Practice Guidance advises that planning permission usually runs with the land, and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission but there are not sufficient grounds in this case to justify such an approach.
11. I have considered whether some form of condition requiring the planting and maintenance of a hedge would overcome my concerns. Aside from the fact that planting can too easily be removed or simply suffer disease and die, it would be difficult to enforce any particular height or density of foliage and coverage. It would also not necessarily curtail noise emanating from activities on the deck or overcome any perceived sense of being overlooked. As such, a condition relating to boundary planting does not provide a sufficiently strong basis on which to allow the appeal.
12. I have also been invited to consider using conditions to secure a higher boundary fence and/or the installation of an acoustic screen to the side of the deck. Aside from having no substantive evidence before me to indicate such measures would be successful and have no harmful consequences, the appeal process should not be used to evolve a scheme in this way. These would be significant additions that would be materially different to what was considered by the local planning authority. It is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. In the interests of fairness, this appeal must be determined based on the proposal on which the Council made its decision, and which has been subject to consultation. To do otherwise could unacceptably prejudice the interests of other parties.
13. I have not had further regard in this decision to concerns over how the Council handled the planning application as this is an administrative matter to be taken up directly with them. I have focused on the planning merits of the scheme in regard to the main issue of the case.

Conclusion

14. The proposal would harm the living conditions of neighbouring residents and would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

Stewart Glassar

INSPECTOR