



Appeal Decision

Site visit made on 21 May 2024

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 MAY 2024

Appeal Ref: APP/G5180/D/23/3327440

14 Tubbenden Lane, Orpington, Bromley BR6 9PN

- 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 Ranjit Menon against the decision of the Council of the London Borough of Bromley.
 - The application reference is 23/02180/FULL6.
 - The development is retrospective - garden level changes and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the description of development in the heading above which has been taken from the application form, the development is more fully described on the Council's decision notice and appeal form as 'Part Retrospective garden level changes and landscaping to include new fence'. The Council determined the application on that basis. I have therefore used that description for the purposes of assessing the proposal.
3. From the submitted evidence and my site visit observations the patio has been created, the accesses up to the lawned area have been installed and the garden level changes have mostly been undertaken.

Main Issue

4. The main issue is the effect of the development on the living conditions of neighbouring residents with regard to privacy and outlook.

Reasons

5. The appeal site comprises a two-storey detached dwelling in an elevated position within a spacious plot. There is a large rear garden which slopes upwards from the rear of the house. To the west it is bordered by the rear gardens of the houses at 1 to 9 Sherlies Avenue, with the greatest overlap being with nos. 3, 5 and 7.
6. The material removed to create the patio has been mainly used to raise the western part of the garden which previously sloped downwards on this side. The patio is around the same level as the rear garden of 3 Sherlies Avenue, to which it is adjacent to. The two areas are separated by the retaining wall of the patio and the fence along the rear of the garden of no. 3.

7. Due to the respective heights and the boundary features, the potential for overlooking the rear garden of no. 3 when in the patio is limited, even when using the ramp to/from the higher lawned area. Opportunities for overlooking are also limited when in the area of the garden that has had its level increased due to the separation distance and the angled nature of views. I am therefore satisfied that the development does not give rise to an unacceptable loss of privacy for residents of 3 Sherlies Avenue when in their rear garden.
8. The retaining wall of the patio is a similar height to the fencing along the rear boundary of no. 3. As such, it does not give rise to a harmfully enclosing or overbearing effect on outlook for residents of this dwelling when in their rear garden.
9. The level of the garden near to the boundary with the rear gardens of nos. 5 and 7 has been raised by a noticeable amount. The submitted plans show that the boundary fence height clear of the raised levels at no. 5 is around 0.5 metres and at no. 7 is around 0.9 metres. As a result, clear views of the rear gardens of nos. 5 and 7 are possible in close proximity. The level of overlooking would be detrimental to the residents of nos. 5 and 7, significantly detracting from the usability of their garden as a private space.
10. The submitted evidence indicates that the layout of the dwellings and associated gardens together with the ground contours meant that there was scope for overlooking of the gardens of nos. 5 and 7 prior to the raising of the levels. This is acknowledged by the Council in its officer report where it states that 'there is already the potential for a relatively high degree of mutual overlooking of rear gardens'.
11. However, there appears to have been some separation between the higher parts of the garden and the rear gardens of nos. 5 and 7. Consequently, the perception of being overlooked by someone standing in those parts of the garden would not be as great compared to someone standing on the higher ground levels that have been created beside the boundary, who would be clearly visible above the height of the fence at a short distance. This is not withstanding that the boundary fence may have been latticed in places.
12. Screening in the form of a Cherry Laurel hedge along part of the western boundary is shown on the submitted plans. At my site visit I observed that this has been planted. The proposal includes a temporary 1.8 metre high fence along the eastern line of the hedge, which would be retained until the hedge reaches 1.8 metres in height. While the hedge may contribute to screening views of the gardens of nos. 5 and 7 over time, it will not endure forever. I am unconvinced that a reasonable and enforceable condition could require the retention of planting of similar thickness and height for the lifetime of the development. In any event, even with planting, due to the close proximity, the height of the garden that has been created along the western boundary is likely to result in a perceived loss of privacy for the residents of nos. 5 and 7. A condition could require the provision and retention of the fencing, but this would appear excessively tall and overbearing when seen from the rear gardens of nos. 5 and 7 due to its height and the difference in levels.
13. I therefore conclude that the development has a harmful effect on the living conditions of residents of 5 and 7 Sherlies Avenue with regard to privacy and outlook. This is contrary to the requirements of Policy 37 of the 2019 adopted

Bromley Local Plan, which requires development to respect the amenity of occupiers of neighbouring buildings amongst other considerations.

Conclusion

14. The proposal would conflict with the development plan taken as a whole. There are no material considerations worthy of sufficient weight that would indicate a decision otherwise than in accordance with it. The appeal should therefore be dismissed.

F Wilkinson

INSPECTOR