



Appeal Decision

Site visit made on 10 July 2024

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th July 2024

Appeal Ref: APP/D3830/D/24/3336298

47 Lucastes Avenue, Haywards Heath, West Sussex RH16 1JZ

- 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 Altazi against the decision of Mid Sussex District Council.
 - The application Ref is DM/23/1272.
 - The development proposed is described as 'retrospective application for proposed new decking in rear garden at 47 Lucastes Avenue'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the privacy of occupants of no.2 Lucastes Lane.

Reasons

3. The area comprises predominantly large detached properties set within generous landscaped plots. The gardens immediately surrounding the appeal site slope downwards from north to south and as a result the garden of no.47 is higher than the neighbouring gardens to the south. Surrounding rear gardens are long and bound by varying boundary treatments including shrubs, mature trees and fencing. As a consequence, intervisibility between the rear gardens is limited and there is a reasonable expectation of privacy at the rear of these properties.
4. The area of decking has been installed to the rear south western corner of the garden and enlarges an older area of patio comprising stone slabs. The decking extends very close to the existing fencing which separates it from the garden of no.2 Lucastes Lane to the south and west. When standing on the decking, clear views are possible over the fencing and over much of the garden of no.2 and towards the property's rear facing windows. This causes a significant loss of privacy to the occupants of that property.
5. A nearby Oak tree and Conifers in the neighbouring gardens have reasonably low canopies which extend over the decking. However, the density of their foliage provides very little screening and, in the case of the Oak, the effects of any screening would be further reduced at other times of year. A low level Laurel shrub also exists in the gap between the decking and fence, but does not provide screening.

6. There is dispute between the main parties regarding the previous garden levels and the appellant considers the ground level has not been changed. There is not, however, substantive evidence to demonstrate this, or to demonstrate with certainty that the effects of the decking on privacy are the same as the previous garden level. In addition, it is not the role of this appeal to establish whether planning permission is required for the decking.
7. Even if the garden level was unaltered, the appellant accepts that the installation of decking allows a surface suitable for garden furniture, and allows the space to be used. The consequent change in the way this part of the garden is used therefore substantially increases the scope for overlooking of no.2.
8. I have considered whether screening could reasonably be secured by a planning condition. However, given the limited width of the gap between the decking and the boundary fencing, and in the absence of information on possible solutions, it cannot be established with certainty that effective screening could be installed. As such, I do not consider such a condition would be reasonable.
9. Overall, the decking causes harm to the living conditions of occupants of no.2 Lucaste Lane as a result of the loss of privacy, and is in conflict with Policy DP26 of the Mid Sussex District Plan adopted 2018, which requires among other things, development to not cause significant harm to the amenities of existing nearby properties, including the impact on privacy.

Other Matters

10. The site lies within the Lucaste Conservation Area, of which the defining features include its open space, gardens and landscaping. As the decking has an appearance typical of a garden setting it would preserve the character and appearance of the Conservation Area.
11. The decking provides benefits to the occupants of the property and enhances how they use their outdoor space. However, given the size of the garden overall, this benefit is not a consideration of sufficient weight to outweigh the harm which has been found and the conflict with the development plan. Where the proposal has been found to be acceptable in terms of its visual effects, this is a neutral matter and does not weigh in favour of the proposal.
12. I note concerns of local residents relating to changes in ground levels on the site and importing of soil. However my considerations are limited to the description of development for which planning permission was sought, being the decking.

Conclusion

13. For the above reasons, having taken account of the development plan as a whole, along with all other relevant material considerations, the appeal is dismissed.

C Shearing

INSPECTOR