



Appeal Decision

Site visit made on 7 May 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st August 2024

Appeal Ref: APP/N1920/W/23/3327822

30 Lodge Avenue, Elstree, Hertfordshire WD6 3ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Joseph Arazi against the decision of Hertsmere Borough Council.
 - The application Ref 23/0269/HSE was approved on 19 July 2023 and planning permission was granted subject to conditions.
 - The development permitted is the "Installation of 3 Air Conditioning units and construction of a raised terrace/patio area (Retrospective) with side/rear balustrade and steps to rear."
 - The condition in dispute is No 1 which states that: Within one month of the date of this decision, the privacy screen to the side/rear of the existing patio/raised platform as shown on drawing 2023/1593/2 Rev 1 dated and received 13 July 2023 shall be permanently installed (fixed onto the surface) and shall remain in situ at all times unless otherwise agreed in writing by the Local Planning Authority. The Applicant shall notify the Planning Department on completion of the works to allow the Council to carry out an inspection to ensure that the works have been carried out in accordance with the approved plans.
 - The reason given for the condition is: To satisfactorily protect the character and appearance of the area and the residential amenities of nearby occupiers. To comply with Policies SADM3 and SADM30 of the Site Allocations and Development Management Policies Plan 2016 and Policy CS22 of the Hertsmere Core Strategy 2013.
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Decision

1. The appeal is allowed and planning permission Ref 23/0269/HSE for the installation of 3 Air Conditioning units and construction of a raised terrace/patio area (Retrospective) with side/rear balustrade and steps to rear, at 30 Lodge Avenue, Elstree, Hertfordshire WD6 3ND is varied by deleting condition 1 and substituting it for the following condition:
 1. Within three months of the date of this decision, the privacy screen to the side/rear of the existing patio/raised platform as shown on drawing 2023/1593/2 Rev 1 dated and received 13 July 2023 shall be permanently installed (fixed onto the surface) and shall remain in situ at all times. The Applicant shall notify the Planning Department on completion of the works to allow the Council to carry out an inspection to ensure that the works have been carried out in accordance with the approved plans. If the privacy screen is not installed by the specified date in accordance with the approved details then the raised terrace/patio shall be removed from the site (until such time as a scheme approved by the local planning authority is implemented).

Preliminary Matters

2. I proceed to deal with the appeal on a part-retrospective basis, since at the time of my site visit, the air conditioning units had been installed, the patio and steps to the rear garden were in place, but no balustrading or privacy screen had been installed.

Background and Main Issues

3. Planning permission was granted for the installation of three air conditioning units and a raised patio area to the rear of the house, with a side/rear balustrade and steps to access the garden from the patio. This permission was subject to conditions, including condition 1 which requires the privacy screen shown in the approved drawings to be permanently installed within one month of the date of the decision, and then permanently retained. The condition required the appellant to notify the planning department on completion of the works to allow them to inspect and confirm the works had been completed in accordance with the plans. The Council considers the condition to be necessary to protect the privacy of the neighbouring occupier of No. 28 Lodge Avenue, as well as to protect the character and appearance of the area.
4. The main issues therefore are whether the condition is reasonable and necessary in the interests of:
 - the living conditions of neighbouring occupiers; and,
 - the character and appearance of the area.

Reasons

Living conditions

5. 30 Lodge Avenue is a two-storey detached house, with additional accommodation in the roof. The front garden is given over to parking; a side access adjacent to No. 28 leads to a large rear garden. The area is suburban in nature, largely comprising detached two to three storey houses of a variety of designs set in substantial plots, which lend the area a spacious and verdant character. Due to the topography, the appeal property is set slightly higher than its neighbour at No. 28.
6. To the rear elevation, there are two sets of glazed doors which open onto a raised patio. The patio is set back from the boundary with No. 28, but when standing on the east side of the patio, there are clear views into the garden at No. 28. I note that there are also views into the garden of No. 32 from the other side of the patio which extends right up to the boundary with No. 32. The Council's view is that the relationship with No. 32 has not changed following the installation of the patio, whereas the height of the patio relative to the neighbour at No. 28 has introduced greater potential for overlooking and consequent harm to living conditions.
7. The approved privacy screen, at 1.93m high, extending the full depth of the patio, would prevent views into the garden of No. 28. However, the appellant disputes the Council's view that this is the only feasible solution to prevent an unacceptable degree of overlooking. Copies of correspondence have been provided with the appeal from the occupier of No. 28, indicating their

preference, as well as that of the appellant, for screening in the form of planting.

8. Planting, whilst potentially providing some screening depending on the size and species of plant, would offer no guarantee of protecting privacy given the long-term maintenance burden and risk of diseased or dying plants. It is within the gift of the appellant to create a planting scheme that may improve the privacy of the appeal site and neighbouring property. This could be done irrespective of the required screen and is not a matter which is controlled by the Town and Country Planning Acts. Whilst I understand the wishes of the appellant and neighbour in respect of the suggested alternative condition, there is no guarantee that a planting scheme would adequately mitigate against the loss of privacy to No. 28.
9. In the absence of a specific proposal for an alternative design or location for a screen or extended boundary fence, the condition requiring the installation of the privacy screen to the edge of the patio as shown on the approved drawings would be reasonable and necessary in order to mitigate against loss of privacy to the occupiers of No. 28.
10. The complete removal of the condition would have the effect of being harmful to the privacy of the garden of No. 28, and would conflict with Policy SADM30 of the Hertsmere Local Plan - Site Allocations and Development Management Policies (SADM Plan), which, amongst other things requires new development to have limited impact upon the amenity of occupiers of the site, its neighbours and its surroundings in terms of outlook, privacy, light, nuisance and pollution.
11. I note in their reason for condition 1, the Council also refer to Policy SADM3 of the SADM Plan which relates to the redevelopment of residential sites with a focus on the type and quality of accommodation. It is not directly related to condition 1 and the reason therefore lacks precision.

Character and appearance

12. The screen as shown on the approved drawings would have a neutral effect upon the character and appearance of the area. In this respect, the condition to require the screen's installation is necessary in the interests of ensuring a screen of an agreed design is installed, and not one which would potentially harm the character and appearance of the host dwelling or surrounding area. The screen as proposed would be in line with the aim of Policy CS22 of the Hertsmere Core Strategy 2013 which aims to secure high quality and accessible environments, along with Policy SADM30 of the SADM Plan which amongst other things seeks to achieve high quality design.

Other Matters

13. There is no substantive evidence to suggest that the screen shown on the drawings would cause unacceptable micro-climatic conditions.
14. The appellant has raised the matter of whether the Council should have re-consulted interested parties following receipt of revisions to the scheme. The Planning Practice Guidance (PPG) states where an application has been amended, it is up to the local planning authority to decide whether further publicity and consultation is necessary in the interests of fairness (paragraph 026 ID 15-026-20190722). This matter has no bearing on my consideration of the appeal.

Conditions

15. The current wording of condition 1 is out of date and can no longer be complied with. I have amended it to ensure that the patio screen as shown on the approved drawings is installed and maintained, so as to make the development acceptable in planning terms. I note the Council's suggested amendments, but the condition as drafted is sufficiently precise as it refers to the relevant approved drawing which specifies the height of the screen. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the patio screen before the development takes place. The condition as drafted will ensure that the development can be enforced against if the requirements are not met.

Conclusion

16. For the reasons given above I conclude that the planning permission should be varied as set out in the formal decision.

L Francis

INSPECTOR