



Appeal Decision

Site visit made on 24 July 2024

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2024

Appeal Ref: APP/V1260/D/24/3345093

49 Parkway Drive, Bournemouth, BH8 9JS

- 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 D Hunt against the decision of BCP Council.
 - The application Ref is 7-2024-27839-C.
 - The development proposed is raising of levels to rear garden.
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Decision

1. The appeal is allowed and planning permission granted for raising of levels to rear garden at 49 Parkway Drive, Bournemouth, BH8 9JS in accordance with the terms of the application, Ref 7-2024-27839-C, dated 21 December 2023 and subject to the conditions listed below.
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (submitted on 22/12/2023); drawing No. SS1097.006 (Proposed Alteration to Patio and Garden Levels).
 - 2) Within 2 months of the grant of this planning permission a scheme to secure a landscaping screen on the eastern boundary of the application site with 47 Parkway Drive extending the length of the raised garden hereby permitted (as highlighted in 'green' on drawing No. SS1097.006) shall be submitted to and approved in writing by the Local Planning Authority. The landscaping screen shall include the following:
 - a. A schedule detailing supply sizes, densities and numbers of all proposed trees, plants and/or hedging to form part of the screen and confirmation of location, species and sizes where appropriate.
 - b. Detailed plans and sections to confirm that the screen will grow to a height of 1.2 metres above the height of the existing timber fence to the boundary with 47 Parkway Drive or an alternative height agreed with the Local Planning Authority that is considered sufficient to prevent overlooking from the approved raised garden level into the rear garden of 47 Parkway Drive, and
 - c. An implementation programme.

The landscaping screen shall be carried out in accordance with the approved details and agreed implementation programme before any part of the raised garden hereby permitted is first brought into use.

The completed landscaping screen shall be managed and maintained in accordance with an approved management and maintenance plan, and retained thereafter in conjunction with the use of the raised garden.

Preliminary Matters

2. I have adopted the description of development from the application form.
3. An Inspectors Request was sent to both parties on 2 August 2024 seeking comments on whether the privacy issue raised by the appeal proposal could be addressed by a condition, requiring the submission and approval of a landscape screen to mitigate for the level of overlooking that arose. The Appellants email dated 6 August 2024 confirmed their agreement to such an approach. The Council's email, also dated 6 August 2024, raised a query in relation to what a 'green screen' would comprise and reiterated the objections set out in their Delegated Report (DR). I have determined the appeal on this basis.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of the neighbouring occupiers of 47 Parkway Drive (No.47).

Reasons

5. The appeal site is located on the southern side of Parkway Drive which comprises mostly two storey detached properties set within spacious plots. The host property has recently been extended at the rear. I understand that the works to raise the level of the rear garden commenced in September 2022 and are complete other than being laid to lawn or a similar finish. As the works have already been undertaken, planning permission is sought retrospectively for the retention of the raised rear garden levels.
6. The extent of the works undertaken are shown shaded 'green' on drawing No. SS1097.006. They relate to a large part of the rear garden, extending up to the common boundary with 51 Parkway Drive (No.51), to the west. On the eastern boundary with No.47, the raised level is set back from the common boundary and held up by a retaining wall of timber sleepers. The ground level of the gap in between is at pre-development levels. On the southern boundary, the raised garden is set back even further and again held up by a retaining wall of timber sleepers.
7. Based on the spot levels shown on the submitted plan and the figures in the DR, the rear garden to the host, which slopes downwards, has been raised by some 1.3 metres at the southernmost end, and some 0.8 metres at its northernmost end. Whilst I would not consider the increase of 1.3 metres to be significant, it is the relationship that this gives rise to with the rear of No.47 that is the main issue. The immediate garden to No.47 is at a lower level to the host's. On the common boundary between the two is a timber fence of some 2 metres in height, which I understand belongs to No.47.
8. The Council contend that the raised garden is harmful to the amenity and the privacy of the occupiers of No.47. No concerns have been raised in relation to the impact on the living conditions of neighbours to the west and south, due to a combination of changes in levels, distance and existing boundary screening. I concur with those findings. I also concur with the Council's finding that the proposal does not give rise to any impact on the character and appearance of the area.
9. The DR indicates that the existing boundary fence to No.47 is some 0.85 metres higher than the raised level of the host's garden, which concurs with

my observations on site. I also agree with the Council's findings that this height of fencing does not provide any meaningful screening to the views that are available over the rear garden and elevation to No.47.

10. Mutual overlooking of neighbouring gardens is an inherent and common characteristic of built up areas particularly where there is a difference in levels and occupiers have extended at the rear. As I observed on my visit, works are currently being carried out to No.47 where I understand a rear extension, similar to that on the host, is being built. As I also observed on site, the host property already affords views over the rear garden to No.47 both from the rear windows of the main house and its new extension. Even so, the raising of the garden level has introduced new and increased levels of overlooking, which would not have been possible at the pre-development garden levels.
11. The level of overlooking that arises is, in my view, harmful to the living conditions of the neighbouring occupiers of No.47. As such, without any mitigation, the proposal would be contrary to policy CS41 of the Bournemouth Local Plan: Core Strategy (October 2012) (BLP). This policy requires, amongst other matters, development to provide a high standard of amenity to meet the day to day requirements of future occupants. This approach remains consistent with paragraph 135 f) of the National Planning Policy Framework (December 2023) (Framework), which states that decisions should ensure that new development secures a high standard of amenity for existing and future users.
12. At the time of my site visit, the majority of the raised garden was fenced off and not being used, and as I confirmed earlier it has not been laid to lawn and was partly covered in building materials. Even so, the Appellants Grounds of Appeal refer to discussions that have taken place with the owners of No.47 to reach agreement on new boundary screening to mitigate for the overlooking that occurs. The representations received from the occupiers of No.47 confirm that these discussions have taken place with a view to agreeing the use of green screen or similar on the common boundary. The representations state that their preference would be to see any screening maintained at a height of some 1.2 metres (4 feet) above the height of the existing timber fence.
13. The DR indicates that Officers considered that the height of new fencing required to mitigate for the level of overlooking that occurs would have had an overbearing and oppressive impact on the living conditions of the occupiers of No.47. As a consequence, Officers concluded that this matter could not be resolved by a condition that sought additional boundary treatment. I do not share those views or concerns, and consider that an appropriate landscape (green) screen could be secured by condition that would be sufficient to mitigate for the level of harm that arises.
14. In reaching that finding, I have had regard to the mutual level of overlooking that already occurs between the neighbouring gardens. Also, the fact that the rear garden of the host and that of No.47 are long and wide, and face south. As such, the provision of a landscape screen, to a height of some 1.2 metres above the height of the existing boundary fence would not appear overbearing or oppressive to the occupiers of No.47. There are a number of forms that the landscape screen could take and the existing gap between the raised garden and boundary fence would appear to provide a sufficient margin to

accommodate that screen. If not, then the gap could, in my view, be easily increased.

15. Whilst I was not able to view the garden of No.51, to the west of the host, I understand that they have raised the level of their garden in a similar way, which, due to the slope in the road, sits at a higher level than the garden to the host. Even so, the garden to No.51 is completely screened by an extensive hedgerow and whilst this is higher than that required on the boundary with No.47, it provides a good example of the level of screening that can be achieved. Its existence also demonstrates that a much lower green screen on the boundary with No.47 would neither be overbearing or oppressive and would in fact introduce a softer and more natural finish to the common boundary.
16. The above findings are supported by paragraph 55 of the Framework which states that consideration should be given to whether otherwise unacceptable development could be made acceptable through the use of planning conditions. As I have found, the use of a condition to secure the approval of an appropriate landscape screen, would, in this case, result in a development that without it would not be acceptable. Moreover, a condition that requires the proposed landscape screen to be submitted to and approved by the Council also allows the occupiers of No.47 to be consulted, and their agreement sought to the proposed scheme.
17. Accordingly, I find that, subject to the provision of an appropriate landscape screen on the boundary with No.47, the proposal would not lead to any significant harm to the living conditions of neighbouring occupiers and would comply with policy CS41 of the BLP and paragraph 135 f) of the Framework. The provision of a landscape screen would mitigate for the level of overlooking that presently occurs from the raised garden and ensure that the development secures a high standard of amenity for both existing and future occupiers of No.47.

Conditions

18. I have considered the imposition of conditions in relation to the advice in the Framework and the Planning Practice Guidance chapter on the 'Use of planning conditions'.
19. The Council's Questionnaire only suggested a condition requiring compliance with the submitted plans, which I consider to be necessary and reasonable to reflect the details included in the application.
20. A condition to secure a landscape screen is also necessary and reasonable to reflect the findings I have reached and to protect the living conditions of No.47. The condition includes a timeline for submission of the scheme, requirement for an implementation programme, as well as a management and maintenance plan, and agreement over the height that the new screen should achieve.

Conclusion

21. For the reasons given above and having taken all the matters raised into account, I conclude that the appeal should be allowed.

G Roberts

INSPECTOR