



Appeal Decision

Site visit made on 9 December 2024

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2024

Appeal Ref: APP/P1133/D/24/3353262

34 Haytor Drive, Newton Abbot, Devon, TQ12 4DU

- 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 Miss Rachel Green against the decision of Teignbridge District Council.
 - The application Ref is 23/01480/FUL.
 - The development proposed is replacement deck.
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Decision

1. The appeal is allowed and planning permission granted for replacement deck at 34 Haytor Drive, Newton Abbot, Devon, TQ12 4DU in accordance with the terms of the application, Ref 23/01480/FUL, dated 12 August 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; TQRQM2322183200908 Block Plan; 34/04 Proposed Elevations; 34/01 Proposed Layout Plan; 34/06 Section View.
 - 2) Within 3 months of the grant of this planning permission additional boundary screening in the form of a solid or lattice timber fencing shall be installed on the boundaries of the application site with 36 Haytor Drive and 32 Haytor Drive extending along the length of the raised replacement deck and steps hereby permitted. The additional boundary screening shall, together with existing boundary fencing, extend to a height of 1.8 metres above the raised floor of the replacement deck and steps. The completed boundary screening shall be retained thereafter in conjunction with the use of the raised deck.

Preliminary Matters

2. I have adopted the description of development from the decision notice as this is more concise than that on the application form. I have however deleted the word 'retrospective' (in brackets) as this is not an act of development and is thus superfluous.
3. The Appellant has raised various points in relation to alleged inaccuracies in the Council's Delegated Report (CDR), the lack of consultation and communication at the application stage and whether the Planning Case Officer undertook a site visit. Whilst I have had regard to the CDR in my decision, the remaining points are not matters that I can comment on in the context of an appeal that has been submitted under section 78 of the Town & Country Planning Act 1990. If

the Appellant wishes to pursue these points further, I suggest that they do so directly with the Council through the normal complaints procedure.

4. On 12 December 2024 the Government published a revised version of the National Planning Policy Framework (NPPF). However, the policies that are relevant to this appeal have not changed and I have not, therefore, sought the parties comments on the revised NPPF.

Main Issues

5. The main issues are the effect of the proposed development on: (a) the living conditions of the neighbouring occupiers in relation to overlooking, and (b) the living conditions of neighbouring occupiers in relation to the development being overbearing.

Reasons

Living conditions – overlooking

6. The appeal site is located on the eastern side of Haytor Drive and comprises a detached property with a good sized garden to the rear. The surrounding area includes similar properties with similar sized gardens. To the east of the appeal site are open fields with long range views into the valley. The works to replace the deck have already been undertaken and planning permission is, therefore, sought retrospectively for the retention of the replacement deck.
7. The extent of the works undertaken are shown on the submitted plans with the deck extending some 13 metres along the rear boundary to the host right up to the common boundary with 32 Haytor Drive (No.32) and just short of 1 metre off the common boundary with 36 Haytor Drive (No.36). The deck has a length of some 3.9 metres with the steps to/from the lower garden extending some 2.45 metres further. The deck is some 0.8 metres above the height of the lower garden. The Appellants Appeal Statement (AAS) states that the deck replaced a previous terrace or decking, which was smaller in terms of its footprint but at a similar height.
8. In relation to No.32, the original timber common boundary fence extended, I understand, to a height of some 1.8 metres. However, with the raised level of the deck this equated to a height of some 1.2 metres above the floor of the raised deck. The Appellant, therefore, added timber trellis (lattice) fencing along the length of the deck so as to increase the height of the common boundary fence to some 1.9 metres above the floor of the deck.
9. Mutual overlooking of neighbours gardens is a common characteristic of densely built up urban areas, particularly where there is a difference in levels, as there is in this case. Even so, I am satisfied that the retention of the existing fencing to some 1.9 metres above the floor of the deck prevents any harmful increase in the level of overlooking of No.32's rear garden. Further timber trellis fencing may also be required to secure the same height along the steps, which can be controlled by a condition.
10. As I observed on site, the deck is located on the rear most part of the host's garden. All the neighbouring gardens are of a good size and face onto the fields to the east, with extensive views over the valley. The focus of anyone either sitting or standing on the deck will, therefore, be towards those views or otherwise towards the lower part of the hosts garden. As the evidence before

me also indicates, it replaces a smaller but similar height deck that was in place for a number of years. I accept that the deck results in some overlooking but I am satisfied, for the above reasons, that the level of any increase is limited and does not result in any harm to the living conditions of the occupiers of No.32.

11. Turning to No.36, there is also an existing timber fence on this common boundary, which I understand extends to some 1.8 metres in height. With the raised level of the deck, the height of this fencing above the floor of the deck is similar to that at No.32 before the additional trellis was added. There is a shed and mature landscaping, within the garden to No.36, on this boundary and as I confirmed earlier the deck is sited just under a metre off the common boundary.
12. Even so, I agree that further screening is also necessary on this boundary to prevent any increase in overlooking, even though I note that the occupiers of No.36 state that they have no objection to the replacement deck. This could again be secured through the addition of timber trellis (lattice) fencing on top of existing to secure a height of some 1.8 metres above the floor of the raised deck. As with the screening to No.32, this should extend along the 3.9 metre length of the deck. In note, in this respect, that the AAS confirms the Appellants in principle agreement to provide additional screening.
13. I also note that the Council's email of the 13 August 2024, reproduced in the AAS, appears to refer to the provision of a 1.8 metre high privacy screen on the boundary with No.36 (assuming that's what the email means when it refers to "*downhill neighbour*"). I accept that the email suggests that the deck should be reduced by a third, but I don't see the need to do so in conjunction with the additional screening.
14. With the mitigation secured by the additional timber trellis (lattice) fencing, the replacement deck is, in my view, acceptable and does not, in relation to the issue of overlooking, result in harm to the living conditions of the neighbouring occupiers. In both instances, the additional screening can be secured by a condition. This approach is supported by paragraph 56 of the NPPF which states that consideration should be given to whether otherwise unacceptable development could be made acceptable through the use of planning conditions.
15. Accordingly, with the additional screening, the appeal proposal complies with part c) iii of policy WE8 of the Teignbridge Local Plan 2013 – 2033 (May 2014) (TLP). This states that extensions, outbuildings and minor development will be permitted where the scale of the proposal is appropriate to the existing building and it does not reduce the level of privacy enjoyed by neighbouring occupiers. This approach remains consistent with paragraph 135 f) of the NPPF which states that decisions should ensure that new development secures a high standard of amenity for existing and future users.

Living conditions – overbearing

16. The Council's second reason for refusal alleges that due to the raised boundary fence the development results in an unacceptable level of overbearing to the rear amenity space of No.32. Based on my observations on site and the evidence before me, I do not share the Council's concerns.

17. The extent of the raised boundary fence is modest and is sited on the rearmost part of the common boundary with No.32. The height of the raised boundary fence, some 1.8 or 1.9 metres above the floor level of the deck or some 2.6 metres when viewed from the garden to No.32, is also, in my view, modest. It is not uncommon to find high structures or outbuildings sited on the rear boundary of gardens, as is the case with No.36. Even so, there is a difference in levels and the garden to No.32 has a good width that also benefits from the open views over the fields to the east. Those views and the main outlook from the rear garden of No.32, is not, in my view, harmed by the raised fencing. I accept that the fencing is visible, but any impact on outlook or the enjoyment of the garden to No.32 is, in my view, limited.
18. I also agree with the Appellant that the raised fencing does not affect the light received by the garden to No.32, as the fencing is located due north of that garden. There is also no evidence before me that supports any alleged loss of light. The Council have also referred to the issue of precedent, but I have, as is required, determined the application on its individual merits having regard to the circumstances of the case and the prevailing development plan policies.
19. As a consequence, the raised boundary fence does not appear overbearing or oppressive to the rear garden of No.32 and does not, therefore, result in any harm to the living conditions of the occupiers. Accordingly, the appeal proposal complies with part c) iv of policy WE8 of the TLP. This states that extensions, outbuildings and minor development will be permitted where the scale of the proposal is appropriate to the existing building and it does not have a dominant or overbearing impact on neighbouring properties or the streetscene. This approach also remains consistent with paragraph 135 of the NPPF.

Conditions

20. I have considered the imposition of conditions in relation to the advice in the NPPF and the Planning Practice Guidance chapter on the 'Use of planning conditions'. The Council's Questionnaire 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. As planning permission is sought retrospectively there is no need for a time limit condition.
21. A condition to secure the additional timber fence screening is also necessary and reasonable to reflect the findings I have reached above and to protect the living conditions of the occupiers of No's 32 and 36. The condition includes a timeline for the completion of these works and that the screening be retained thereafter in conjunction with the use of the replacement deck.

Conclusion

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

G Roberts

INSPECTOR