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## Appeal Decision

Site visit made on 13 June 2019

by **David Storrie DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 July 2019

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**Appeal Ref: APP/G4240/D/19/3227164**  
**9 Hawthorn Drive, Stalybridge, SK15 1UE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Paul O'Neil against the decision of Tameside Metropolitan Borough Council.
  - The application Ref 18/00005/FUL, dated 12 December 2017, was refused by notice dated 27 March 2019.
  - The development proposed is the re-modelling of rear garden area including construction of steps/raised platform and erection of 2.3m high boundary fencing.
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### Decision

1. The appeal is allowed and planning permission is granted for the re-modelling of rear garden area including construction of steps/raised platform and erection of 2.3m high boundary fencing at 9 Hawthorn Drive, Stalybridge, SK15 1UE in accordance with the terms of the application, Ref 18/00005, dated 12 December 2017, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby approved relates to the site location plan, and layout plan received on the 4th January 2018.

### Preliminary Matter

2. The proposed development has been carried out. I therefore treat the appeal on its merits as an application for retrospective permission.
3. Although the proposed development involves re-modelling of the existing rear garden area, the only plans submitted with the planning application were a *Layout Plan* and a *Location Plan*. No plans were submitted that indicated the degree of change in terms of ground levels although the appellant submitted a series of before and after photographs as part of their application.
4. I am satisfied that the evidence submitted is sufficient to enable me to assess the appeal on the main issue. All parties have had the opportunity to comment on this evidence.

## **Main Issue**

5. The main issue is the effect of the proposed development on the living conditions of the occupiers of 11 Hawthorn Drive (no.11) with regard to outlook and privacy.

## **Reasons**

6. The appeal site is a two-storey semi-detached dwelling located in a road of similar properties within a residential area. The rear garden of the property slopes up away from the house rising up to approximately 2.5m above the ground level of the dwelling. This topography is repeated in neighbouring properties either side of the appeal site. Levels also appear to change across the neighbouring properties with nos. 1,3,5 and 7 being higher than no.9. This is repeated between nos. 9 and 11.
7. The proposed development creates three distinct levels to the rear garden by altering ground levels. In the absence of any detailed plans that show the existing and proposed ground levels, a series of photographs have been submitted by the appellant that show the before and after details of the works the subject of this appeal. The Council consider that the middle level section has been raised by some 1.5 metres whilst the upper section has been raised by some 0.8 metres. This is based upon a comment on the Officer Report that *it would appear there was originally very little appreciable difference between the site levels and those still visible in the neighbouring garden at number 11 Hawthorn Drive*. The appellant disputes the degree of change to ground levels suggested by the Council and provides photographic evidence to support their case.
8. It is the middle level where the Council suggest the change in ground level is the greatest but when viewing the before and after photographs of this section and using the existing side window to the garage at number 9 as a marker, any change in level of the middle section appears minimal. Given the topography of the rear garden, views toward the first floor of neighbouring properties is evident. From the evidence submitted showing before and after views looking toward the rear of the properties, I do not consider that the degree of overlooking would demonstrably increase as a result of the proposed development such that it would demonstrably harm privacy.
9. Turning to the proposed boundary fence, this would be set in from the existing common boundaries of the site. There is disagreement between the parties on the height of the proposed fence. The appellant says the fence would be the same height as the fence it replaces whilst the Council consider that the existing fence was 1.8m high and the proposed fence would range between 2.4 and 2.6 metres. Given the sloping nature of the site the new fence has been designed to follow the slope before levelling out parallel with ground levels whilst the existing fence runs parallel to ground levels and steps up as the ground levels rise.
10. Once again, by taking reference from the before and after photographs, a degree of overlooking already exists between the two properties. Having viewed the appeal site and viewed it from no. 11 as well, due to the topography of the rear gardens, a degree of overlooking of neighbouring properties is inevitable and this is mainly to and from first floor windows. When viewed from both properties there were limited views into the rear garden

areas but clear views of the upper floors. I do not see this significantly changing as a result of the proposed development and do not consider that it would be appropriate to further increase the height of the proposed fence given the levels difference that exists between the two properties.

11. As a consequence of the above, and the change in ground levels between nos. 9 and 11, the new fence would appear much higher when viewed from the rear garden area of no. 11 although it would be partly screened by the existing fence panels on the common boundary between the two properties. I viewed the site from the rear garden of no. 11 and noticed that some of the original fence panels had been removed thus opening up views of the proposed fencing.
12. I consider the close board design of the fence and proposed materials to be appropriate in this residential location.

### **Other matters**

13. Concerns have been raised regarding the impact of the proposed development on drainage. This is not an issue that has been raised by the Council and I have no clear evidence on this matter on which to take a view on.

### **Conditions**

14. As well as the standard time limit condition, I have imposed a condition relating to the submitted details to provide certainty. The Council requested a condition requiring further details to be submitted for a revised design for the fencing with particular regard to the middle section adjoining 11 Hawthorn Drive. Given my finding on the main issue with regard to privacy I do not consider such a condition to be appropriate or necessary.

### **Conclusion and the planning balance**

15. Based upon the evidence submitted and what I saw on my site visit, I conclude that the proposed development would not significantly increase overlooking of neighbouring properties to unduly harm privacy. Furthermore, whilst the proposed fence would be higher when viewed from no. 11, I do not consider that this would be unduly harmful to visual amenity.
16. On balance, I consider that the proposed development would accord with Policies 1.3, H10 (a) and (d) of the Tameside Unitary Development Plan (2004) and Policy RD12 of the Residential Design SPD (2010) that, amongst other things, seek to ensure that development is well designed and does not have an unacceptable impact on the amenity of neighbouring properties.
17. For the above reasons the appeal is allowed.

*David Storrie*

INSPECTOR