
Appeal Decision

Site visit made on 17 August 2016

by Elizabeth Pleasant DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31st August 2016

Appeal Ref: APP/A2335/D/16/3152091

38 Hest Bank Lane, Hest Bank, Lancaster, Lancashire LA2 6BT

- 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 Newton against the decision of Lancaster City Council.
 - The application Ref 15/01623/FUL, dated 21 December 2015, was refused by notice dated 6 April 2016.
 - The development proposed is construction of a first floor balcony to the rear elevation with obscure polycarbonate block wall to side, and replace obscure glazed side window with clear glass.
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Decision

1. The appeal is allowed and planning permission is granted for construction of a first floor balcony to the rear elevation with obscure polycarbonate block wall to side at 38 Hest Bank Lane, Hest Bank, Lancaster, Lancashire LA2 6BT in accordance with the terms of the application, Ref 15/01623/FUL, dated 21 December 2015, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Dwg HB/5/15, Block Plan; Dwg HB/6/15, Location and Existing Elevations; and Dwg HB/1/16, Amended Proposed Elevations.
 - 3) Before the first occupation of the balcony hereby permitted the 1.8m high side glazed privacy panels to the north-western and south eastern elevations as shown on approved Dwg Ref: HM/1/16 shall be fitted with obscured glass and shall be permanently retained in that condition.

Application for costs

2. An application for costs was made by Mr Paul Newton against Lancaster City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council issued a split decision for the proposed development described in the heading above. They granted planning permission for the retention of the clear glazed side window and refused planning permission for the construction of a first floor balcony to the rear elevation. Although I am able to deal with

the whole proposal as described in the heading above¹, it is clear that in issuing a split decision, the Council has no objections to clear glass in the side window. I have no reason to disagree. I shall therefore determine the appeal solely on the basis of the Council's Decision to refuse to grant planning permission for the construction of a first floor balcony to the rear elevation with obscure polycarbonate block wall to side.

Main Issue

4. The main issue in this case is the effect of the proposed development on the living conditions of the occupiers of the neighbouring dwellings, with particular regard to privacy.

Reasons

5. The balcony would be located at first floor level on the flat roof area of the existing extension at the rear of the appeal property. This area is currently afforded access by French style doors, but is not enclosed. At the time of my visit the appellant had constructed a temporary hand rail to enclose the balcony area and provided polycarbonate sheeting to a height of 1.8m to its sides to replicate the effect of the proposed development.
6. The appeal property, like the neighbouring properties Nos.36 and 40 Hest Bank Lane, is a detached dwelling with a generous private rear garden area. Its position on the plot is generally aligned with its neighbours. When standing on the proposed balcony area there are views over ends of the rear garden areas of both 40 and 36 Hest Bank Lane, although the view towards the garden of No 36 is partially obscured by an outbuilding located within it. The proposed 1.8m opaque screen would enclose the sides of the balcony and it was clear from the temporary structure that had been erected, that the proposed privacy screen would prevent any direct overlooking of the more private patio areas which are located close to the rear of the neighbouring properties. Only the roof area of the rear conservatory at No 40 would be visible.
7. It is not uncommon for there to be some mutual overlooking of rear garden areas by the upper level windows of neighbouring properties; however it is generally accepted that any patio or terrace area close to the rear of dwellings should be afforded a greater level of privacy. I am satisfied that those more private amenity areas associated with the neighbouring dwellings, including the conservatory at No 40 would not be overlooked by the proposed balcony by reason of the proposed privacy screens. I accept that the balcony may be visible to the neighbours, however the proposed railings and screen would be light weight predominantly glazed structures and would be located a sufficient distance away from the neighbours common boundaries so as not to be visually dominant nor cause undue noise and disturbance to neighbouring occupiers when in use. Furthermore, the neighbourhood has a mixed character and I noted that there was a balcony of a similar design within this part of the street.
8. I conclude that the proposed development would not cause significant harm to the living conditions of the occupiers of neighbouring dwellings, with particular regard to privacy. I therefore find no conflict with Policy DM35 of the Adopted Lancaster Local Plan Development Management DPD, 2014 which seeks to ensure that new development, amongst other things, does not have a

¹ Section 79 (1) (b), Town and Country Planning Act, 1990.

significant detrimental impact to amenity in relation to overshadowing, visual amenity, privacy, overlooking, massing and pollution. Furthermore, there would be no conflict with the National Planning Policy Framework's (the Framework) Core Planning Principle of providing a good standard of amenity for all existing and future occupiers of land and buildings.

Conditions

9. The Council has suggested a number of conditions which I have considered against advice in the Framework and Planning Practice Guide. As a result I have amended some of them for clarity and omitted others.
10. I have imposed a condition specifying compliance with the approved drawings as this provides certainty, and a condition requiring the side privacy panels to be fitted and maintained with obscure glass to safeguard the amenities of the occupiers of neighbouring properties is also necessary.
11. The Council has suggested a condition requiring the balcony to be constructed in materials to match the existing building. I do not consider this condition to be necessary as the details of the materials of construction are clearly specified on the approved drawings.
12. The Council has also suggested a condition to require the existing hedgerow along the south-eastern boundary of the site to be maintained at its present average height of 3.5m. This hedgerow is not located within the appellant's garden and the suggested condition would not therefore be enforceable. Furthermore, the balcony is located at a higher level than the hedgerow and would not therefore be screened by it. I have not therefore imposed this condition as it would be neither necessary nor enforceable.

Conclusion

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

Elizabeth Pleasant

INSPECTOR