
Appeal Decision

Site visit made on 14 March 2017

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 29 March 2017

Appeal Ref: APP/T5150/W/16/3165506

265A Kilburn Lane, North Kensington, London W10 4BQ

- 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 Muhammad Adil Abbas Khan against the decision of the Council of the London Borough of Brent.
 - The application Ref 16/3749, dated 24 August 2016, was refused by a notice dated 17 November 2016.
 - The development proposed is the retention of balcony at rear elevation of property.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is described as the retention of a balcony and it was clear from my visit to the site that the balcony has been constructed. I have therefore determined this appeal on the basis that the development has already taken occurred.
3. I am aware from other appeal cases that policies from the Brent Unitary Development Plan, 2004 referred to by the Council in its decision notice have been superseded by policies from Brent's Development Management Policies, Development Plan Document (DMPDPD) 2016, which has been adopted since this appeal was submitted. The Council's decision notice referred to Policy DMP 1 of the emerging DMPDPD and I am therefore satisfied that neither party has been prejudiced.

Main Issues

4. The main issues in this case are the effect on the:
 - Living conditions of neighbouring residents, with particular regard to privacy; and
 - Character and appearance of the area.

Reasons

Living conditions

5. The balcony/roof terrace is located on the flat roof of the existing single storey extension at the rear of this property and afforded access by a door from the
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kitchen. It is enclosed by simple steel black railings, and when standing on this balcony area there are unrestricted views across the garden areas of neighbouring properties on both Kilburn Lane and Claremont Road.

6. The balcony lies in close proximity to the first floor windows of the adjoining property, No 263. Whilst one of these windows is obscure glazed, and therefore likely to serve a bathroom, the other window is clear glazed and to a habitable room. There is a clear line of sight between the balcony and this window, resulting in a loss of privacy to the occupiers of No 263. Furthermore, the size of the balcony is such that there is adequate space for sitting out and the congregation of people which, in such close proximity to No 263, would cause noise and disturbance to neighbouring occupiers, particularly during the evening time.
7. Due to the orientation of the properties on Claremont Road, there is no direct line of sight between their rear windows and the balcony. However, when standing on the balcony there is direct overlooking of both the garden areas of Nos. 265 and 263 Kilburn Lane and, albeit to a lesser degree, the gardens of properties on Claremont Road. Whilst the host property's kitchen window already provides views across those garden areas, the presence of an outside sitting area with open and unrestricted views in close proximity to these amenity areas is significantly more intrusive. I am aware that there have not been any objections from neighbouring residents to the development, but that does not justify the harm I have identified.
8. I conclude that the balcony causes significant and demonstrable harm to the living conditions of neighbouring residents, with particular regard to privacy. The development is therefore contrary to the development plan, and in particular I find conflict with Policy DMP 1 of the DMPDPD and Supplementary Planning Guidance 5, Altering and Extending Your Home, 2002 (SPG5) which seek to ensure that new development, including balconies and roof terraces, maintain the privacy and outlook for neighbouring residents and provide high levels of amenity for all.

Character and appearance

9. The balcony is located at the rear of the property and situated within an area recessed between two outriggers. It is not therefore visually prominent, nor is it open to public views. The balcony has been constructed on top of an existing flat roofed extension, and the enclosing railings by reason of their small scale, simple design and dark colour are not conspicuous.
10. Although there are no other balconies visible in the locality, there is an eclectic mix of outbuildings and other development visible across the rear garden areas and elevations of neighbouring properties. The balcony does not therefore appear incongruous in this back of house location, and nor does it materially detract from the overall character or appearance of the area.
11. I conclude that the balcony does not cause harm to the character or appearance of the area and does not therefore conflict with Policy DMP 1 of the DMPDPD or SPG5, which seek to ensure that new development incorporates good design, and does not cause harm to the character or appearance of an area.

Other Matters

12. I understand that the host property does not have any other external amenity space, and I have taken into consideration the Council's Design Guide for New Development, SPG17 which encourages the provision of balconies where new apartments are unable to have direct access to a garden area. However, the harm I identified to the living conditions of neighbouring residents and conflict with the development plan is not outweighed by this consideration.
13. I have also taken into consideration the appellant's suggestion that the erection of a privacy screen would prevent overlooking, and that the provision of a screen could be made the subject of a condition. However, no details of a privacy screen have been provided, and to overcome the harm I have identified any screen would need to be substantial. Consequently, the planning merits of a privacy screen would require further consideration by the Council and other parties and would not be a minor amendment. Taking into account advice on the use of planning conditions set out in paragraph 206 of the National Planning Policy Framework and in Planning Practice Guidance,¹ it would not be a matter which it would be reasonable to condition.

Conclusion

14. Although I have found that the balcony would not cause harm to the character and appearance of the area, I have found that it would cause significant harm to the living conditions for neighbouring residents. Therefore, for the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Elizabeth Pleasant

INSPECTOR

¹ Planning Practice Guidance, Ref ID:21-012-20140306