
Appeal Decision

Hearing held on 6 June 2017

Site visit made on 6 June 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 6 July 2017

Appeal Ref: APP/Z3635/C/17/3166804

124 Hawthorn Way, Shepperton, Middlesex TW17 8QD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mark Abbots-Darbyshire against an enforcement notice issued by Spelthorne Borough Council.
- The enforcement notice was issued on 30 November 2016.
- The breach of planning control as alleged in the notice is the unauthorised erection of a rear extension including balcony.
- The requirements of the notice are described as 'The demolition of the single storey rear extension including balcony in question and the removal of all associated materials from the site'.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part on ground (a) and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice as corrected and varied is upheld as set out below in the Formal Decision.

Procedural Matters

1. The appeal was made by Mr Mark Derbyshire who gave the postcode of his property as TW17 8GD however, the notice was served upon Mr Mark Abbots-Darbyshire and the Council stated the postcode of the appeal site was TW17 8QD. At the Hearing the appellant confirmed that his correct surname is Abbots-Darbyshire but he is also known as Derbyshire and he made a mistake when quoting his postcode on the appeal form. The address of the appeal site as stated on the notice is therefore correct.
2. At the Hearing the parties also confirmed it was their view that the use of the word 'balcony', as opposed to 'roof terrace' adequately described what had been built on top of the extension roof and the roof overhang. In addition, the Council confirmed the notice was issued to remedy a breach of planning control.

The ground (a) appeal and the deemed planning application

Main Issue

3. At the hearing the Council confirmed that they had no objection to the size, siting or design of the extension and the roof overhang. I shall deal with the
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appeal on this basis. The main issue is therefore the effect of the balcony development on the living conditions of neighbouring occupiers, having regard to privacy, noise and disturbance.

Reasons

4. The appeal concerns a mid-terrace property that has been divided into two flats. The appellant owns both flats and occupies the first floor unit. Neighbouring properties either side remain in use as single dwelling houses. As built, where the appeal building adjoins No 126 to the south, this area comprised abutting coal and refuse stores with a bedroom over that provided a covered passageway leading into the rear garden. This part of the building has about half the depth of the main part of the building and results in a lightwell area between the rear of Nos 124 and 126.
5. The appellant has now inserted a staircase in part of the storage area to create a new entrance to the first floor. At the rear of the storage area he has erected an extension approximately 3.1m in depth, 2.7m in width and 2.2m high. This is sited adjacent to the boundary fence with No 126. He has added 'astro turf', a privacy screen and a barrier to the flat roof to create a balcony which extends across the passageway on top of a small roof overhang, to make a larger space. Access to the balcony is from the former bedroom, now a kitchen, via a pair of outward opening French windows which have replaced a smaller window.
6. From the balcony it is possible to look down into the lightwell area of No 126 as well as into most of the garden area of that property, which contains a washing airer, and is laid to grass. This is the case even though there is a privacy screen on the side of the balcony adjacent to the boundary with No 126. It is also possible to see into the flank, clear glazed windows of the conservatory sited on the far side of the rear of No 126 away from the boundary with No 124. At the time of my site visit these windows were covered with blinds but it is not clear from the submissions before me whether this has always been the case.
7. Standing in the south west corner of the balcony it is also possible to see into the rear bedroom window of No 126 despite the privacy screen. This window is in close proximity to the balcony and general activities on the balcony are audible to the occupiers of the bedroom, as confirmed by representations made by the neighbouring occupiers.
8. The appellant submits that anything that can be seen from the balcony can be seen from standing within the garden of No 124 or by looking out from the upstairs windows. However, at the site visit I saw that there is a substantial fence on the boundaries of No 124 that prevents direct overlooking from the garden of No 124 into the lightwell, garden and conservatory of No 126. Also, it is not possible to see directly into the affected first floor window of No 126 from the garden level due to the larger distance between the viewing positions and the difference in height.
9. The general overlooking of neighbouring gardens from first floor windows is mutual in this area but it is not possible to see into the affected bedroom window of No 126 from the main windows within the rear of No 124 due to the significant setback of the bedroom over the store areas.

10. The appellant also submits that the balcony is used as a prayer area, as his place of tranquillity and that it is difficult to use it for barbeques, as alleged by the neighbours, due to the way the wind blows around the extension. The neighbours state that social activities on the balcony have resulted in unacceptable levels of noise and disturbance. Notwithstanding the difference in opinion between the appellant and his neighbours on this point, it is considered that the balcony development has, in any event, resulted in the potential for noise and disturbance due to its proximity to the bedroom of No 126.
11. The Council suggested imposing a condition requiring the submission of details for a different privacy screen in the event planning permission was granted, but I find that this would not address the potential harm from noise and disturbance. I also find that the balcony has resulted in a significant loss of privacy for the occupiers of the adjoining property given the position of the balcony and the proximity of the bedroom window to it at No 126.
12. I turn now to consider the effect of the balcony development on the living conditions of the occupiers on No 122 to the north. It is only when standing on the very edge of the balcony that it is possible to see over their garden. Due to the distance between the position of the balcony and this garden it is difficult to look down into any lawn, patio or sitting out area at the property. It is possible to see across into part of the windows within the outbuilding at the far end of the garden at No 122. These windows look directly back towards No 122 but due to the distance between the balcony and the generous depth of the rear gardens I consider the harm caused by this overlooking not to be intrusive.
13. With regard to noise and disturbance and No 122, I consider there would be little to distinguish between gatherings on the balcony or within the garden of No 124 in relation to No 122. This is because the balcony is set back behind the main rear wall of the building and also due to the distance between the balcony and the rear windows of No 122.
14. The Council's Supplementary Planning Document (SPD)¹ states that the need to maintain privacy means that the opportunities for balconies will be limited. With this in mind the appellant has put forward personal circumstances² to demonstrate why he should be allowed to keep the development. Due to his illness he envisages he may become reliant upon a wheelchair and the balcony would provide convenient access to open space. In the past he has also been admitted to hospital for two periods and the balcony, together with other strategies, enables the appellant to remain well. However, personal circumstances can change whereas the development would be permanent. Whilst I recognise how serious these matters are for the appellant, in my view they are insufficient to set aside the harmful effects of the balcony on the living conditions of the occupiers of No 126.
15. For all these reasons it is concluded that the balcony development has resulted in harm to the living conditions of the occupiers of No 126, having regard to privacy, noise and disturbance. This aspect of the development, as described in the notice, does not therefore accord with Policy EN1 of the Council's local plan³. This requires that new development should achieve a satisfactory

¹ Design of Residential Extensions and New residential Development Supplementary Planning Document April 2011

² Letter dated 5 June 2014 from hospital consultant confirming his diagnosis; letter dated 23 May 2015 from the Ward Manager confirming two periods as an inpatient for treatment.

³ Spelthorne Core Strategies and Policies Development Plan Document adopted 26 February 2009

relationship with adjoining properties to avoid significant harmful effects in terms of loss of privacy, amongst other matters. I give this policy considerable weight as it is consistent with the National Planning Policy Framework's requirement for a good standard of amenity for all existing and future occupiers of land and buildings. The appeal on ground (a) therefore fails to this extent.

16. With regard to the extension and roof overhang, at 2.2m high this is modest in height especially having regard to the height of the dividing garden fence at this point. Its width and depth also mean that it is tucked within the lightwell area. There are no windows to habitable rooms at ground floor level at No 126 that are affected by it and with a painted finish it matches the host dwelling. This element of the development is not a matter of contention between the parties and I similarly find it to be an acceptable extension that accords with Policy EN1 and the Council's SPD. The appeal on ground (a) therefore succeeds to this extent.

Conditions

17. The Council have not suggested any conditions in respect of just the extension in the event of planning permission being granted for the development. However, it is necessary to impose a condition to prevent the use of the roof of the extension and roof overhang as a roof garden/balcony to protect the living conditions of neighbouring occupiers.
18. In addition, given my findings on the balcony component of the development, it is necessary and reasonable to impose a condition requiring the submission of a scheme to prevent access to the roof of the extension to protect the living conditions of neighbouring occupiers. The purpose of this condition is to require the appellant to comply with a strict timetable for the prevention of access to the roof. This needs to be addressed in order to make the development of the extension and the roof overhang acceptable.
19. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter. This is because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission for the extension where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

The ground (f) appeal

20. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose which in this case has been confirmed that it is to remedy the breach of planning control. In the light of my findings on ground (a) the considerations on ground (f) only concern the balcony development.

21. In appealing on ground (f) the appellant must specify lesser steps which in his view would overcome the objections to the balcony development. However, the appellant has failed to do so referring only to the installation of a more substantial privacy screen on the side boundary and to his personal circumstances. As I have already discussed, these would not prevent the harm to the living conditions of the neighbouring occupiers. I therefore consider it would not be appropriate to vary the notice as suggested and that the requirements of the notice are not excessive to remedy the breach of planning control. Accordingly the appeal on ground (f) fails.

Conclusion

22. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with a correction and a variation and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as they are inconsistent with the permission which I will grant by virtue of s180 of the Act.

Formal Decision

23. It is directed that the enforcement notice is corrected by the insertion of the words 'a roof overhang and' after the word 'including' in Schedule 2 of the notice. It is also directed that it is varied by the insertion of the words 'comprising the privacy screen, the 'astro turf' and the barrier' after the word 'balcony' in Schedule 4 of the notice.
24. Subject to these corrections and variations, the appeal is allowed insofar as it relates to the extension and roof overhang and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the rear extension and roof overhang subject to the following conditions:
- 1) The roof area of the extension and roof overhang hereby permitted shall not be used as a balcony, roof garden or similar amenity area.
 - 2) The extension hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 14 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within two months of the date of this decision a scheme to prevent access to the roof of the extension shall have been submitted for the written approval of the local planning authority. The scheme shall include a timetable for its implementation.
 - ii) If within six months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter remain in place.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

25. The appeal is dismissed and the enforcement notice is upheld as corrected and varied for the balcony development, which comprises the installation of a privacy screen, a barrier on the edge of the roof and 'astro turf' and planning permission is refused in respect of the balcony development on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D Fleming

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Mark Abbots-Darbyshire	
Mr Luke Abbots-Darbyshire	Appellant's son
DipCii	

FOR THE LOCAL PLANNING AUTHORITY:

Mr Matthew Churchill BSc Msc	Planning Officer
Ms Lynsey Tracey BSc	Planning Enforcement Officer

Documents submitted by the appellant at the Hearing:

Letter dated 5 June 2014 from Mr Francis Johnston FRCS
Letter dated 23 May 2015 from Mr Neil Bennett Ward Manager
Letter dated 23 June 2009 from Katherine Shaw Churches' Agency for
Safeguarding
Advertisement for M Darbyshire Building: Disabled Access Solutions