

Appeal Decision

Site visit made on 16 August 2017

by K E Down MA (Oxon) MSc MRTPI MRSB

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

Decision date: 29th August 2017

Appeal Ref: N1730/D/17/3173884

38 Kukri Gardens, Church Crookham, Fleet, GU52 8EU

- 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 Miss Naomi Hicks against the decision of Hart District Council.
 - The application Ref 16/03308/HOU, dated 9 December 2016, was refused by notice dated 17 March 2017.
 - The development proposed is erection of a rear balcony creating direct garden access. Garage conversion.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a rear balcony creating direct garden access at 38 Kukri Gardens, Church Crookham, Fleet, GU52 8EU in accordance with the terms of the application, Ref 16/03308/HOU, dated 9 December 2016, 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: NH-598-01 and NH-598-02 Rev D.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
 - 4) The balcony hereby permitted shall not be brought into use until a privacy screen, comprising living or artificial vegetation no less than 1.8m in height and occupying the full width of the western boundary of the balcony so as to provide a continuous screen, as illustrated on approved plan ref NH-598-02 Rev D, has been provided. The privacy screen shall thereafter be retained.

Procedural matters

2. Although the description of development on the application form includes a garage conversion and the appeal form states that this has not changed, it is clear from the evidence that the garage conversion was deleted from the proposals prior to the determination of the application by the Council. I have
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therefore restricted my consideration to the proposed rear balcony and only included this in the formal decision above.

Clarification

3. The Council's written evidence differs from that of the appellant and states that at the next door flats the first floor flat is No 42 and owns the garden immediately to the rear of the building while the ground floor flat is No 40 and owns the garden adjoining the garden of the appeal property. However, at the site visit it was clear that the appellant's evidence is correct and No 40 is the first floor flat, owning the garden adjoining the appeal dwelling. No 42 is the ground floor flat and owns the garden immediately to the rear of the building.

Main Issue

4. There is one main issue which is the effect of the proposed balcony on the living conditions of occupiers of 40 Kukri Gardens with respect to privacy.

Reasons

5. The appeal dwelling is a modern coach house which occupies the first floor above three garages, one of which is used in conjunction with the coach house. It has a private garden to the rear, accessed via a path to the side of the building or through the garage. The dwelling has three rear windows, two of which overlook its own garden and one which directly overlooks the garden of 40 Kukri Gardens, the first floor flat in the adjacent block of two flats. The overlooking window is located at the top of the entry stairs and serves a hallway that links the stairs with all the rooms in the coach house. Its location means it is likely to be passed frequently and used for looking out. It provides a clear view of the garden at No 40.
6. The proposed balcony would be on the rear elevation of the coach house and would be accessed from the middle opening in the dwelling, via a door that would replace the existing window. It would provide access to the garden below via an external staircase. The balcony would be similar in scale and appearance to an existing balcony on the front elevation of the coach house and another on the rear elevation of No 40. It would be large enough to accommodate a small table and two chairs and therefore could be used for sitting out.
7. Owing to the boundary between the gardens of the appeal dwelling and No 40 being part way across the rear elevation of the appeal dwelling, the proposed balcony would be within a short distance of that boundary and would allow overlooking of the garden at No 40. This overlooking would reduce the privacy in the garden at No 40 because it would introduce a second vantage point and the angle of view would be different from that at the existing window and so an additional section of garden would be visible.
8. Overlooking of gardens is not unusual in urban settings and significant overlooking is already seen in Kukri Gardens, with the balcony and windows at No 40 directly above and overlooking the garden of No 42 and windows in the appeal dwelling overlooking the garden of No 40 and, at an angle, the neighbouring garden at No 36. The proposed balcony would not therefore allow a materially greater degree of overlooking than already exists in the area.

However, it would introduce a new point of overlooking towards the garden of No 40 which would exacerbate the existing situation.

9. During a written pre-application inquiry, the Council suggested in its response that the proposed balcony and external staircase may be acceptable, subject to the provision of a privacy screen to prevent overlooking towards the garden of No 40. I agree this would be a sensible solution and the proposed development includes such a privacy screen. The examples shown on the submitted drawing and in other evidence show planters located close together and containing tall vegetation. Such screening would provide an effective visual barrier between the proposed balcony and the garden of No 40. This would substantially reduce opportunities for overlooking. It would occupy one short side of the balcony, leaving the remainder open, avoiding any alien sense of enclosure. In any case balcony planting is commonly seen.
10. The Council suggests that the height of the proposed screening is unknown and that an average person would be likely to be much taller. However, the planting illustrated appears to be at least as tall as an average person. Moreover, this could be controlled through a planning condition, as could the requirement to retain the screening. Such a condition would be necessary to make the proposed balcony acceptable and reasonable since the screening is included as part of the proposal. It would be readily enforceable since the balcony overlooks open space from which the screening would be visible. In addition it would be visible to the occupier of No 40 when in their garden. I propose to impose such a condition.
11. It is concluded on the main issue that the proposed balcony, including a privacy screen as proposed, would have no materially detrimental effect on the living conditions of occupiers of 40 Kukri Gardens with respect to privacy. In consequence the proposed development would comply with Policies GEN1, GEN14 and URB16 of the Hart District Local Plan (Replacement) 1996 – 2006 Saved Policies, which taken together expect development proposals to sustain or improve the urban design qualities of the area and ensure that no material loss of amenity occurs to adjoining residential occupiers through loss of privacy and overlooking.
12. The Council suggests, in addition to the statutory commencement condition, two conditions: firstly, requiring the development to be constructed in matching materials to those used in the existing building. This is necessary to ensure that the balcony blends with existing balconies at the appeal site and nearby so as to preserve the character and appearance of the area. Secondly, a condition requiring the development to be carried out in accordance with the approved plans is also necessary to provide certainty. Finally, as reasoned above, I will impose a condition requiring the provision and retention of a privacy screen as proposed.
13. For the reasons set out above and having regard to all other matters raised, including the representations of the occupier of No 40 and Church Crookham Parish Council, I conclude that the appeal should be allowed.

KE Down
INSPECTOR