



Appeal Decision

Site visit made on 18 June 2019

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2019

Appeal Ref: APP/Q1255/W/19/3224883

7 Excelsior Road, Poole BH14 8TT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Ms Yolanda Smit against the decision of Poole Council.
 - The application Ref APP/18/01421/F, dated 29 October 2018, was approved on 21 December 2018 and planning permission was granted subject to conditions.
 - The development permitted is conversion of the existing flat roof area on the first-floor level for use as a terrace.
 - The condition in dispute is No 4 which states that: *'An obscure glazed screen of at least 1.8 metres in height shall be erected along southern side of the balcony, as marked on the approved plan, and shall thereafter be permanently retained as such.'*
 - The reason given for the condition is: *'In the interests of privacy and amenity of the neighbouring properties and in accordance with Policy PP27 of the Poole Local Plan (November 2018).'*
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Decision

1. The appeal is allowed and the planning permission Ref APP/18/01421/F for conversion of the existing flat roof area on the first-floor level for use as a terrace at 7 Excelsior Road, Poole BH14 8TT, granted on 21 December 2018 by Poole Council, is varied by deleting condition No 4 and varying condition No 1 as follows:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plan: Plan 1.

Preliminary and Procedural Matters

2. S79(1) of the Town and Country Planning Act 1990 allows me to allow or dismiss the appeal or reverse or vary any part of the decision (whether the appeal relates to that part or not) and I may deal with the application as if it had been made to me in the first instance.
3. Before permission Ref APP/18/01421/F was approved, the main parties agreed a revised drawing which introduced a 1.8m high privacy screen and a 1m set back at the west side of the balcony. Deletion of condition No 4 therefore required a variance to the accord with plans condition No 1 to reflect the removal of the privacy screen from the proposal. As the only alternative drawing before me which omits the privacy screen shows the scheme as originally submitted, I used it in my decision.
4. This also removed the 1m set back from the balcony. I therefore gave the Council an additional opportunity to comment on this element of the appeal. As the approved drawing was originally submitted and subsequently published during the planning application process, no party has been prejudiced by my use of this drawing in the decision.

5. The Council has suggested a condition as an alternative to this approach. However, although it omits the requirement for the privacy screen, it would not approve a substitute balustrading arrangement. It would not therefore be reasonable or precise to use the Council's suggested condition.
6. For the sake of clarity and the avoidance of doubt, I requested that reference numbers be added to the appeal drawings.

Main Issue

7. The main issue is whether the condition is reasonable or necessary in the interests of the living conditions of the occupants of 6 Excelsior Road with regard to privacy.

Reasons

8. Excelsior Road is a short cul-de-sac within the urban confines of Poole. The land drops sharply on the north side of the street, with the properties on this side split level, with tall rear elevations punctuated by numerous terrace and balcony areas which take in the vista of Poole Harbour to the west. There are some privacy screens between private spaces, but not all balconies or terraces have them, such that there are currently very high levels of mutual overlooking between properties.
9. No 6 and No 7 have a particularly intimate relationship, with it possible to look from one terrace to the other in immediate proximity. One can also look from the upper level Juliette balcony within No 7 directly to the lower terrace of No 6. The Council has approved the creation of a terrace on the existing flat roof beyond this Juliette balcony with a standard height balustrade along its principal, west side. The curvature in this balustrade would allow direct overlooking towards the rear elevation and terrace of No 6.
10. The adjacent, short section to the south is required by the planning permission to be enclosed by a 1.8m privacy screen which is set back from the edge of the flat roof by 1m. Considering the acute level of mutual overlooking which is already taking place, and which would occur from the balcony in any event, both the 1m set back and the short section of privacy screen would have negligible benefit and are therefore not essential to protect the occupants of No 6 from unacceptable additional overlooking.
11. I therefore conclude that the condition is not reasonable or necessary in the interests of the living conditions of the occupants of No 6 Excelsior Road with regard to privacy. Without it, the proposal would comply with Policy PP27 of the Poole Local Plan (adopted 2018). As a consequence, it is necessary for me to also vary condition No 1 in order to incorporate drawing Ref Plan 1, which reflects changes to the scheme as a result of the omission of the condition.

Conclusion

12. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and varying condition No 1.

Matthew Jones

INSPECTOR