



Appeal Decision

Site visit made on 8 July 2019

by Adrian Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2019

Appeal Ref: APP/N4720/D/19/3227583

106 Brackenwood Drive, Gledhow, Leeds LS8 1PZ

- 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 Dickinson against the decision of Leeds City Council.
 - The application Ref 19/01037/FU, dated 19 February 2019, was refused by notice dated 25 April 2019.
 - The development proposed is described on the application form as balcony on top of pre standing single story dwelling [sic] and fire assembling point for person in case of emergency.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. During my site visit I observed that a raised decking platform surrounded by planting boxes was present on top of the roof of the single storey side extension. The platform could be accessed from the first-floor patio doors. Photographs submitted with the appeal indicate that this did at one time form part of what I understand, from the information before me, was an unauthorised balcony structure closely resembling the appeal proposal. The Council's delegated report considered the application retrospectively. However, the surrounding fencing has now been removed and therefore I have considered the appeal on the basis of the submitted plans.

Main Issues

3. The main issues are the effect of the proposal on the character and appearance of the building and area; and upon the living conditions of the occupants of 2 and 4 Lincombe Rise, having particular regard to privacy and overbearing.

Reasons

Character and appearance

4. The appeal property is a two storey semi-detached house located on the corner of Brackenwood Drive and Lincombe Rise, and also opposite the junction with Chandos Gardens. The area is characterised by semi-detached houses, short terraces and apartment blocks. The semi-detached and short terrace housing is of a similar character and appearance.
5. Having regard to the evidence before me and my own observations made during my site visit, the proposed balcony would be prominent when the site is

viewed from the south on Brackenwood Drive, from the junction with Lincombe Rise and opposite from Chandos Gardens, despite the vegetation on the site's boundary. I am mindful that the vegetation could also be reduced in height at any time through normal maintenance, or removed, which would make the balcony even more prominent. In any event, I consider that the design and prominence of the proposed balcony would result in it being a highly visible, incongruous feature attached to the first floor flank elevation of the appeal property.

6. In support of the appeal, the appellant submitted photographs of other balconies, some of which have timber railings or fencing. However, no addresses have been provided and I do not have any details of how they came to exist. Hence, I cannot be sure that they are directly comparable to the appeal scheme. I noted the balconies on the front of nearby houses in Brackenwood Drive, but they are recessed into the building and only those at ground floor level have fencing, so they are not the same as the appeal scheme. In any case, the presence of other balconies is not a reason, on its own, to allow unacceptable development.
7. I conclude, on this issue, that the proposed balcony would significantly harm the character and appearance of the building and surrounding area. As such, the proposal is contrary to Policy P10 of the Leeds Core Strategy 2014 (CS), HDG1 of The Leeds City Council Householder Design Guide Supplementary Planning Document April 2012 (SPD), and paragraphs 127 and 130 of the National Planning Policy Framework (Framework). Collectively, these seek, among other things, high quality design that protects and enhances the character and overall quality of the area, as well as the original building.

Living conditions

8. The appeal property sits perpendicular to Nos 2 and 4 and at a considerably higher level due to the steep gradient of Brackenwood Drive. I can see from the submitted photographs that there is already a degree of existing overlooking of the small back gardens of Nos 2 and 4 from the rear windows of the appeal property.
9. Nevertheless, the proposal would introduce an elevated and projecting vantage point beyond the envelope of the building, which would afford its users a closer and more open view over both neighbouring gardens and also into the rear first floor windows of No 2. There is dispute over the precise distance from the boundary but even if I were to accept the appellant's measurements, the views into both neighbouring gardens and into the rear first floor windows of No 2 would be at very close proximity. The proposed fencing would not be high enough to prevent these views into the neighbours' gardens and the windows of No 2, while the boundary trees do not extend far enough around to offer any screening. As a consequence, the balcony would lead to an increased and unacceptable level of overlooking of both neighbouring gardens and into the first-floor windows of No 2, to the detriment of the living conditions of the occupants.
10. Furthermore, I witnessed from within the rear garden of No 2 that by virtue of its elevation and proximity, the proposal would also have an overbearing impact upon occupants of this property when using their garden area to the detriment of their living conditions. I acknowledge that this garden may not

currently be well used, but I saw no reason why that could not change in the future, or by different occupants.

11. As I explained earlier, I do not have the full details of the balconies referred to by the appellant, but the nearby balconies on Brackenwood Drive tend to overlook the public realm rather than the small rear gardens of neighbouring properties. I have, in any event, considered the appeal scheme on its own merits.
12. The fact that there were no objections to the proposal is not determinative. More significantly, the proposal would not achieve one of the important objectives in paragraph 127(f) of the Framework to secure a high standard of amenity for all existing and future users.
13. For these reasons, on this issue, I conclude that the proposed balcony would have an unacceptable impact on the living conditions of the occupants of 2 and 4 Lincombe Rise in terms of privacy and overbearing. This is contrary to CS Policy P10, and HDG2 of the SPD, which collectively seek, among other things, to protect the living conditions of neighbours from excessive overdominance and overlooking. It is also contrary to paragraph 127(f) of the Framework in this regard.
14. The Council have referred to Policy GP5 of the Leeds Unitary Development Plan Review 2006 in the first reason for refusal, but it is not a saved policy and therefore I have given it little weight in my decision.

Planning Balance

15. I have carefully considered the reasons given for why the appellant has applied for planning permission for the balcony. This includes a means of fire escape for a person in the house with impaired mobility, as well as improved care and living conditions for that person because of difficulties accessing the main garden. These are personal circumstances to which I afford significant weight in favour of the appeal.
16. I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had regard to rights conveyed under Article 8 of the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998 (HRA). This is a qualified right and interference may be justified in the public interest, but the concept of proportionality is crucial.
17. Dismissal of the appeal would interfere with the appellant's rights under Article 8 of the ECHR, as incorporated by the HRA. However, I am not convinced that dismissing the appeal would entirely negate use of the roof as a means of fire escape in the manner it has been put to me in the appeal. Any planning permission would also run with the property and therefore the balcony could be used by others, now and in the future, who do not have the same needs. These are matters which carry significant weight against allowing the appeal.
18. I have identified harm insofar as the character and appearance of the area and the living conditions of the occupants of Nos 2 and 4. These are legitimate and well-established planning policy aims. As such, a refusal of planning permission

would therefore be proportionate and necessary. It would not result in violation of the Human Rights of the appellant and others in the household. Protection of the public interest cannot be achieved by means that are less interfering of their rights.

19. Although the appellant may be willing to change the balcony and is open to guidance on this, I have considered the appeal based on the scheme that is before me, and as considered by the Council following public consultation. I note the appellant's points about the Council taking photographs and undertaking site visits unannounced, but this does not alter my view on the proposal. It is also open to the appellant to produce the necessary information with a view to finding a solution.

Conclusion

20. Whilst I acknowledge the personal circumstances presented in this case, I conclude that these do not outweigh the harm I have found in relation to the scheme's impact on the character and appearance of the area and the living conditions of neighbours.
21. On balance, and for the reasons outlined above, I conclude that the appeal should be dismissed.

Adrian Caines

INSPECTOR