



Appeal Decision

Site visit made on 1 May 2019

by N Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th August 2019

Appeal Ref: APP/A1720/W/18/3218772

5 Warsash Court, Havelock Road, Warsash, Southampton, SO31 9JZ

- 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 Ms Jane Conway against the decision of Fareham Borough Council.
 - The application Ref P/18/0731/FP, dated 3 July 2018, was refused by notice dated 28 September 2018.
 - The development proposed is replace existing Velux window with a Velux double balcony terrace window.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Ms Jane Conway against Fareham Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this case is whether the effect of the development on living conditions for occupiers of neighbouring properties would be acceptable, with regard to privacy and noise and disturbance.

Reasons

4. Warsash Court contains a number of flats, including Flat 5, which is housed within the roof space of the building. There is a rooflight in the roof slope serving that flat. It is proposed to replace that rooflight with set of doors leading onto a terrace area.
5. The layout of the building is such that windows serving some of the flats are located on the inside edge of projecting gable features. It is agreed between the parties that one of those windows, at first floor, serves a living room within Flat 4.
6. The proposed balcony would be at a higher level than that window, but it would be quite near to it and I was able to see on my visit that people using the terrace would be able to see in to part of the living room at Flat 4 at fairly close quarters. The balcony would not, of course, be used all of the time and would not be large enough to accommodate groups of people, but during the warmer months it could be used as outdoor space for prolonged periods.

7. Such use would result in levels of overlooking that would reduce the privacy enjoyed by occupiers of Flat 4 to an unacceptable level. Even when the balcony was not in use, knowing that this could change quickly could result in occupiers at that property feeling uncomfortable in using that part of their living space that would be overlooked. I consider that the relationship between the balcony and the living room window would result in a serious loss of privacy. That the window at Flat 4 is doubled glazed and can be left opened or closed does not alter my conclusions on this matter.
8. The appellant does not dispute that a degree of harm may be caused by the proposal but does not consider that it would reach unacceptable levels or that it would outweigh the benefits associated with the development for occupiers at No 5. I do not agree. Whilst there would be benefits for occupiers at the appeal site, including access to outdoor space, those would be outweighed by the loss of privacy experienced at Flat 4.
9. The appellant has highlighted that an existing unobscured window at Flat 3 can already overlook the window at Flat 4. That window serves a bathroom, though, where occupiers are much less likely to spend prolonged periods than at the balcony that is the subject of this appeal.
10. The Council is also concerned that potential noise and disturbance associated with the use of the balcony could undermine the enjoyment of a shared patio area at the site. Given the size of the terrace, I do not think it likely that levels of activity would be such that could cause any serious harm to the enjoyment of that outside space.
11. For the reasons that I have described, I consider that the effect of the appeal development on the privacy enjoyed by occupiers at Flat 4 would be unacceptable, in conflict with Policy DSP3 of the Fareham Local Plan Part 2: Development Sites and Policies 2014 (FLP), which seeks to protect living conditions for neighbouring occupiers.
12. Policy CS17 of the Fareham Local Development Framework Core Strategy 2011 (CS) seeks to secure high quality design. It sets out various qualities that it says that development should include 'in particular' and whilst protecting living conditions of neighbours is not explicitly referenced in the policy text, I do not consider that it should be treated as an exhaustive list of what is required in a development to ensure that it is of a high quality.
13. The policy requires that proposals demonstrate adherence to urban design principles, of which I consider achieving an acceptable relationship with neighbouring properties to be one. I also note that the supporting text to Policy DSP3 acknowledges that protecting privacy is an important component of achieving good urban design at paragraph 3.24. For those reasons, I am satisfied that there would also be a conflict with Policy CS17.
14. The Fareham Borough Design Guidance Supplementary Planning Document (Excluding Welbourne) provides additional advice as to how proposals can be appropriately designed. It provides two illustrations of possible balcony designs, it seems to me, simply to demonstrate that some designs could result in more acceptable relationships with neighbouring sites than others. Whilst neither illustration depicts the appeal proposal exactly, I would not expect a document such as this to describe every possible design. I consider the message that it is trying to deliver to be that balconies can result in a loss of

privacy, as I have found would be the case here and a conflict with that SPD reinforces the concerns that I have described.

15. Paragraph 11 of the National Planning Policy Framework (the Framework) describes the presumption in favour of sustainable development. It says that for decision making, that means approving development proposals that accord with an up-to-date development plan without delay. In this case, and for the reasons that I have described, the proposal would conflict with the Development Plan as a whole. I do not regard the proposal to be sustainable development and so I do not agree with the appellant that a presumption in favour of the appeal scheme should be applied.

Conclusion

16. For the reasons that I have described, the appeal is dismissed.

N Smith

INSPECTOR