



Appeal Decision

Site visit made on 28 May 2019

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2019

Appeal Ref: APP/U1430/W/19/3221997

47 Langley House, Collington Ave, Bexhill TN39 3NB

- 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 Ashan Jeeawon against the decision of Rother District Council.
 - The application Ref RR/2018/1334/P, dated 13 May 2018, was refused by notice dated 21 August 2018.
 - The development proposed is the renewal of external balustrade around first floor flat roof area.
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Decision

1. The appeal is allowed, and planning permission granted for the renewal of the external balustrade around first floor flat roof area, at 47 Langley House, Collington Ave, Bexhill TN39 3NB, in accordance with the terms of application RR/2018/1334/P, dated 13 May 2018, and subject to the attached condition.

Condition 1 – The development is hereby permitted in accordance with the following approved plans; Site location plan, drawing no (2). 15/1263/04 dated 07.08.15; Block plan (1) no. 15/1263/02 dated 07.08.15; Drawing ref (6). Jeeawon roof plan; Drawing ref (11). Jeeawon stair detail; Drawing ref (7). Jeeawon elevations 'A' rev 21-11-17; Drawing ref (8). Jeeawon elevations 'B' rev 21-11-17; Drawing ref (9). Jeeawon elevations 'C' and 'E' rev 21-11-17; Drawing ref (10). Jeeawon elevations 'D' rev 21-11-17; and, Drawing ref (5). 1st floor area drawing.

Procedural matter

2. The description of the development has been taken from the application description, but commentary describing the reasons for the replacement have been omitted. Such commentary does not describe the nature of the development and consequently, it has not been included in the fourth bullet point of the banner heading above.
3. Section 73A of the 1990 Act allows for the submission of “retrospective” applications. The replacement balustrade subject of this appeal has already been partly constructed. I am therefore considering this appeal in part retrospectively.
4. It is clear from the evidence before me, that the parties are in dispute about whether the use of this flat roof requires planning permission. I am aware that a Certificate of Lawful Development was refused by the Council in 2018.

However, the question, whether any proposed or continued use of the flat roof, constitutes development requiring planning permission, is not a matter before me.

5. There is no dispute that the balustrade is operational development that requires planning permission. This appeal therefore relates only to the physical works undertaken to replace the balustrade.

Main Issue

6. The main issue is the effect of the development on the living conditions of neighbouring residents, with particular reference to loss of privacy and outlook, on the properties at 45 Collington Avenue, Nos 2 and 4 Normansdale, Nos 1 to 4 Chiltern Court and Nos 2,4,6 and 8 Harewood Close.

Reasons

7. The site comprises a large detached building in a mainly residential area where there are a mix of detached dwellings and blocks of flats. To the west there is a four storey block of flats with small balconies to the rear. Harewood Close lies to the south west and comprises a terrace of moderate dwellings set within small plots. Nos 2 and 4 Normandale lie to the south and rear of the site. To the south east there is a small block of flats known as Chiltern Court. A footpath runs along the eastern boundary, linking Normandale with Collington Avenue.
8. There is an existing metal staircase from the garden up to the flat roof with a second leading up to the upper rooms. The photographs provided by the appellant indicate that prior to these works there was a handrail that surrounded the flat roof. It is agreed that it is this handrail that has been replaced with the glazed balustrade. I have no evidence before me to suggest that this handrail was unlawful. I note the Council's concerns that a flat roof does not require balustrades. However, this was the position prior to this development being carried out.
9. The new balustrade comprises a number of glass panels connected with metal posts. It is not in dispute that they have been sited in the same position as the handrail, although an additional section of some one metre was proposed outside the first floor bedroom. It is understood that there have been further changes to the rear windows and doors, however, this falls outside the scope of this appeal.
10. From my site visit it is clear that the use of the flat roof would provide views into the rear gardens of Nos 2 and 4 Normandale, 45 Collington Avenue and Nos 2 to 8 Harewood Close. Overlooking to Nos 1 to 4 Chiltern Court would be less, due to the orientation of the host property. However, although the relationship would be different, similar views of these gardens could be achieved from the various rear windows and doors in the host property. The small balconies at Harewood Close are smaller, but at my site visit it was clear that they are well used with chairs and hanging washing apparent at the time of my site visit. Being higher than the appeal property, they would also result in a similar degree of overlooking of the rear gardens of the properties in Harewood Close and Normansdale.
11. I acknowledge that the provision of railings or a balustrade to a flat roof is likely to encourage its use for sitting out and relaxation. This can then lead to

unacceptable levels of overlooking. In this instance however, the potential for overlooking already existed prior to the works, whether or not the flat roof was used in some way. There is conflicting evidence about how the flat roof has been used over the years and it is unclear why the metal handrail was provided originally. The change from the handrail to the glazed panels undoubtedly change the appearance of the rear of the property, but do not result in a form of development that is more overbearing than existed previously.

12. Based on the evidence before me and my site visit, I find that the erection of the replacement balustrade, would not lead to unreasonable additional overlooking, or an overbearing impact on neighbouring properties. I therefore conclude that the replacement balustrade would comply with policies OSS4 (ii) of the Rother Local Plan Core Strategy (2014) and policy HG8 of the Local Plan (2006). Together these policies seek to ensure that new development does not unreasonably harm the amenity of adjoining properties.

Condition and Conclusion

13. I have had regard to the condition suggested by the Council and agree that it is necessary in the interests of providing certainty.
14. The appeal is therefore allowed subject to the attached condition.

Hilary Orr

INSPECTOR