



Appeal Decision

Site visit made on 25 September 2019

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 28 October 2019

Appeal Ref: APP/X2220/D/19/3231592

Anchorage, Bay Hill, St Margarets, Kent, CT15 6DU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Margaret Davies against the decision of Dover District Council.
 - The application Ref 18/01341, dated 20 November 2018, was refused by notice dated 8 April 2019.
 - The application sought planning permission for new front porch/single storey side extension without complying with a condition attached to planning permission Ref DOV/18/00907, dated 18 October 2018.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: 5701/A3/01, 5701/A3/02, 5701/A3/03, 5701/A3/04, 5701/A3/05, 5701/A3/06, 5701/A3/07, 5701/A3/08, 5701/A3/09, 5701/A3/10 (Received 23 August 2018).
 - The reason given for the condition is: For the avoidance of doubt.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During the course of the application the proposal was modified to increase the height of the privacy screen with a full-height section close to the proposed door, and a transition section reducing the height to meet a lower, half height section of screen towards the front of the property. I have determined the appeal on this basis.
3. It was requested that I view the appeal site from the neighbouring property of Leaside and I was able to do so at my site visit

Main Issue

4. The main issue is the effect of the proposal on the living conditions of the occupiers of Leaside with particular reference to overlooking.

Reasons

5. Anchorage is a semi-detached dwelling house with four floors of accommodation fronting Bay Hill. The building is set back from the street by a front garden incorporating a car parking space and a paved outdoor amenity area. Anchorage has windows on the flank wall, at third and fourth floor level.

The third floor window is obscure glazed, but openable and serves a bathroom. At fourth floor level the windows serve a bedroom and a study. The dwelling has recently been granted planning permission for a side extension with a flat roof.

6. The dwelling to the south west of Anchorage, known as Leaside, is set back behind the frontage line of Anchorage, with a parking area and grassed external amenity area fronting the street. There is a mature hedge between Anchorage and Leaside, which provides a degree of privacy between the two dwellings. Further, buildings on Bay Hill are set on steeply sloping ground. In the case of Leaside, the ground floor level equates roughly to that of the first floor level of Anchorage, resulting in an increased degree of privacy from comings and goings on the street than would normally be expected.
7. The proposed development would result in a glazed balustrade, incorporating a higher section of privacy screen close to the house on the side facing south west, with access to allow the flat roof to be used as a terrace.
8. Leaside has an external balcony area at first floor level. This balcony is accessed by doors giving onto bedrooms. On the ground floor the front corner of the dwelling closest to Anchorage is laid out as an open plan hall/sitting room. Above is a bedroom. Both the first floor bedroom and the sitting room have windows set into the corner of the building. These windows face towards the area that the proposed terrace would occupy. At ground floor level, there is a pair of patio doors on the north eastern end of the front façade giving onto a ground floor extension which forms a part of the hall/sitting room area.
9. Anyone standing towards the front of the proposed terrace would be able to look over the existing hedge and would both be clearly visible from the corner and north-easternmost windows of Leaside, and, in turn, be able to look back into the rooms, including, notwithstanding the difference in height, the bedroom on the first floor. The existing planting does provide some screening between the two properties, but this is insufficient to provide an effective screen.
10. Whilst the appellants may not, themselves, be intending to stand or sit at the outer end of the terrace, there is no certainty that others using the terrace, either guests or future occupants of Anchorage, would respect this intent.
11. The appellants have made efforts to diminish the effect of the proposal on the neighbour's privacy by the incorporation of the full-height and transition sections of privacy screen. Whilst these do reduce the effect of the proposal, the transition and residual half height sections of screen would still leave the neighbours open to an increased degree of surveillance and awareness of the presence of persons on the terrace.
12. There are restricted views of the windows in question from existing windows in Anchorage. However, the proposal would increase the existing degree of overlooking.
13. There are other windows on the front face of Leaside, these would only be subject to more oblique views from the proposed terrace and the degree of intrusion would be less. The balcony area itself, on Leaside, and the amenity area to the front is, by the nature of its location, already open to a degree of overlooking from the public realm and the neighbouring properties. Further, the

- existing planting between the properties would provide a degree of screening of the front amenity area of Leaside from views from the proposed terrace. The proposed terrace and its use would not materially increase this existing degree of intrusion upon persons using the front balcony or amenity area of Leaside.
14. My attention has been drawn to a High Court decision¹. That decision considered that, in that particular case, the nuisance from overlooking arose “because of the complete glass walls of the living accommodation”. Further, the decision considered that “It would be wrong to allow this self-induced incentive to gaze, and to infringe privacy, and self-induced exposure to the outside world, to create a liability in nuisance.” The windows on the development at Leaside are relatively modest and of a more traditional proportion which have not created a situation with such large areas of unscreened glazing as to invite observation from outside.
 15. Further, in that case, the judges were mindful of the character of the surrounding area, in urban south London, and concluded that “An occupier in that environment can expect rather less privacy than perhaps a rural occupier might. Anyone who lives in an inner city can expect to live quite cheek by jowl with neighbours.” The area within which the appeal site and Leaside lie is a low density area of a village, where occupiers could reasonably expect a greater degree of privacy than that of city dwellers.
 16. I therefore find that the proposed amendments to the permitted scheme would result in an unacceptable increase in both surveillance and the perception of surveillance of these habitable rooms with a corresponding loss of privacy to the occupants of Leaside.
 17. I therefore conclude that the development would result in harm to the living conditions of the occupiers of Leaside with regards to overlooking. The development would, therefore, be contrary to the aims and objectives of paragraphs 124, 127 and 130 of the National Planning Policy Framework, which jointly, amongst other things, seek to achieve well-designed buildings and places with a high standard of amenity for existing and future users, and that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme.

Other Matters

18. In support of the appeal, my attention was drawn to the development of a balcony on Leaside which the appellant considers as being similarly intrusive on her enjoyment of Anchorage as that of the proposal on Leaside. However, the existence of this does not justify the harm I have identified and, in any case, I have determined this appeal on its own merits.
19. The proposal lies within the St Margaret’s Bay Conservation Area (the CA). As such I have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. In addition, Paragraph 193 of the Framework requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation.

¹ Fearn v The Board of Trustees of the Tate Gallery [2019] EWCH 246 (Ch)

20. The character and appearance of the CA is defined by streets of predominantly detached dwellings of varying design within sizeable plots, often with prominent bay windows and balconies fronting the road. The extension of Anchorage has already been approved and the only matter before me is the proposal to amend the approved scheme.
21. During my site visit I observed several terraces with balustrades on properties in the area. Whilst of a modern design, the proposed form of balustrade would be similar to some of these and not out of keeping with either the area or the design of the dwelling. I therefore conclude that the proposal would preserve the prevailing character and appearance of this part of the CA. I note that this agrees with the opinion of the Council's Heritage Team.

Conclusion

22. For the reasons given above, and having regard to all other matters raised, the appeal should be dismissed.

I Dyer

INSPECTOR