



Appeal Decision

Site visit made on 19 December 2019

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 December 2019

Appeal Ref: APP/M2270/D/19/3234193

7 Lansdowne Road, Royal Tunbridge Wells TN1 2NG

- 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 Mr Stephen Mason against the decision of Tunbridge Wells Borough Council.
 - The application Ref 19/01249/FULL, dated 3 May 2019, was refused by notice dated 4 July 2019.
 - The application sought planning permission for proposed new rear balconies, retaining brickwork walls and centralised garden steps up to ground floor level garden without complying with a condition attached to planning permission Ref 18/01898/FULL, dated 7 August 2018.
 - The condition in dispute is No 3 which states that: Notwithstanding the submitted details and plans, prior to the commencement of the development hereby approved, details of privacy screens to the southern side of the largest balcony and the northern side of the smaller balcony shall be submitted to and approved in writing by the Local Planning Authority.
The details shall show the privacy screens to be a minimum of 1.8m high and constructed of either;
 - Solid materials, or;
 - Glazing obscured to Pilkington level 3 or higher (or equivalent) which is an integral part of the manufacturing process and not a modification or addition made at a later time.The approved privacy screens shall be installed before the first use of the development hereby approved and shall be permanently retained thereafter.
 - The reason given for the condition is: In the interests of residential amenity. This is a pre-commencement condition as the privacy screens will need to be incorporated into the overall design of the balconies.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application form indicates that the development had already started when the application to remove condition 3 was submitted to the Council. However, the planning application form also indicates that the development was not yet completed at that time. At my visit a rear ground floor balcony was in place and I was able to access it, although the balcony erected at the site differs to that shown on the plans before me. For the purposes of clarity, I have considered the proposal in the context of the plans

that were approved by planning permission Ref 18/01898/FULL and upon which the Council determined planning application Ref 19/01249/FULL.

Background and Main Issue

3. Planning permission granted two balconies to the rear of the building at ground floor level. This proposal seeks to remove the requirement put in place by condition 3 to erect two privacy screens, one at the northern end and one at the southern end of the balconies. The main issue is the effect that removing the condition would have on the living conditions of adjoining occupiers.

Reasons

4. The ground floor of the appeal property is elevated as it is situated above a lower ground floor level. To the rear the garden and outdoor space is sited at a lower level to the ground floor. I saw that the properties either side have a similar arrangement. The balconies would, therefore, have an elevated positioning at the rear of the property. This would allow for observation over the common boundary fences and vegetation toward the windows at the rear of those properties on either side.
5. It appeared to me that the rear windows at No.9 Lansdowne Road served habitable rooms. Indeed, third party representation indicates this to be the case. These are rooms in which the adjoining occupiers would spend a reasonable amount of their time. No.5 also has side windows near to the common boundary within close proximity to the proposal. The balconies, without privacy screens, would enable those using them to achieve views of the private living spaces of the adjoining properties and this would be harmful to the living conditions of the occupiers of those properties. I do not consider bamboo planting would satisfactorily prevent visibility such that would mitigate the harm.
6. I acknowledge that there may be other balconies relating to apartments in Lansdowne Road that do not host privacy screens. The appellant has not directed me to any specific examples to enable me to consider what similarity, if any, those balconies would have to the balconies before me. The Council has nonetheless highlighted a development at Lansdowne Villas but indicates that that development's separation between balconies and the nearest dwellings did not raise the need for privacy screens. In any event, the appeal before me can and should be considered on its own merits.
7. The properties either side host side facing windows, along with side/rear staircases, in close proximity to the appeal property. However, the staircases, being accesses, serve a different purpose to that of balconies. Even if existing side windows and staircases at other properties create some observation of the appeal property or other properties in the area, this does not justify creating a development that would introduce an additional harmful loss of privacy to adjoining occupiers.
8. It has been advised that the previous balconies at the rear of the appeal property did not host privacy screens. The Council has explained that the original balconies served tall rear openings which were little wider than the openings themselves. The balconies before me would be quite different in size and design and would clearly allow occupiers recreational enjoyment of the outdoor space that the balconies would provide. I do not consider the previous

balconies offer support in relation to not providing privacy screens to the new balconies.

9. The balconies have been designed to be in keeping with the aesthetic of the property and its surroundings, noting that the area in which the property is located is a designated conservation area. The privacy screens would be of a different form to the galvanised balconies, however they would be relatively low-key features when observed in the context of the entire rear elevation of this property. I do not consider that the privacy screens would create significant visual harm to the appearance of the property or the heritage character of the wider area.
10. For these reasons, the proposal to remove the privacy screens would have a harmful impact upon the living conditions of adjoining occupiers. This brings the proposal into conflict with Policy EN1 of the Tunbridge Wells Borough Local Plan 2006 that requires development, amongst other matters, not to cause significant harm to the residential amenities of adjoining occupiers, with privacy cited as one of those matters required to be satisfied.

Conclusions

11. Having regard to the above findings and to prevent harmful overlooking of existing adjoining occupiers, I consider condition 3 to be necessary. The appeal, therefore, should be dismissed.

Nicola Davies

INSPECTOR