



Appeal Decision

Site visit made on 10 December 2019

by Colin Cresswell BSc (Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 December 2019

Appeal Ref: APP/D0840/W/19/3236914

8 Upper Polmear, Par PL24 2FY

- 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 Shane Harman against the decision of Cornwall Council.
 - The application Ref PA17/12079, dated 26 January 2018, was refused by notice dated 28 March 2019.
 - The development proposed is use of existing flat roof area as a balcony amenity area.
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Decision

1. The appeal is allowed and planning permission is granted for 'use of existing flat roof area as a balcony amenity area' at 8 Upper Polmear, Par PL24 2FY in accordance with the terms of the application, Ref PA17/12079, dated 26 January 2018, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 117/03/PL/001 Rev A and 117/03/PL/002.

Procedural Matters

2. The appeal property forms part of an estate of 16 dwellings which were originally granted planning permission on 19 August 2015 (Ref PA14/11998). That permission was subject to a number of conditions. Condition 1 states that '*the development hereby permitted shall be carried out in accordance with the plans listed below under the heading Plans Referred to in Consideration of this Application*'. Condition 17 states that '*the flat roof areas of the dwellings hereby approved shall not be used as balconies or amenity areas*'.
3. The permission was also subject to a planning obligation under section 106 of the Act¹ which sought to provide open space, education contributions and affordable housing. Half of the 16 properties are open market dwellings and half are affordable dwellings, secured by the section 106 agreement.
4. The appellant proposes to use the existing flat roof as a balcony and has submitted plans of the proposed development showing a new glass balustrade. The Council does not object to the detail of this proposal.

¹ Town and Country Planning Act 1990

5. The application was made under section 73 of the Act and sought to 'vary' conditions 1 and 17 of the original planning permission. However, this part of the Act does not enable existing conditions to be varied. Instead, were the appeal to succeed, a new permission would be created. The original permission would remain extant and unaffected.
6. In this case, the planning permission relates to the whole estate, not just No 8 Upper Polmear. Hence, allowing this appeal under section 73 would create a new permission for all 16 properties on the estate. The section 106 agreement would not apply to the new permission and, as a consequence, there would be no legal mechanism to secure the continued provision of the affordable housing. One implication of allowing the proposed development under section 73 would, therefore, be a loss of affordable housing. This was the reason for the Council's decision to refuse the application.
7. Given the circumstances of this case, I have treated this appeal as relating simply to an application for planning permission for the development proposed and have determined it under the provisions of section 78 of the Act. That way, were the appeal to succeed, the original planning permission for all the houses on the estate (including the appeal property) is untouched and the section 106 agreement, which secures the affordable housing, would remain applicable. Taking this approach enables the appellant to pursue the development applied for whilst addressing the Council's only objection, which related to concerns about securing the affordable housing in the long term. In the circumstances that prevail, I am content that dealing with the development proposed in this way causes no prejudice to any party.

Application for Costs

8. An application for costs was made by Mr Harman against Cornwall Council. The Council has also pursued a costs application against Mr Harman. These applications are the subject of separate Decisions.

Main Issue

9. The main issue is the effect of the proposed balcony on the living conditions of surrounding occupiers having particular regard to privacy and noise.

Reasons

10. Although the Council raises no objection to the proposed balcony, interested parties have made representations.
11. The proposed first floor balcony area would face south, towards the houses in Polmear Parc. On the site visit I noted that the appeal property is at a higher ground level than those it faces. Hence, users of the proposed balcony could achieve elevated views in the direction of housing within Polmear Parc, including the rear gardens.
12. However, the drawings provided by the appellant show that any overlooking would be minimal and this accords with my own observations. Furthermore, the dwellings are relatively well separated. Some degree of overlooking is normal in residential areas and the balcony would not unduly exacerbate this. Even though a number of other properties facing Polmear Parc also have balconies, the cumulative effect would not be significant.

13. For similar reasons I consider that use of the balcony as outdoor amenity space would not lead to unacceptable levels of noise. The balcony would be relatively small and this is a residential environment where some degree of background noise from outdoor amenity space may be expected. I therefore conclude on this issue that the proposal would have an acceptable effect on the living conditions of surrounding occupiers.

Conclusion

14. My approach to determination of this appeal means that the granting of planning permission would not jeopardise the affordable housing offer within the estate. As such, there would be no conflict with the development plan policies quoted by the Council in its reasons for refusal. Nor would the proposal harm the living conditions of surrounding occupiers.
15. The appeal is therefore allowed. For clarity, standard conditions that require the development to be carried out in accordance with the plans and within a time limit have been imposed.

Colin Cresswell

INSPECTOR