



Appeal Decision

Site visit made on 19 November 2019

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: **13 January 2020**

Appeal Ref: APP/K2420/C/19/3225956

49 Main Street, Bagworth, Coalville LE67 1DN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Miss Helen Crouch against an enforcement notice issued by Hinckley and Bosworth Borough Council.
 - The enforcement notice was issued on 8 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a balcony to the rear of 49 Main Street, Bagworth, Coalville, Leicestershire LE67 1DN.
 - The requirements of the notice are: Remove the balcony and all associated materials.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under Section S177(5) of the 1990 Act as amended.

The appeal under ground (a)

2. The main issue is whether the development would harm the living conditions of the occupiers of No 47 Main Street with particular regard to privacy and outlook.
3. The appeal site is a two-storey mid terraced house on Main Street with a single storey flat roof projection and a modest area of outside space to the rear.
4. The appeal balcony is situated on the part of the single storey roof nearest to the first storey element of the dwelling. It was not clear from my site visit if the work to the balcony has been completed. I note that a glass balcony screen was originally proposed by the appellant. The balcony currently consists of decking type wood on top of the roof and there are wooden posts and a connecting rail at the side with a spiral metal staircase providing access to the roof and balcony.
5. No 47 is to the west of the appeal dwelling and has a limited amenity space to the rear due to having a detached shed. As the dwellings are terraced, there will be some existing elements of overlooking from rear windows of the appeal dwelling and No 47 onto amenity spaces. However, the position and height of the outside balcony does provide greater views of the amenity space of No 47

than any internal view. The likelihood of at least chairs and a table on the balcony would result in more prolonged views and a stronger perception of being overlooked. People using the balcony would be heard and at least partially seen from the balcony as the distance between the balcony and the two storey rear extension of No 47 is only approximately 3 metres.

6. The appellant has referred to a right of way from the appeal site through the amenity space of No 47 from a gate on the common boundary between the two dwellings and considers that this results in a complete loss of privacy for the occupiers of No 47. However, the existence of that right of way does not alter the views from the balcony or result in the occupiers of no 47 having a lesser requirement in terms of privacy when they choose to use their outside space.
7. The Council has referred to the balcony as being overbearing as well as causing overlooking and privacy issues. In terms of the physical appearance of the balcony, its position means that the built development itself is not necessarily overbearing. However, the use of the balcony for periods of sitting out and having conversations would be overbearing in the sense of dominating the outdoor space where the balcony is situated and impacting upon the use of the outdoor space of No 47.
8. The appellant has referred to the occupiers of No 47 choosing to reduce their outdoor space with the erection of a large shed and a rear extension but that does not alter the need for occupiers of No 47 to have privacy in what remains of their outdoor space.
9. The appellant proposes the use of screens both for the staircase and the side of the balcony. There is, however, limited information about the nature, size or materials to be used for any screening other than that glass is no longer proposed or any evidence that screening would address the overlooking issues. Consequently, I cannot be satisfied that any screens could effectively mitigate the harm I have found.
10. I, therefore, do find that use of the balcony has harmed the living conditions of the occupiers of No 47 with particular regard to privacy and outlook. The development therefore conflicts with Policy DM10 of the Site Allocations Development Management Policies DPD Adopted July 2016 which refers to requiring development to not have a significant adverse effect on the privacy and amenity of nearby residents.

The appeal under ground (f)

11. This ground relates to whether the steps required by the notice exceed what is necessary to remedy the breach of planning control.
12. An enforcement notice is required to set out the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in Section 173(4) of the 1990 Act. The notice alleges the unauthorised erection of a balcony. The steps required to be taken are to remove the balcony and all associated materials. The purpose of the notice is therefore to remedy the breach of planning control by restoring the land to its condition before the breach took place. The requirements do no more and no less. Consequently, they are not excessive. Therefore, the ground (f) appeal must fail.

Other Matters

13. The appellant has referred to the use of the route as a fire exit but there is no evidence from a building control point of view, for example, that the absence of the staircase would put occupiers of the rear of the house at risk in the event of a fire and potentially needing to evacuate the house.

Conclusion

14. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under S177(5) of the 1990 Act as amended.

E. Griffin

INSPECTOR