



Appeal Decision

Site visit made on 11 February 2020

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 17 February 2020

Appeal Ref: APP/Z2260/D/19/3241894

46 Canterbury Road, Margate CT9 5BG

- 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 Miss Joanne Fetherston against the decision of Thanet District Council.
 - The application Ref FH/TH/19/0951, dated 4 July 2019 was refused by notice dated 11 September 2019.
 - The development proposed is described as "Build flat wooden sun deck on top of existing flat roofed outbuilding raising height by 35mm. Surround the sundeck with fencing to height of 1100mm set within the existing boundary. Provide access to sun deck via spiral staircase from garden".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. At the time of my visit some works had already taken place, installing decking on the roof of the outbuilding.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of the occupiers of 44 Canterbury Road with particular reference to enclosure, overlooking and noise.

Reasons

4. The appeal site is an end of terrace property fronting Canterbury Road. The appeal site is formed of two flats, in the main building, and a modest single storey outbuilding in the garden to the rear of the property. Other than within the appeal site the ground floors of the terrace are in commercial use, including a convenience store at 56 Canterbury Road, with accommodation above. At the time of my site visit, the gardens to the rear of the neighbouring properties were undergoing some works to provide decking and grass. To the rear of the site the land is currently being redeveloped.
5. To the east of the site, at 44 Canterbury Road, lies a recent development of flats with dwellings to the rear with four levels of accommodation facing the street. The flats at No 44 have windows facing towards the site. The site is separated from the flank wall of No 44 by a narrow alleyway.
6. The proposal would place a sun deck/roof garden enclosed by a

7. balustrade just over one metre in height around the roof of the single storey outbuilding.
8. Although obscure glazed, the windows in No 44 are still openable and, from the information before me, serve habitable rooms. Persons at, or close to, the windows of those flats on the ground and first floor closest to the decked roof would, given the very close proximity of the sun deck, be aware of anyone sitting or standing on it, regardless of the obscure glazing. Further, there is a small enclosed area to the rear of the flats serving as an external amenity area for occupiers. This is partially overlooked from the roof. Persons in this area or at the ground or first floor windows would experience both an increased degree of surveillance and awareness of the presence of persons on the roof.
9. Given the restricted openness of the boundary between Nos 44 and 46, the increase in built form of the balustrade and access stairway, together with the active use of the space would lead to an increased sense of enclosure in the space between the properties and in those habitable rooms closest to the development.
10. The proposed balustrade would be insufficient to prevent overlooking, or the awareness of persons on the roof. Whilst a barrier could be incorporated on the roof of sufficient height to prevent overlooking of the areas of No 44 in question, this, of itself, would be visually intrusive and further restrict the openness of that boundary.
11. The appellant may, herself, be intending to enjoy the outdoor amenity area as a peaceful, secluded garden, and there is no evidence of noise from the occupiers of No 46 disturbing their neighbours in the past. However, there is no certainty that others using the terrace, either guests or future occupants of the site, would respect this intent and it is likely that persons on the roof, enjoying its use as an outdoor amenity area, would create noise.
12. Though there are external amenity areas to the rear of the terrace, and the flats at No 44, these are at, or below ground level, with intervening fencing which would, to a degree, contain any disturbance from noise. The proposal would be elevated and noise from persons on the sun deck would be promulgated at a higher level, with little containment.
13. Bringing these matters together, I therefore find that the proposed sun deck would result in an unacceptable increase in both enclosure, surveillance and the perception of surveillance of the habitable rooms and outdoor amenity space with a corresponding loss of privacy to the occupants of No 44. This, together with the likely increase in noise disturbance would cause material harm to the living conditions of occupiers of No 44.
14. The roof garden would provide an elevated outdoor amenity space for the residents of No 46, enlarging the amenity area shared between the two flats, and the planting would provide colour and habitat for wildlife, albeit of limited scale. However, these benefits are outweighed by the harm that I have identified above and so do not alter my decision.
15. The appellants have identified other sources of noise in the wider area, including traffic on Canterbury Road, emergency vehicle sirens and local businesses, against which they consider any noise emanating from their roof garden would be insignificant. However, I have little substantive evidence

before me to demonstrate the level of this noise disturbance. I have, in any case determined this appeal on its own merits.

16. I therefore conclude that the development would result in harm to the living conditions of the occupiers of 44 Canterbury Road with regards to enclosure, overlooking and noise. The development would, therefore, be contrary to the aims of Policy D1 of the Thanet Local Plan (2006) which, amongst other things, seeks to provide development of high quality and inclusive design which is compatible with neighbouring buildings and does not lead to unacceptable loss of amenity through overlooking or noise. Similarly, the proposal would be contrary to the objectives of paragraphs 117 and 127 of the National Planning Policy Framework (2019), which jointly, amongst other things, seek to achieve well-designed buildings and places with a high standard of amenity for existing and future users.

Other Matters

17. The site lies in close proximity to the former Sea Bathing Hospital and Chapel, which is a grade II listed building (the LB). As such I have a statutory duty to pay special attention to the desirability of preserving the building or its setting. 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.
18. The significance of the LB derives from its architectural features and historic interest. The separation distance from the LB lead me to conclude that the development would preserve the setting of the LB and I note that this agrees with the opinion of the Council's Conservation Officer.
19. In support of the appeal my attention has been drawn to the development of other balconies in the area that overlook the appeal site. The appellant has raised the loss of a sea view from the upper storey of No 46 and considers that the proposal would provide a degree of compensation for this loss. However, these matters would not justify the harm that I have identified above.
20. It has been brought to my attention that the proposal would provide outdoor amenity space for the appellant's partially sighted mother. Disability is a protected characteristic and so, in exercising my duty on behalf of the Secretary of State I have had due regard for the Public Sector Equality Duty contained in the Equality Act 2010. Whilst the dismissal of this appeal will result in the continuation of existing living conditions for the residents of No 46, which they are seeking to improve, allowing the appeal would result in harm to the living conditions of other nearby residents, as identified above. The decision is, therefore, necessary and appropriate.

Conclusion

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

I Dyer

INSPECTOR