



Appeal Decision

Site visit made on 27 January 2020

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2020

Appeal Ref: APP/N1160/W/19/3238689

30 Burrow Hill, Plymstock, Plymouth, Devon PL9 9LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Ms Sarah Jennet against the decision of Plymouth City Council.
 - The application Ref 19/00910/FUL, dated 4 June 2019, was approved on 24 July 2019 and planning permission was granted subject to conditions.
 - The development permitted is rear ground floor balcony.
 - The condition in dispute is No 3 which states that: The glazed balcony shown on approved drawing 481-2 (Proposed Plans and Elevations) dated May 2019, shall be obscure glazed with an obscurity rating of not less than level 5 and shall thereafter be retained as obscure glazing in perpetuity.
 - The reason given for the condition is: In order to protect neighbour amenity in accordance with Policy DEV1 of the Plymouth and South West Devon Joint Local Plan (2014 – 2034) 2019 and the National Planning Policy Framework 2019.
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Decision

1. The appeal is allowed and the planning permission Ref 19/00910/FUL for rear ground floor balcony at 30 Burrow Hill, Plymstock, Plymouth, Devon, PL9 9LE, granted on 24 July 2019, by Plymouth City Council, is varied, by deleting condition Nos 3 and 4.

Preliminary Matters

2. At the time of my visit, the steel framework for the balcony was already attached to the rear elevation of the dwelling, although there was no platform, enclosure around the steel frames or any glazed balustrade. This does not alter my approach to determining the merits of the proposal.

Main Issue

3. The main issue is whether the condition is reasonable and necessary having regard to the effect of the balcony on the living conditions of neighbouring occupiers at No 50a Underlane, with particular regard to overlooking.

Reasons

4. No 30 Burrow Hill is a detached bungalow which from the evidence has recently had renovations undertaken to the rear. It is situated on an elevated level relative to its long rear garden which slopes down in a southerly direction. The garden adjoins that belonging to No 50a Underlane. The rear upper windows of No 50a Underlane are highly visible from large rear windows and the garden of the appeal dwelling. Due to the elevated level of the appeal dwelling and the urban character of the area, a degree of overlooking is not uncommon between dwellings in Underlane and Burrow Hill.

5. The Council granted planning permission for the balcony with a 3 metre projection, albeit with the disputed condition requiring the balustrade around its edge to be obscure glazed. The glazing was not shown in the plans or described on the application form as being obscured. It was simply shown as a 1m high glazed balustrade which was to be structurally fixed to the balcony frame.
6. An obscure glazed balustrade of only 1 metre in height would have limited effectiveness as a privacy screen for neighbouring occupiers. At that height, the only views that would be partially limited would be for those who were sitting in the dining room, from which unrestricted views are currently available through the full length clear glazed doors. Views from below the balustrade would be more oblique and less likely to look directly into adjoining gardens or dwellings than a higher level view. Anyone standing on the balcony or sitting on it in upright chairs would be able to attain higher level views over the balustrade, irrespective of the glazing type.
7. Turning to the more general question of whether a condition is required to protect privacy or mitigate the perception of being overlooked, I note that the separation distance between the balcony and No 50a Underlane exceeds the minimum separation distance set out in the Council's Design Guidelines SPD¹. I do however note that the minimum distances are intended to apply between window to windows, rather than windows to balconies (for which no guidance exists). I also note that the minimum distances should be increased relative to the level of elevation between the dwellings. When taking these factors into account, the degree of separation is still considered to be acceptable given the existing degree of mutual overlooking and the limited effectiveness of an obscure glazed balustrade of only 1 metre in height.
8. The neighbouring occupier has indicated that the Hazel tree in the garden of the appeal dwelling helpfully limits the extent of visibility between the windows of their house and the balcony during the summer months when it is most likely to be used. I visited during the winter when the effectiveness of the tree and other landscaping as a screening measure is negligible. The request that the appellant provide an undertaking to retain the tree with sufficient foliage is not something that could be secured by way of a planning condition or obligation and nor would it adequately address any natural decline in the health of the tree, if that were to occur.
9. I therefore find that there is no justification for the disputed condition in terms of Policy DEV1 of the Plymouth and South West Devon Joint Local Plan (2014 – 2034) (adopted March 2019) (JLP) which seeks to ensure that new development provides satisfactory privacy for both new and existing residents. Furthermore, having regard to the tests for the use of planning conditions set out in the National Planning Policy Framework (the Framework) and the advice in Planning Practice Guidance I find that the condition is neither necessary to protect the living conditions of neighbouring residents nor reasonable.

Other Matters

10. Condition 4 of the original permission relates to the removal of permitted development rights for roof extensions and alterations. The parties were invited

¹ Development Guidelines Supplementary Planning Document

to comment on whether such a condition was reasonable or necessary, having regard to the advice in the Framework which, in paragraph 55, sets out, amongst other things, that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted. As it appears that condition No 4 was not relevant to the development permitted, I do not consider that it is reasonable. The comments from the parties do not alter my opinion on this matter.

Conclusion

11. For the reasons given, I conclude that the planning permission should be varied as set out in the formal decision above.

Hollie Nicholls

INSPECTOR