
Appeal Decision

Site visit made on 25 February 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 April 2020

Appeal Ref: APP/A2470/W/19/3243021

9 Main Street, Barrow, Oakham LE15 7PE

- 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 Mr Kevin Williams against the decision of Rutland Council.
 - The application Ref 2019/1134/FUL, dated 1 October 2019, was approved on 29 November 2019 and planning permission was granted subject to a single condition.
 - The development permitted is construction of a 5m x 3m garage along with amendments to approved scheme 2018/0103/FUL: change from a pitched roof on a single storey extension to a flat roof and amendment to fenestration on first floor of extension substituting sliding glazed doors with a Juliet balcony in place of two of the four windows.
 - The condition in dispute is No.1 which states that: *The Juliet balcony barrier, as shown on DRG#1, shall be installed prior to the room it serves being occupied, and thereafter retained. The flat roofed area beyond the Juliet balcony shall not at any time be used as a balcony or sitting out area and neither shall any additional balustrade, railing, wall or other means of enclosure be erected on any part of the flat roof beyond the Juliet balcony.*
 - The reason given for the condition is: *In the interests of the residential amenity and privacy of occupiers of no.8 Main Street Barrow, who would otherwise suffer an unacceptable level of overlooking and loss of privacy.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the development in the banner heading above is taken from the application form. However, it differs from the Council's briefer description on the decision notice as "*Application for two storey and single storey extensions including a juliet balcony*". This adequately and simply describes the proposed development. But importantly it is more accurate, as it omits reference to the garage that the appellant withdrew from the application. References to previous planning permissions and the word 'retrospective' are not relevant as they are not descriptions of development. I have therefore determined the appeal on the basis of the Council's description notwithstanding the description in the banner heading.
3. In its delegated report, the Council refers to the application seeking to make changes to approved planning application reference 2017/1040/FUL. The appellant's description refers to making changes to planning application 2018/0103/FUL. Despite the discrepancy, which neither party has commented

on, it is not determinative to my decision as the changes are acceptable to the Council and have been approved.

4. At the time of my site visit, the Juliet balcony had not been installed, but the room it served was furnished and appeared to be in use.

Main Issue

5. The main issue is the effect of removing the condition on the living conditions of occupiers of 8 Main Street (No.8) with particular regards to overlooking.

Reasons

6. The appellant seeks the removal of condition 1 in order to allow access onto the flat roof extension to care for plants and shrubs as part of the creation of a 'green roof'. They consider the condition to be unnecessary and prohibitive for that purpose.
7. The condition has several components. The first is the requirement to install a Juliet balcony across the patio doors of the design shown in DRG#1. The Juliet balcony forms part of the appellant's application and is what they wanted to install. As the Juliet balcony was not in place when the application was determined and was not in place at the time of my site visit, but forms part of the application, it is necessary to ensure it is installed. Therefore, the condition needs to remain to ensure this happens.
8. The second component is to prevent the use of the flat roof as a balcony or sitting out area. As previously stated, the appellant wants to gain access to tend to plants and to also clean the glass of the lantern light. The flat roof is partly taken up with the lantern light that illuminates the room below and I accept that this limits the area of the roof that could feasibly be used for sitting out on. Nonetheless, the lantern would not prevent parts of the roof being used as a sitting area in the event direct access was allowed. The placing of planters and pots on the roof would give it a function, and one that required regular access such as the tending of plants and watering them. This would mean someone was on the flat roof fairly regularly.
9. As the flat roof extends out beyond the rear of the property, anyone using it or even standing on it, would be afforded greater views over the garden of No.8 than would be the case if someone was standing solely at the Juliet balcony, as I observed from my visit. The appellant's land wraps around the adjacent garden of No.8 so that the appellant would be looking in part across at his own land. But overlooking of the adjacent garden would still be possible. The appellant's submitted drawings #C and #D serve to illustrate possible maximum areas viewable from No.8's proposed Juliet balcony and from the appellant's flat roof. Nonetheless, the removal of the condition and use of the flat roof will make the garden of No.8 more overlooked than it is currently, and it is this worsening I must consider. In my view the condition needs to remain to ensure a worsening does not occur.
10. Occasional maintenance and cleaning of the lantern light could not be prevented. However, access via the Juliet balcony would not be the only way to access the lantern, as it would also be possible to use a ladder to climb onto the flat roof.

11. The third component of the condition is to prevent the installation of any additional balustrade, railing, wall or other means of enclosure on any part of the flat roof beyond the Juliet balcony. The appellant's plans submitted with the planning application did not fully show the dwarf brick walls with trellis for climbing plants that have already been erected on the flat roof along its side boundaries. However, the Council has confirmed in its Statement that these structures were already in place when the Council officer made his site visit and subsequent assessment of the alterations. The Council has also confirmed that the condition, as worded, does not include the side dwarf walls and trellis and these do not have to be removed as a result of the condition.
12. However, railings, balustrading, walls or other means of enclosure would likely be needed for the purposes of safety, to stop people falling off the roof if it were to be used. Therefore, the prevention of the installation of these means of enclosure around the flat roof and along its front, or as replacements for what is already there, would discourage the use of the flat roof as a balcony or sitting area. Therefore, the condition needs to remain to ensure this does not happen.
13. The removal of the condition would enable occupiers of the appeal property to go out onto the flat roof to sit, stand, admire the view and tend plants, however infrequently. This would be further encouraged if additional balustrading or means of enclosure were allowed to be erected. In my view, use of the flat roof, even if infrequently, would increase unrestricted overlooking of the garden of No.8, beyond what is currently possible from the living room which the patio door and Juliet balcony serve. This would reduce the privacy that occupiers of No.8 currently enjoy and, therefore, harm their living conditions.
14. The condition seeks to address the particular circumstances of the appellant's extension, so it is not a blanket imposition as the appellant suggests. I find the condition accords with the tests in paragraph 55 of the National Planning Policy Framework, in that it is necessary, relevant to planning and to the development permitted, enforceable, precise, and reasonable in all other respects.
15. I find the removal of condition 1 would harm the living conditions of the occupiers of No.8. Accordingly, the removal of the condition would be in conflict with Policy CS19 of the Rutland Core Strategy Development Plan Document (2011) and Policy SP15 of the Site Allocations and Policies Development Plan Document (2014). These policies collectively seek to ensure development is appropriate and sympathetic to its relationship to adjacent buildings and does not affect amenity and cause unacceptable effects to neighbouring uses by visual intrusion, overlooking or loss of privacy.

Other Matters

16. I acknowledge the appellant's concerns with the Council's handling of the application and the alleged comments and actions made by a local councillor. But in reaching my decision I have been concerned only with the planning merits of the case.
17. The appellant's intentions may well be different to future occupiers. Therefore, as planning permission runs with the land, I must consider the planning merits of what is before me.

18. The appellant advises that no such restrictive condition has been imposed on the extensions and Juliet balcony under construction at No.8. I have not been presented with any Council reports relating to this application or the conditions that were imposed. However, the appellant submitted a number plans (#A and #B) of the adjacent extension. These show that next door's Juliet balcony is not placed above a single storey extension and its roof. As such if one stepped out of next door's Juliet balcony one would fall to the ground. Therefore, it is not comparable to the appeal scheme before me and would explain why a condition like the appellant's was not necessary. Furthermore, I am obliged to consider the appeal on its own merits.

Conclusion

19. The removal of condition 1 would result in a form of development that would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should be dismissed.

K. Stephens
INSPECTOR