



Appeal Decision

Site visit made on 16 June 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2020

Appeal Ref: APP/H2265/C/19/3242286

21 Correnden Road, Tonbridge, Kent TN10 3AT

- 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 Dr Neil Bindemann against an enforcement notice issued by Tonbridge & Malling Borough Council.
 - The enforcement notice, numbered 19/00206/WORKM, was issued on 8 November 2019.
 - The breach of planning control as alleged in the notice is without planning permission the creation of balcony area by the construction of a glass balustrade and the failure to install a Juliette balcony as shown on plan 1116/A1/05 Rev A of TM/17/01106/FL.
 - The requirements of the notice are to remove the glass balustrade as shown in photograph TMBC 1 and 2 attached to this Notice and to construct the Juliette Balcony as shown on plan 1116/A1/05 Rev A and attached to this Notice as plan TMBC 2.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by deleting the words 'creation of balcony area by the construction of a glass balustrade and the failure to install a Juliette balcony as shown on' from the alleged breach of planning control and substituting with 'the erection of a first floor extension not in accordance with'.
2. Subject to the correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a first floor extension not in accordance with plan 1116/A1/05 Rev A of TM/17/01106/FL at 21 Correnden Road, Tonbridge, Kent TN10 3AT as shown on the plan attached to the notice, and subject to the condition in the attached schedule.

Preliminary Matters

3. Planning permission was granted¹ for a first floor side extension with Juliette balcony to the rear, to be built in accordance with the plans listed on the decision notice. The permission is subject to two conditions, namely the standard implementation condition and a condition requiring that materials

¹ Ref TM/17/01106/FL

match those of the existing building. What has been built differs from the approved drawings and does not benefit from the planning permission.

4. A balcony area has been created by installing a glass balustrade around the edge of a flat roofed ground floor element, whereas the approved drawings indicate that direct access onto the flat roof would be prevented by the installation of a Juliette balcony railing. I saw on my site visit that the flat roof is larger than shown on the approved drawings as an open porch has been added providing a covered area outside the rear door. The balcony extends onto the roof of the porch. I note that the appellant states that this was built under permitted development rights and I have no further evidence on this. The extension as built is broadly as indicated on the drawing submitted by the appellant with the appeal. I have dealt with the appeal on this basis.

Matters concerning the notice

5. I have a duty to ensure that the notice is in order.
6. Where a notice is directed at a building which differs materially from approved plans, in the absence of a condition requiring the development to be carried out strictly in accordance with such plans, it should allege the construction of a building without planning permission, in accordance with *Copeland Borough Council*². It follows that the building of an extension is a single operation and therefore the notice should allege the building of an extension not in accordance with the approved plans.
7. Wide-ranging powers are available to me under Section 176(1)(a) to correct any defect, error or misdescription in the notice, and I am satisfied that the correction would not cause injustice to the appellant or the Council.

Ground (a) appeal and the deemed planning application

8. The main issue is the effect of the development on the living conditions of the occupiers of 19 Correnden Road with regard to privacy.
9. Nos 19 and 21 are attached through their original single storey garages, both of which have recently constructed upper floor extensions up to their side boundaries. The balcony to No 21 serves a first floor bedroom, and is accessed through French windows which provide the room's outlook over the rear garden. The extension to No 19 extends beyond the rear elevation of No 21.
10. The garden to No 19 is wide and deep, with an area of patio close to the house, and the rest is laid to grass. The main part of the patio is well screened from overlooking by neighbouring properties by the existing two storey extension and by the setback position of the neighbouring property at No 17, creating a large private seating area close to the rear of the house. The rest of the garden is generally open to views from the first floor windows of neighbouring properties, except where screened by garden vegetation.
11. The balcony allows views over a large part of the garden of No 19. A similar view would be possible from the Juliette balcony, although restricted by its greater set back in relation to the first floor extension at No. 19. Due to the position of the balcony it does not allow overlooking of the main part of the patio. However, it overlooks the smaller part of the patio adjacent to the

² *Copeland Borough Council v Secretary of State for the Environment & Ross & Ross* [1976] JPL 304

boundary, which the neighbour uses for outdoor dining. I appreciate that this area enjoys sunlight and is conveniently located close to the dining room, but the main part of the patio is also accessible through French windows from the house, and has the same orientation. Moreover, the small area of patio at the side of the garden is already overlooked by other first floor windows at No 21, and to some extent from the Juliette balcony. The appellant indicates his intention to attach a privacy screen to the glass balustrade to restrict views. This would further restrict the view from within the bedroom and from the balcony, and this can be required by a condition.

12. The use of a balcony can give rise to a greater level of noise and disturbance, overlooking and the perception of being overlooked than first floor windows. However, taking into account the view across the rear garden from the permitted Juliette balcony, and the level of mutual overlooking from first floor windows, I do not find that the current balcony has significantly worsened the living conditions of No 19, with regard to privacy, subject to the installation of a privacy screen.
13. The neighbour has also raised concerns that the use of the balcony causes noise disturbance to the adjacent bedroom to No 19. However, this could arise from the use of the garden in close proximity to a neighbouring bedroom, or from the Juliette balcony. This is not therefore a reason to withhold planning permission. I note that external lights have been installed, but outdoor domestic lights are not unusual for both security and for aesthetic reasons.
14. The neighbouring property at No 23 is set a considerable distance from the balcony and therefore is not significantly overlooked.
15. For the reasons set out above, I therefore conclude that the development is not harmful to the living conditions of the occupiers of 19 Correnden Road with regard to privacy. It is therefore not in conflict with Policies P4/12 of the Tonbridge and Malling Local Development Framework saved policies April 2010 and Policy CP24 of the Tonbridge and Malling Core Strategy 2007 insofar as they seek to ensure that extensions to residential properties do not result in an adverse impact on the residential amenity of neighbouring properties.

Conditions

16. As the extension has been built there are no relevant conditions that need to be imposed from the original permission. The appellant has indicated that a privacy screen will be erected, and I have concluded that this is necessary in order to reduce overlooking from the balcony towards the garden of 19 Correnden Road.
17. Details of the screen will need to be submitted to the Council, and as the extension has already been built, it is necessary to provide a strict timetable to deal with the submission and installation of a privacy screen, in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place.

18. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.
19. For the reasons given above I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the development as described in the notice as corrected.

N Thomas

INSPECTOR

Condition Schedule

- 1) The extension hereby permitted shall be removed and materials resulting from the demolition shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
- i) Within 3 months of the date of this decision a scheme for the installation of a privacy screen to the balcony shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
- Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.
- In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.