
Appeal Decisions

Site visit made on 28 July 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2020

Appeal A Ref: APP/P1425/C/20/3246352

Land at 53 Hillcrest Road, Newhaven BN9 9EE

- 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 Alice Eldridge against an enforcement notice issued by Lewes District Council.
 - The enforcement notice was issued on 13 January 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of the raised balcony to the rear of the property.
 - The requirements of the notice are:
 - (i) Remove the balcony and remove all materials arising from its removal.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) 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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Appeal B Ref: APP/P1425/W/20/3245997

53 Hillcrest Road, Newhaven BN9 9EE

- 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 Dr Alice Eldridge against the decision of Lewes District Council.
 - The application Ref LW/19/0750, dated 12 October 2019, was refused by notice dated 3 December 2019.
 - The development proposed is first floor balcony at rear of property.
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Decisions

Appeal A

1. 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 raised balcony to the rear of the property on land at 53 Hillcrest Road, Newhaven BN9 9EE referred to in the notice, subject to the condition in the attached schedule.

Appeal B

1. The appeal is allowed and planning permission is granted for a first floor balcony at 53 Hillcrest Road, Newhaven BN9 9EE in accordance with the terms of the application, Ref LW/19/0750, dated 12 October 2019, and the plans submitted with it, subject to the conditions in the attached schedule.

Application for costs in relation to Appeal B

2. An application for costs was made by Dr Alice Eldridge against Lewes District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The address appeared as 'Hill Crest Road' on the application form but as 'Hillcrest Road' on the appeal forms and enforcement notice. I have used the latter in the banner heading above for both appeals, for the sake of consistency.
4. A rear balcony has been erected and a planning application¹ for it was subsequently refused, on the grounds of the effect on the living conditions of the neighbouring occupiers at No 51 due to loss of privacy and light. A further application was submitted reducing the width of the balcony so that there would be a greater gap to the boundary with the neighbouring property at No 51, and including a two metre high privacy screen on the side of the balcony. This application was also refused and is the subject of Appeal B. The reason for refusal included an additional matter in relation to the effect of increased noise on the occupiers of No 51.
5. The reasons for issuing the enforcement notice are based on both of the reasons for refusal, giving the two planning application references. I am aware that only the application reference LW/19/0277 relates to the balcony that is the subject of the enforcement notice and that the reasons for refusal differ.

The appeal on ground (a) and the deemed application, and the s78 appeal

6. Having regard to the reason for issuing the enforcement notice and the reason for refusal for the s78 appeal, the main issue is the effect of the balcony on the living conditions of the occupiers of 51 Hillcrest Road, having regard to privacy, daylight/sunlight and noise.
7. The appeal site is a detached dwelling located on steeply sloping land. Nos 51 and 53 are single storey at the front, and have two storeys at the rear, with wide views across Newhaven and the surrounding landscape and seascape. The balcony is accessed from the living room, which is on the upper floor level when viewed from the rear, and due to the slope of the land has wide views, including across the neighbouring gardens.
8. I saw that the balcony as built affords a view into part of the rear garden of No 51, although this is limited due to the gap between the boundary of the garden and the house and balcony at No 53. At an oblique angle the balcony allows views towards the area immediately to the rear of the house which contained outdoor seating and would have had a degree of privacy prior to the balcony being erected. Overlooking from this angle towards the rear garden means that occupiers using the area of garden immediately adjacent to the rear elevation of No 51 would be visible to someone using the balcony, and this would reduce the privacy of the occupiers. Due to the reduced size of the balcony in Appeal B and the greater gap to the side boundary, it follows that overlooking would be reduced, but there would still be some views into the garden that would be harmful to privacy.

¹ Application ref LW/19/0277

9. The ability to look into the area of the garden of No 51 closest to its rear elevation would be significantly reduced by the provision of a 1.8 metre high obscure glazed privacy screen, as suggested by the appellant, and the provision of a 2 metre screen to the side of the proposed balcony. Other views from the front of the balcony towards the rear of the garden of No 51 are restricted due to the distance from the boundary, the existing boundary fence and hedge, and by the local topography.
10. There is a clear view from the balcony towards a side window to the kitchen of No 51. While views into the room were prevented by a blind at the time of my site visit, this relationship allows direct overlooking from the balcony into the kitchen, which reduces the privacy of the occupiers of that property. The suggested privacy screen would however prevent this view for both schemes. It may still be possible to see the outline of people using the balcony through the screen, and glimpsed views would be possible through any gaps in the glazing panes. However, due to the distance from the boundary I do not agree that this would be significantly harmful to the privacy of occupiers.
11. The concern regarding loss of daylight/sunlight relates to the effect of the privacy screen in both schemes on daylight and sunlight to the kitchen of No 51. The submitted evidence indicates that the kitchen also has a window to the rear, and I have seen no firm evidence that a privacy screen would reduce daylight to the kitchen.
12. Due to the orientation of the buildings, any effect on direct sunlight to the side window would be during the winter months when the sun is lower in the sky, during the middle part of the day. However, this would be limited and would not result in a significant reduction in sunlight reaching the kitchen for the majority of the year. While the privacy scheme proposed for Appeal B would be taller, it would also be further away from the kitchen window, and would not significantly reduce the amount of daylight or sunlight reaching the side kitchen window.
13. In a residential area such as this, it is not unusual for there to be a degree of noise generated by the enjoyment of gardens and other outside spaces, and I note that other properties in the area have rear balconies. The distance of the existing balcony from the boundary and the inclusion of a privacy screen would reduce the potential for noise generated by users of the balcony from causing disturbance to the occupiers of No 51. The transmission of noise towards the neighbouring property would be lessened by the proposal in Appeal B, due to the greater distances involved and the taller privacy screen. I do not therefore find that either of the schemes are or would be significantly harmful to the living conditions of the neighbouring occupiers by reason of noise generation.
14. Due to the distance from the side kitchen window to the balcony in both appeals, the privacy screen would not appear prominent or be restrictive to the outlook from that room. I have seen no evidence that the side kitchen window needs to be shut frequently to avoid noise or odours from those using the balcony nor that this is detrimental to the ventilation of the room.
15. As I have found that there would be no harm to the privacy of the occupiers, there would be no interference with their right for respect for private and family life under Article 8 of the Human Rights Act. Nor do I find that the balcony is badly designed or fails to meet the social objective of sustainable development.

16. Subject to the imposition of a condition requiring the privacy screen, I am satisfied that the ground (a) appeal and the deemed application is not harmful to the living conditions of the occupiers of No 51 with regard to privacy and daylight/sunlight. The s78 appeal would not be harmful to the living conditions of the occupiers of 51 Hillcrest Road with regard to privacy, daylight/sunlight and noise, subject to the installation of the privacy screen. There is therefore no conflict with Policies ST3 and RES13 of the Lewes District Local Plan Part 1 2016 and Policy DM25 of the Lewes District Local Plan Part 2, insofar as they seek to ensure that development respects the amenities of adjoining properties in terms of privacy, sunlight/daylight and noise.

Other Matter

17. It is a well-established principle that planning should not duplicate other legislation, and Building Regulations requirements do not have any bearing on my decision.

Conditions

Appeal A

18. The appellant and the Council have suggested a condition requiring details of obscure glazed screening and a glazed balustrade to the balcony. Having regard to the guidance in the Planning Practice Guidance, (PPG), the obscure glazed screen and balustrade are necessary to prevent overlooking of the neighbouring property and to make the development acceptable in the interests of character and appearance.
19. The purpose of condition 1 is to require the appellant to comply with a strict timetable for dealing with the provision of the privacy screen, which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development 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. 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 ("LPA") 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.

Appeal B

20. The same condition has been suggested as for Appeal A, and for the same reasons is justified, having regard to the guidance in the PPG. As this permission is for a separate development which has not been commenced, conditions setting out the standard time limit for implementation and listing the approved drawings are required.

Conclusions

Appeal A

21. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeals on grounds (f) and (g) do not therefore need to be considered.

Appeal B

22. For the reasons set out above and taking into account all matters raised, I conclude that appeal B should be allowed.

N Thomas

INSPECTOR

Schedule of conditions

Appeal A

- 1) The balcony shall be removed and all materials arising from its removal 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 1 month of the date of this decision a scheme for the provision of an obscure glazed privacy screen to the side of the balcony adjacent to 51 Hillcrest Road and a glazed balustrade 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.

Appeal B

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing number 19-189-02, Block Plan, site location plan.

- 3) Prior to the first use of the balcony hereby approved, an obscure glazed screen to the side of the balcony adjacent to 51 Hillcrest Road and a glazed balustrade shall have been installed in accordance with details which shall have been submitted to and approved in writing by the local planning authority, and thereafter retained.