
Appeal Decision

Site visit made on 10 November 2020

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2020

Appeal Ref: APP/M1520/W/20/3251408
92 High Road, South Benfleet, SS7 5LG

- 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 Mr Richard Powell against the decision of Castle Point Borough Council.
 - The application Ref 19/0909/VAR, dated 11 December 2019, was refused by notice dated 13 March 2020.
 - The development proposed is to demolish the existing buildings and erect a three storey building comprising 13No. flats.
-

Decision

1. The appeal is allowed and planning permission is granted to demolish the existing buildings and to erect a three storey building comprising 13No. flats at 92 High Road, South Benfleet, SS7 5LG in accordance with the terms of the application, Ref 19/0909/VAR, dated 11 December 2019, subject to the conditions in the attached schedule.

Procedural Matters

2. The appeal relates to the variation of conditions 7 and 8 of planning permission reference 18/0531/FUL to amend the colour of all window and door frames to brown and to enable all balconies and terraces to have vertical steel balustrades. The council has no objection to the amended window and door frame colour, which I have been informed, has subsequently been approved under a separate application. As such the focus of my decision letter is on the means of balcony enclosure.
3. At the time of my site visit the development had commenced. However, no balustrading had been installed to the front of the building.

Main Issues

4. The main issue is the long term effect of the proposed balcony enclosures on the character and appearance of the area.

Reasons

5. Condition 8 of planning permission reference 18/0531/FUL states:

Notwithstanding the detail on the approved plans, the balconies or terraces at first and second floor level on the front of the building shall be enclosed by

opaque or solid material, details of which shall first be submitted to and approved in writing by the local planning authority.

Reason: In the interest of visual amenity and to prevent items stored on the balcony from being visible from ground level.

6. The council refused to vary this condition and to allow the balconies at the front of the building to have vertical steel balustrades on the basis that this may encourage future users of the balconies to provide their own forms of screening, using inappropriate materials and finishes that would detract from the appearance of the building and its surroundings. I observed during my site visit that numerous examples of this can be seen in the surrounding area and as such I consider the council's concern to be well founded.
7. The appellant considers that the council could take enforcement action against any inappropriate screening that may be added to the front balconies in the future. Whilst this would be true for some forms of screening, for example fixed fence panels, I saw other forms of screening that have been used in the area, which would not constitute development and thus would not be enforceable but nevertheless, do have a negative impact on the external appearance of those buildings.
8. This is clearly a design issue and one that has been addressed within the adopted Castle Point Residential Design Guidance Supplementary Planning Document (SPD), which states "*Balconies which are visible in the public realm must be provided with screening which obscures views of the use of the balconies*". The adopted SPD is a material planning consideration and I therefore agree that seeking to prevent this problem with good design solutions from the outset is reasonable and appropriate.
9. I note that condition 8 only relates to the balconies and terraces at first and second floor level on the front of the building. I agree that in accordance with the SPD, it is only necessary to obscure the balconies and terraces to the front of the building. The Juliet railings are not mentioned in the condition or the SPD. As these are intended as guard rails rather than as an outdoor space they are less likely to be altered by future occupants and they do not need to be obscured. It is also my view, following my site visit, that the second floor balconies/terraces, which comprise a low brick wall below the proposed balustrading, would be relatively well screened in views from the street.
10. Although I acknowledge that the proposed balustrade railings formed part of the overall design of the building, there is no evidence before me to suggest that an alternative to the railings or simply fixing obscure panels behind the railings would harmfully detract from its overall finished appearance. Indeed I note from the council's report that fixing obscure glazed panels behind the balustrades has been agreed by the council to discharge condition 8.
11. The appellant considers that the use of flat bars would be sufficient to obscure views of the balconies. Wide flat bars may provide some degree of screening, but to my mind would not deter people from making further DIY alterations in the future, in order to improve privacy and for other practical reasons such as to shield against the weather and to prevent things falling through the railings.

12. The proposal overall is of high quality design and in this respect I find no conflict with Policy EC2 of the Castle Point Borough Local Plan or with the National Planning Policy Framework (the Framework).
13. However, the combination of the guidance contained within the adopted SPD and my observations of how other front balconies with railings in the area have been unsympathetically altered are material considerations and in my view these weigh heavily against the removal of condition 8 in its entirety. I have therefore varied this condition, given my views on the Juliet railings and the second floor terraces, to require that only the first floor balconies to the front of the building must be fitted with obscure screening.

Conditions

14. As the development has already commenced there is no requirement to re-impose the original time limit condition. The council has confirmed that conditions 2- 5 have already been partially discharged but remain relevant for implementation purposes and condition 7 has been varied. These conditions have therefore been amended accordingly. Condition 6 and conditions 9 – 20 are unchanged. Condition 8 has been varied in accordance with my findings set out above.

Conclusion

15. For the reasons given the appeal is allowed.

Rachael Bartlett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 01/REV 5, 02/REV 5, 03/REV 5, 04/REV 5, 05/REV 5, 06/REV 5, 07/REV 5, 08/REV 5, 09/REV 5, 11/REV 5 and 15/REV 5.
- 2) The construction method statement approved under application reference 19/0202/CDN shall be adhered to for the duration of the construction period.
- 3) The development shall be completed in accordance with the previously approved finished ground and internal floor levels.
- 4) The development shall not be occupied until the surface water drainage has been completed in accordance with the previously approved scheme.
- 5) The development shall be completed in accordance with the previously approved scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction.
- 6) The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved maintenance plan. These must be available for inspection upon a request by the local planning authority.
- 7) The development shall be completed in accordance with the previously approved materials.
- 8) Notwithstanding the details shown on the approved plans, the balconies at first floor level on the front of the building shall be enclosed at all times by opaque or solid material, details of which shall first be submitted to and approved in writing by the local planning authority.
- 9) Prior to the occupation of apartments 12 and 13, the second floor rear roof terraces serving these apartments shall be provided with obscure glazed screening in accordance with the approved plans to at least level 3 on the Pilkington scale, or such equivalent as may be agreed in writing by the local planning authority, having a minimum height of 1.8m from the floor surface of the terrace. The approved screening shall thereafter be retained at all times.
- 10) Any upper-floor side windows shall be:
 - (i) Obscure glazed to at least level 3 on the Pilkington scale (or such equivalent as may be agreed in writing by the local planning authority); and
 - (ii) Non-opening, unless the parts of the window that can be opened are more than 1.7m above the floor of the room in which the window is installed and retained as such thereafter.
- 11) The window to bedroom 1 of apartment 13 and the bathroom windows of apartments 12 and 13 shall be:
 - (i) Obscure glazed to at least level 3 on the Pilkington scale (or such equivalent as may be agreed in writing by the local planning authority); and
 - (ii) Non-opening, unless the parts of the window that can be opened are more than 1.7m above the floor of the room in which the window is installed and retained as such thereafter.

- 12) The rear balcony to apartment 7 on the first floor of the building shall, before occupation of that apartment, be provided with obscure screening along its northern side, such screening to be obscure to at least level 3 on the Pilkington scale, or such equivalent as may be agreed in writing by the local planning authority, having a minimum height of 1.8m from the floor surface of the balcony. The approved screening shall thereafter be retained at all times.
- 13) Prior to the first occupation of the building the approved hard and soft landscaping shall be carried out in accordance with the approved landscaping plan. Any tree dying or becoming damaged, diseased or uprooted within 5 years of the building being occupied shall be replaced with a tree of similar size and species, or such other species as may be agreed in writing by the local planning authority.
- 14) Prior to the first occupation of the building the approved car parking areas and areas for circulation and turning shall be provided, hard surfaced, drained and made available for use, together with properly constructed vehicular access to the highway. Thereafter, the approved parking spaces shall be kept available for the purpose of vehicle parking and not used for any other purpose.
- 15) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 16) Any existing redundant access at the site frontage shall be suitably and permanently closed incorporating the reinstatement to full height of the footway/kerbing immediately once the proposed new access is brought into first beneficial use.
- 17) The approved cycle parking/storage facilities shall be provided and made available for use prior to the occupation of any apartment and thereafter retained at all times the building is occupied.
- 18) The approved refuse storage facilities shall be provided and made available for use prior to the occupation of any apartment and thereafter retained at all times the building is occupied.
- 19) Prior to the first occupation of any apartment, the approved car parking spaces shall be provided with electric vehicle charge points in accordance with the approved plans. The charge points shall be operational before any apartment is occupied. Following their provision the charge points shall be maintained in accordance with any manufacturers recommendations.
- 20) Prior to the first occupation of any apartment the developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator. One pack per apartment.