



Appeal Decision

Site Visit made on 5 March 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2021

Appeal Ref: APP/N1160/D/20/3264862

10 Admiralty Road, St Budeaux, Plymouth PL5 1NJ

- 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 Mrs Tercia Cummins against the decision of Plymouth City Council.
- The application Ref 20/00777/FUL, dated 2 June 2020, was refused by notice dated 30 September 2020.
- The development proposed is described as Three years ago (it is on the Plymouth council planning site) I was granted planning permission to build a double-storey extension. The top floor extension leads out onto a balcony which I cannot use as a balcony as I only submitted and therefore granted a Juliet balcony. In retrospect, I w.....r a f..... have the area and the president has already been set by my neighbour being granted permission for a full balcony at, and is also putting in a planning application for the same. The balcony would provide us more privacy into our bedroom as I would use opaque glass on the sides 1700mm high as well as more privacy for our neighbours as the way it is now we both could do with the extra privacy which I feel the balcony would give.

Decision

1. The appeal is allowed and planning permission is granted for creation of first floor balcony over flat roof at 10 Admiralty Road, St Budeaux, Plymouth PL5 1NJ in accordance with the terms of the application, Ref 20/00777/FUL, dated 2 June 2020, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan (received by the Council on 4 June 2020); Existing East and North Elevations; Existing West and South Elevations; Proposed North, West and East Elevations (received by the Council on 2 September 2020); and Proposed Balcony Area Plan (received by the Council on 28 August 2020).
 - 3) The glazed privacy screens shown on the approved Proposed North, West and East Elevations (received by the Council on 2 September 2020) shall be provided in accordance with the approved details prior to first use of the balcony hereby permitted, and shall thereafter be retained in perpetuity. The screens shall be constructed of opaque glass.

Preliminary Matters

2. The description of development in the banner heading above has been taken from the planning application form. However, the appeal form includes different wording which reflects the description in the Council's decision notice. I have

therefore used this revised description as it better captures the scope of the development.

3. Various amended plans were submitted during the Council's determination of the planning application. The appellant has indicated that their preference is to gain planning permission on the basis of the original set of proposed plans that were first submitted with the planning application but which were subsequently superseded by amended versions. It has been requested that I consider all of the superseded plans as well as the plans determined by the Council¹ at the time of its decision.
4. However, this appeal relates to the proposal determined by the Council and considering amended plans at appeal stage could deprive parties of the opportunity to comment and thus prejudice other parties' interests. The Planning Inspectorate's Procedural Guide (Planning Appeals – England, 2021) sets out that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Given that the superseded proposed plans also show notably larger balcony areas than the latest set of proposed plans which the Council made its decision on¹, it seems to me that the superseded plans could involve other issues and concerns that are not covered in the Council's refusal reason and Officer Report. Consequently, although I recognise that the proposed development shown in the plans determined by the Council and listed in the Decision Notice are not the appellant's favoured option, I have determined the appeal on the basis of the proposal determined by the Council and have not taken into account the superseded proposed plans.

Main Issues

5. The main issues are the effect of the proposed development on:
 - the character and appearance of the surrounding area; and
 - the living conditions of adjoining occupiers.

Reasons

Character and appearance

6. The appeal site contains a two-storey semi-detached dwelling which has been extended at the rear. Properties on Admiralty Road are generally semi-detached with relatively large rear gardens containing various outbuildings and garden paraphernalia. Some of the properties have differing designs and appear to have been altered and extended over the years. The surrounding area therefore has a residential character with a varied appearance.
7. Positioned on the flat-roof of the single-storey rear projection, the proposed balcony and associated glazing would be visible from the rear gardens of adjoining properties and would be an unusual feature in the locality. However, its relatively small overall scale and its limited depth and bulk means that the balcony would read as a modest addition that would neither be dominating nor visually overbearing. With the extent of its glazing being relatively limited and allowing light through, the opaque glass privacy screens would also not appear as unacceptably large, intrusive or harsh features.

¹ This includes the following proposed plans: Proposed North, West and East Elevations (received by the Council on 2 September 2020); and Proposed Balcony Area Plan (received by the Council on 28 August 2020).

8. For the above reasons, I conclude that the proposed development would not harm the character and appearance of the surrounding area. I therefore find that it accords with Policy DEV20 of the Plymouth and South West Devon Joint Local Plan 2014-2034 (JLP). Amongst other aspects, this requires development to meet good standards of design, contribute positively to townscape and protect and improve the quality of the built environment. It would also be consistent with the provisions in the National Planning Policy Framework (Framework) in relation to achieving well-designed places.

Living conditions

9. The proposed development would provide an elevated balcony on part of the flat-roof of the existing single-storey rear projection on the site. The balcony would be roughly in line with the main sitting out area at the rear of No 11.
10. It has been put to me that the flat roof can be used as a balcony (screen fencing excluded) without planning permission. Be that as it may, it is not for me within the context of an appeal under section 78 of the Town and Country Planning Act 1990 to formally determine the lawful use of land. If a person wishes to ascertain whether a use is or would be lawful, the correct approach is for an application to be made under section 191 or 192 of the Act for a certificate of lawful use.
11. However, notwithstanding whether the roof could currently lawfully be used as a balcony, the proposed development, on the basis of its limited scale and its position, set in from – and thus not directly adjacent to – the shared boundaries with adjoining properties, would not be an overbearing, intrusive feature. Its effect on adjoining occupiers' levels of outlook, daylight and sunlight would therefore not be significant. In addition, the opaque glass privacy screens would direct views from the proposed balcony over the site's rear garden and towards the estuary and countryside to the north. The privacy screens would therefore limit the extent of potential overlooking of adjoining properties to the rear sections of their gardens and away from the main sitting out areas. I observed on my site visit that the privacy screens would also reduce significantly the extent of possible overlooking from the existing sliding doors/approved Juliet balcony which, irrespective of the missing balustrade, currently provide relatively extensive views from the first-floor bedroom over adjoining rear gardens, including main amenity and sitting out areas.
12. Given its limited size and depth, the balcony could not accommodate a significant number of people. Noise associated with its use would therefore be likely to be relatively limited. This is also a residential area with several dwellings located in relatively close proximity. As such, a certain degree of noise associated with occupiers using their outside spaces would not be unusual. Accordingly, any such noise arising from the use of the balcony would, despite its elevated position, be experienced within this context and also the background noise from the adjoining dual carriageway. In addition, the privacy screens would serve to reduce the presence of people on the balcony and limit the diffusion of any noise arising from its use.
13. For the above reasons, I conclude that the proposed development would not harm the living conditions of adjoining occupiers. I therefore find that it accords with JLP Policy DEV1 which, amongst other aspects, requires development to safeguard the amenity of local communities including in relation to the provision of satisfactory daylight, sunlight, outlook, privacy and protection from

noise disturbance. It would also be consistent with the provisions in the Framework in relation to achieving a high standard of amenity for existing users and the guidance in the Plymouth and South West Devon Supplementary Planning Document (2020) in relation to the impact of balconies on neighbours.

Other matters

14. Commenting on the planning application, the Ministry of Defence submitted recommendations relating to the design and type of glazing given the site's location in relation to the explosives safeguarding area. However, this is a matter for the appellant to consider when finalising the type of glazing to be used on the proposed development.

Conclusion and Conditions

15. For the above reasons, the appeal is allowed.
16. In addition to the standard time limit condition, I have imposed a condition requiring the carrying out of the development in accordance with the approved plans in the interests of certainty. A condition covering the provision and retention of the privacy screens and the materials to be used is necessary in the interests of the living conditions of adjoining occupiers. However, the matching materials condition suggested by the Council would neither be necessary nor reasonable because the proposed materials would not match existing materials. I have therefore declined to impose it.

T Gethin

INSPECTOR