



Appeal Decision

Site Visit made on 20 July 2021

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2021

Appeal Ref: APP/W4325/W/21/3268548

2 Brancote Mount, Oxton, Wirral CH43 6XS

- 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 Alan Morris against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/20/00756, dated 9 June 2020, was approved on 12 August 2020 and planning permission was granted subject to conditions.
 - The development permitted is construction of a first floor rear balcony.
 - The condition in dispute is No 3 which states that: *'Notwithstanding the approved plans, concurrent with the construction of the first-floor balcony an opaque 1.7 metre high privacy screen shall be erected along the full length of the eastern side of the balcony. The screen shall be erected before the balcony is first brought into use and shall be retained as such thereafter.'*
 - The reason given for the condition is: *'In the interest of residential amenity and for the avoidance of doubt.'*
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Decision

1. The appeal is allowed and the planning permission Ref APP/20/00756 for construction of a first floor rear balcony at 2 Brancote Mount, Oxton, Wirral CH43 6XS granted on 12 August 2020 by Wirral Metropolitan Borough Council, is varied by deleting condition 3.

Procedural Matter

2. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. I am satisfied that the revisions to the Framework do not prejudice the positions of the parties in respect of the issues raised in this appeal, so it has not been necessary to seek further comments on this change.

Background and Main Issue

3. Planning permission was granted by the Council for a balcony with steel support posts, glass balustrade with a composite decking flooring to be erected, to the rear of the detached dwelling. The plans submitted with the application did not show any privacy screen, but the Council imposed a condition on the basis of *'notwithstanding the approved plans'* that an opaque privacy screen at 1.7m in height should be erected along the eastern side of the balcony. I observed at the time of the site visit that the balcony has been erected, along with the privacy screen and the balcony is in use.
4. The appellant contends that the screen is not necessary and wants to remove condition 3. This would mean that the privacy screen would be removed and

replaced with clear glass balustrade on the east elevation. This would be as shown on the proposed plans that accompanied the planning application.

5. As a result, the main issue is whether the condition in dispute is necessary in regard to local and national planning policies and in the interests of the living conditions of neighbouring occupiers, with particular regard to overlooking and privacy.

Reasons

6. Saved Policy HS11 of the Wirral Unitary Development Plan (Including Minerals and Waste Policies), 2000 (UDP) sets out that proposals for house extensions will be permitted subject to certain criteria, this includes (i) *the scale of the extension being appropriate to the size of the plot, not dominating the existing building and not so extensive as to be unneighbourly, particular regard being had to the effect on light to and the outlook from neighbours' habitable rooms and not so arranged as to result in significant overlooking of neighbouring residential property.*
7. The Council's Supplementary Planning Guidance 11 (SPG11) House Extensions, 2004 advises that balconies will not be acceptable where they would increase overlooking into neighbour's properties to an unacceptable degree and create a feeling of being overlooked from a higher level.
8. The appeal site is a two-storey detached brick property within a substantial plot and located in a predominantly residential area. Neighbouring dwellings are of a similar appearance, including being detached along both Brancote Mount and Brancote Gardens. The rear garden is enclosed and features mature vegetation, including trees, hedgerows and plants around each of the boundaries. Towards the east the land levels change, and a fence is also erected between the appeal site and No.3 Brancote Mount (No.3). The balcony is sited on the rear but towards the eastern side of the property and measures 3.5m in length with a projection of some 1.25m.
9. Despite the fence and mature landscaped boundaries, the Council contend that the opaque privacy screen is necessary on the eastern side to protect the living conditions of occupiers at No.3 and without its provision there would be views in this garden, resulting in loss of privacy.
10. The balcony would no doubt increase overlooking towards the rear garden of No.3 due to the position of the balcony and proximity to the boundaries. However, views would be largely screened by the mature landscaping, the fence along the eastern boundary and the change in land levels. Moreover, this was clearly evident from the site visit and looking from and over the clear glass balustrade of the balcony towards No.3 that views are screened.
11. Even if, I was to accept the Council's contention and that planting was to diminish, particularly during the winter months including the large hedgerow of No.3. There would still only be limited views towards the north eastern section of the neighbouring garden, which would still be hindered by the fence, side gable of No.3 and the difference in land levels. As a result, significant overlooking of the neighbouring property at No.3 or their garden would not occur, or certainly not to the extent that would be unacceptable and harmful to their living conditions.

12. Furthermore, the Framework, at paragraph 56 and the Planning Practice Guidance advises that planning conditions should be kept to a minimum and only imposed when necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other aspects. From the evidence before me, the Council's Officer report is somewhat confusing and contradictory.
13. Particularly as it refers to the minimal depth of balcony not having the opportunity to sit/stand comfortably for a long period of time given the limited 'useable space', it would not increase the level of overlooking to an unacceptable degree or overall have an adverse impact on the amenities of occupiers of neighbouring properties expect to enjoy. As such, it is not clear how the Council reached its decision to impose a condition for an opaque privacy screen on the eastern side in accordance with national policy and guidance.
14. As such, for the reasons set out above, I conclude that the disputed condition is not necessary in the interests of living conditions of neighbouring occupiers, with particular regard to overlooking and privacy. Removing the disputed condition would not conflict with Saved Policy HS11 and SPG11, which together, amongst other things, seek balconies do not result in significant overlooking into neighbour's properties.

Conclusion

15. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

KA Taylor

INSPECTOR