The Planning Inspectorate

Appeal Decision

Site Visit made on 20 July 2021

by Sarah Housden BA (Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2021

Appeal Ref: APP/A1015/D/21/3273809
53 Foljambe Avenue, Walton, S40 3EY

- 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 Paul Wilbourn against the decision of Chesterfield Borough Council.
- The application Ref CHE/20/00774/FUL, dated 10 November 2020, was refused by notice dated 12 April 2021.
- The development proposed is 'installing tiling and a railing to an existing flat roof creating a balcony'.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The raised patio which has been installed to the rear of the dwelling does not form part of the appeal proposal and is being dealt with by the Council as a separate matter.

Main Issue

3. The main issue in this case is the effect of the proposed balcony on the living conditions of adjoining occupiers, having particular regard to overlooking and noise and disturbance.

Reasons

4. The appeal property is a detached dwelling located within a residential area to the south-west of Chesterfield town centre. Foljambe Avenue rises towards the south-west so that the appeal property's ground and floor levels are above those of No 51 Foljambe Avenue (No 51).

5. The appeal dwelling has a single storey flat roof extension to the rear accommodating part of the kitchen/dining area. The proposed balcony would be above the flat roof at first floor level and would be enclosed by a 1.1 metre high glass balustrade fixed to metal posts. It would be accessed from one of the bedrooms by patio doors. I saw at my site visit that patio doors have already been installed in this opening, but open inwards to serve a Juliet balcony enclosed by railings.

6. Due to the separation distance between the appeal property and Nos 6 and 8 St David's Rise (Nos 6 and 8) to the rear and the vegetation on their common boundary, any overlooking from the balcony towards their rear garden areas would be distant and would not result in direct overlooking or a material

change in the levels of privacy currently enjoyed by the occupiers of Nos 6 and 8.

7. Views into the rear gardens of No 51 and No 55 Foljambe Avenue (No 55) will already be possible from the existing first floor windows and Juliet balcony in the rear elevation of the appeal property. However, due to its floor area and the proposed balustrade enclosure, the balcony could accommodate outdoor furniture and for these reasons together with its southerly aspect, it would be likely to be used for much longer periods compared with the shorter duration of views from the existing windows.

8. By reason of its height and its projection from the rear wall, there would be direct and close views over No 51's rear garden from the balcony. From the side of the balcony, views into No 51's first floor bedroom window and conservatory would be possible. The effect of overlooking in this direction would be exacerbated by the lower ground level of No 51. Although No 55 is at a higher level and there is a mature privet hedge on the common boundary with the appeal property, due to its height, the rear garden of No 55 would also be overlooked from the balcony.

9. Overall, due to the combination of its elevated height, position and the likely extended periods of use, overlooking from the balcony would result in material harm to the levels of privacy currently enjoyed by the occupiers of Nos 51 and 55.

10. The use of the appeal property's existing rear garden area is likely to generate some noise and disturbance. However, due to its height at first floor level, any noise and disturbance from the balcony would be likely to extend over a wider area compared with noise from the rear garden area at ground level. Whilst I note that the appellant does not intend to install sound equipment or hold large gatherings, future occupiers could use the balcony in a different manner. The additional noise and disturbance associated with the use of the balcony compared with the rear garden area would be likely to harm the enjoyment of the rear gardens of Nos 51 and 55 and would therefore be detrimental to the living conditions of their occupiers.

11. Overall, the combination of overlooking from the balcony and associated loss of privacy and the potential for the noise and disturbance from its use would cause material harm to the living conditions of the occupiers of Nos 51 and 55. For these reasons, the proposed development would be contrary to Policies CLP14 and CLP20 of the Chesterfield Local Plan (2020) in so far as they require development to have an acceptable impact on the amenity of adjoining occupiers taking into account noise and disturbance and overlooking.

Other Matters

12. There is nothing in the evidence to suggest that the representations submitted by an organisation calling itself 'Urban Creep' unduly influenced the determination of the planning application which is the subject of this appeal. The Council determined the planning application in accordance with the development plan, having regard to the main issues raised in the representations and the circumstances of the site. The appeal has also been determined based on those matters.

13. For the reasons outlined above and having had regard to all other matters raised, the appeal should be dismissed.

Sarah Housden

INSPECTOR