
Appeal Decision

Site visit made on 30 November 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 January 2022

Appeal Ref: APP/M1710/W/21/3279320
16B The Green, Rowlands Castle, PO9 6BN

- 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 Lee Slark against the decision of East Hampshire District Council.
 - The application Ref 58572/003, dated 02 February 2021, was refused by notice dated 27 April 2021.
 - The development proposed is balustrade.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The balustrade has been erected and I have dealt with the appeal accordingly. This has had no bearing on my assessment of the merits of the appeal scheme.
3. A revised version of the *National Planning Policy Framework* (the Framework) was published on 20 July 2021. I have taken this into account where relevant to my decision.

Main Issue

4. The Council's second reason for refusal relates to concerns that the balustrade facilitates the use of the first floor balcony which results in overlooking and loss of privacy to neighbouring properties. However, the description of development only relates to the balustrade. The information before me is that during the course of the application the Council advised that the description be changed to include the use of the flat roof as a balcony, but the appellant did not agree to such a description change, on the basis that the appellant considered that the balcony use was established.
5. The Council has also confirmed that the first floor rear elevation doors, included on drawing No. PD/1093/1 Rev A, did not form part of the application proposal, and that they comprise part of a development which was the subject of a recently refused planning application¹.
6. Accordingly, my determination of this appeal is based on the appeal scheme before me, which does not include use of the flat roof as a terrace. This takes account of the description of development applied for, and the planning appeals

¹ Ref 58572/002

procedural guidance² (Annexe M) which advises that, if an appeal is made, the appeal process should not be used to evolve a scheme, and 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.

7. With the above in mind, there is no requirement for me to consider further the matter of neighbouring privacy in my decision. Accordingly, the main issue is the effect of the development on the character and appearance of the host property and the Rowlands Castle Conservation Area (RCCA).

Reasons

Character and appearance

8. The appeal property is a two-storey, semi-detached property. It lies within a mixed-use area located to the north of The Green and within the RCCA. The ground floor comprises a commercial unit at the front with a flat behind, known as No.16A. The subject of this appeal, No.16B, is a residential unit occupying the first floor and roof of the building.
9. Section 72 (1) of the Planning (Listed Buildings and Conservation Areas Act 1990 (the Act) requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
10. The evidence before me is that the significance of the RCCA focuses on The Green and the buildings that front onto this large triangular-shaped area of grass. None of these buildings are listed as being of special architectural or historic interest. However, together they combine to create an attractive historic village centre, mainly dating back to the 19th century, and comprising densely-built groups of stylised terraces with small brick boundary walls.
11. Whilst different building designs and roof forms are evident within the RCCA, there is, nonetheless, an overall uniformity of traditional building style, detailing and materials. This results in an overall consistency within the townscape, which is a characteristic of the RCCA. Having regard to materials and other building details, many of the buildings within the RCCA remain substantially unaltered, and retain many of their original architectural features. Walls are mainly brick, and roofs are mainly slate or tile and generally have shallow pitches. Other common features are sliding sash or casement windows, and elegant simple wooden doors. Balconies and roof terraces are not a prevailing feature of this townscape.
12. The appeal property forms part of the group of buildings to the north of The Green, and occupies a prominent position directly fronting onto the open space. It comprises one half of a period property whose design, materials and detailing reflect those which typify the conservation area. As such, given its position and composition, the appeal property makes a positive contribution to the significance of the RCCA.
13. The appeal scheme introduces a contemporary addition, which is out of keeping with the period design of the building. The frosted glass panels and steel posts are at odds with the palette of traditional materials which epitomize the townscape. The wide and square glazing panel design is not reflective of the

² Procedural Guide. Planning Appeals – England. The Planning Inspectorate October 2021.

slimmer, more vertical, glazing proportions which are characteristic of the host, and neighbouring, period properties. The combination of the size of the glazing panels, their opaque nature, and their first floor height, serves to draw the eye towards the structure, so that the balustrade stands out as an incongruous feature within a townscape of simple, unassuming rear roofscapes which typify the locality. Its 'boxy' appearance means that the balustrade sits awkwardly in relation to the adjacent pitched roof rear projection to the appeal property.

14. Although the balustrade is not widely apparent in views from The Green at the front of the property, it is visible from neighbouring properties and their gardens, including those to the rear of the site. It can also be clearly seen from the car park serving the nearby commercial unit at No.12. As such, the appeal scheme stands out as an incongruous addition to the building, due its design and materials which are not in keeping with the prevailing character of this part of the RCCA.
15. The balustrade has resulted in an overtly obvious roof terrace feature having been created. This is an alien addition to the building, and to the wider townscape, in which roof terraces are not characteristic. During my site inspection, I did not observe any other roof balconies within the site vicinity, and my attention has not been drawn to any in the appeal submissions.
16. The introduction of this incongruous and discordant element to the building, and the erosion of the uniformity of building design and materials within this part of the RCCA, would be harmful to the character and appearance of the host property and the wider conservation area, given the significance of the building as an integral part of the prevailing townscape.
17. For the above reasons, I therefore conclude that the appeal scheme harms the character and appearance of the RCCA. As such, it does not accord with Policies CP29 and CP30 of the *East Hampshire District Local Plan: Joint Core Strategy* (2014) (the Core Strategy), and Policies HE2 and HE5 of the *East Hampshire District Local Plan: Second Review* (2006) (the Local Plan). These policies, amongst other things, require new development to seek exemplary standards of design and respect the character, identity and context of the area, and for alterations to unlisted buildings to preserve or enhance the character and appearance of the building and the conservation area.
18. For similar reasons, the appeal scheme would also be contrary to Policies of the Framework which seek to conserve and enhance the historic environment, as set out in Chapter 16.
19. The statutory duty in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. In terms of the advice in Paragraph 202 of the Framework, the harm to the RCCA would be '*less than substantial*'. Consequently, the Framework sets out the need to address the '*less than substantial harm*' in a balanced manner against the public benefits associated with the proposal. No public benefits have been put forward in respect of the development to outweigh the identified harm to the character and appearance of the conservation area.
20. There is evidence before me that suggests that the flat roof has been used as an outdoor recreation space for a number of years by a former occupant of the property, prior to the installation of the balustrade.

21. It is not for me, under a section 78 appeal, to determine whether or not the existing roof terrace is lawful. Notwithstanding this, the previous use appears to have been a more informal use than the current balcony use, and not involving permanent physical alterations to the building, since access was gained via a first floor window and the edge of the roof was defined by the positioning of pot plants. As such, any former informal use of the roof in this manner does not justify or outweigh the harm to the character and appearance of the area arising from the appeal scheme that I have identified.

Other Matters

22. Subsequent to the refusal of the planning application and the submission of the appeal, the appellant has applied³ to the Council for a determination under section 191 the Act in respect of the use of the roof as a sun terrace/roof garden. The determination of this appeal under section 78 does not affect the issuing of a determination under section 191 regardless of the outcome of this appeal.
23. There is no requirement to delay my determination of this appeal pending the decision of the certificate of lawfulness application, since I am determining the appeal solely on the basis of the description of development applied for in the planning application, and the outcome of the certificate of lawfulness application would not alter my conclusions in respect of the impact of the balustrade on the character and appearance of the area. As such, the determination of the certificate of lawfulness application would not affect the outcome of this appeal.
24. Whilst the Framework requires the Council to approach decisions in a positive and creative way, this is not unqualified and would not address or outweigh the aforementioned harm that I have identified to the character and appearance of the area.
25. I acknowledge the appellant's disappointment that the Council did not seek to agree an acceptable solution prior to refusing the planning application. This is not a matter for consideration as part of this appeal decision, which I must determine on the merits of the scheme before me. Moreover, I note that the appellant did not seek pre-application advice from the Council, as advocated by the Framework.
26. Whilst the appeal scheme would serve a function in terms of improving safety and privacy in association with roof access, I am not persuaded, on the basis of the evidence before me, that there are no other design alternatives that could be adopted. As such, these factors are not sufficient to outweigh the harm that is caused contrary to the Core Strategy, the Local Plan and the Framework.
27. I have given careful consideration to the appellant's requirements for space to relax and an outdoor space for a cat. However, I am not persuaded by the evidence before me that the appeal scheme design is necessary to achieve these aims. Also, I am mindful of the advice contained in Planning Practice Guidance⁴ that, in general, planning is concerned with land use in the public interest. It is also probable that the proposed development would remain long after the current personal circumstances cease to be material. For these reasons, I therefore find that these matters are not sufficient to outweigh the

³ Ref 58572/004

⁴ Paragraph 008 Reference ID 21b-008-20140306 – 'What is a material planning consideration?'

harm that would be caused contrary to the development plan and the Framework.

Conclusion

28. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR