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# Appeal Decision

Site visit made on 13 April 2022

**by R Jones BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18<sup>th</sup> May 2022**

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**Appeal Ref: APP/C4615/D/22/3293413**  
**24 Botany Drive, Gornal, Dudley DY3 3XT**

- 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 and Mrs David Bytheway against the decision of Dudley Metropolitan Borough Council.
  - The application Ref P21/2240, dated 13 December 2021, was refused by notice dated 31 January 2022.
  - The development proposed is 2 No. balconies to rear elevation (retrospective)
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. I saw from my site visit that the 2no. balconies to the rear elevation of the appeal property have already been constructed and the planning application was made retrospectively. Accordingly, I have considered the appeal on that basis.

## Main Issue

3. The main issue in this case is the effect of the development on the living conditions of the neighbours, with regards privacy.

## Reasons

4. No.24 Botany Drive (No.24) is a detached split level dwelling with its living accommodation at first and bedrooms at ground floor. The garden of No.24 falls away to the rear such that long, scenic views are afforded to the south west. To best appreciate these views, 2no. steel framed balconies, with stainless steel and glass balustrading, have been constructed at first floor accessed from the living and dining rooms.
5. No.24 has a long garden which extends to the rear of houses on Old Quarry Drive. Because of the significant change in level, the view from the rear balconies of No.24 is largely toward the first floor windows and roofscape of these houses. The separation distance between the rear elevation of No.24 and the rear elevation of the closest neighbour on Old Quarry Drive (No.11) is over 40m. This distance, in combination with the levels and intervening hard and soft landscaping, means that any perception of overlooking from the balconies

is negligible, and does not cause harm to the living conditions of these neighbours.

6. The balcony accessed from the dining room of No.24 projects around 1.5m from the rear elevation and is therefore large enough to accommodate a small table and chairs. I observed on site that there are views from this balcony toward the detached neighbour to the north, No.22 Botany Drive (No.22), over a flat roofed garage in the rear garden of No.24. The siting of No.22 means that its side elevation is slightly splayed from No.24 and its rear building line projects further into the garden. As a consequence of this, and the high close boarded timber fence on the common boundary, a degree of privacy is afforded to No.22 closest to the rear elevation of the house notwithstanding the balcony to the dining area. No.22 itself benefits from a balcony over part of its ground floor. This has trellising and planting along the balustrade on the southern edge to minimise overlooking to No.24. This, in combination with the 1.8m retractable privacy screen on the northern edge of the dining room balcony, means that overlooking between the two balconies would be limited. Consequently, I find no harm to the living conditions of the neighbours of No.22.
7. However, the rear building line of No.26 Botany Drive (No.26) is set back slightly behind No.24 and I saw on site that the entirety of the upper part of the garden, including the patio area closest to the house, is visible from the living room balcony. Whilst I note that this replaced a Juliette balcony and is fairly narrow its depth (only around 700mm) it is nonetheless possible to stand out on this balcony increasing overlooking and causing significant loss of privacy to the occupiers of No.26.
8. I note that views from the dining room balcony toward No.26 are currently partly restricted by the living room balcony and the boundary fencing. However, because of its projection (of around 1.5m) from the rear elevation of No.24 there would remain views over the garden of No.26 including the patio area closest to the house, where it is reasonable to expect a good level of privacy. I therefore find that both balconies would result in a significant loss of privacy to the occupiers of No.26, such that they would cause harm to the living conditions of those neighbours.
9. The appellant has drawn my attention to other examples of balconies in the vicinity, including No.22's balcony that is referred to above. I have not, however, been provided with full details of these examples save I note the Council's evidence that the balcony at No.22 was granted planning permission around 23 years ago. I am therefore mindful that local planning policy and guidance may well have changed in the interim period and, in any event, I do not consider the presence of other balconies in themselves justify the significant loss of privacy I have found in this case.
10. Consequently, the development conflicts with the Council's *Planning Policy Guidance Note 17 House Extension Design Guide* and Policy L1 of the Dudley Borough Development Strategy (2017) because it would cause unacceptable harm to the amenities of the occupiers of neighbouring dwellings through loss of privacy

## **Conclusion**

11. For the reasons given above, I conclude the appeal is dismissed.

*R Jones*

INSPECTOR