



Appeal Decision

Site visit made on 24 May 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 27 June 2022

Appeal Ref: APP/P4415/C/21/3284900

39 Aldervale Close, Swinton, MEXBOROUGH, S64 8UB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Scott Flynn against an enforcement notice issued by Rotherham Metropolitan Borough Council.
 - The notice, numbered EN2021/0134, was issued on 17 September 2021.
 - The breach of planning control as alleged in the notice is the unauthorised erection of a first floor balcony.
 - The requirements of the notice are to remove the door to the balcony and close the opening with brickwork matching that of the dwelling.
 - The period for compliance with the requirement is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.]
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a) and the deemed application for permission

2. The main issue is the effect of the development on the living conditions of the occupiers of 37 Aldervale Close ('No. 37').
3. The development is a first floor balcony which is accessed from the bedroom at the rear of the house. It extends to the boundary with No.37 and anyone standing on it has a view of the whole of that garden including the area immediately next to the rear elevation of No.37. As the balcony is at first floor height, the actual and perceived level of overlooking of the garden of No.37, and its rear elevation including windows into habitable rooms causes harm to the occupiers of that property.
4. The Council is not requiring that all of the works undertaken to construct the balcony are removed or for the pitched roof to be reinstated, but rather that the door to the balcony is removed and the opening closed. The appellant has stated that he could install a Juliet balcony pursuant to permitted development rights in place of the current door. Whilst this may be correct, a Juliet balcony in that location would not create the same level of overlooking that is created by the existing balcony and its use, as it would be set back from the boundary with No.37 and the views of the garden and rear elevation would be much more limited.

5. The appellant had asked for the development to be considered with a condition requiring 2m high opaque privacy screens to be installed on the two sides of the balcony, which he says will prevent the overlooking and therefore remedy the harm. Whilst I do accept that such screens would prevent any actual overlooking, the proximity of the development to the boundary and house at No.37, taken with the size and layout of the two properties, would result in a perception of overlooking felt by the occupiers of No.37. This would be overbearing and unacceptable. In addition, the users of the balcony itself would feel extremely enclosed due to the height of the screens which would therefore not provide an acceptable standard of outdoor space.
6. The development causes material harm to the living conditions of the occupiers of No.37. This is in conflict with Policy CS28 of the Rotherham Local Plan Core Strategy 2013 – 2028, which is part of the development plan for the area, and which, amongst other things, seeks to secure well designed buildings which are responsive to their context. The development is also in conflict with the Householder Design Guidance Interim Planning Guidance March 2014 and the National Planning Policy Framework 2021, which are material considerations. As there are no other considerations which outweigh this conflict the appeal on this ground should be dismissed and the deemed application for permission should not be granted.

Ground (f)

7. An appeal on this ground is on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice or, as the case may be, to remedy any injury to amenity which may be caused by any such breach.
8. I have already considered the appellant's alternative scheme to include the installation of the screens as part of the ground (a) appeal above. The purpose of the notice was to remedy the injury to amenity of the residents of No.37 and as such does not exceed what is necessary. The appeal on ground (f) does not therefore succeed.

Zoë Frank's

INSPECTOR