



Appeal Decision

Site visit made on 23 August 2022

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th August 2022

Appeal Ref: APP/R1038/D/21/3282155

3 The Crescent, Clay Cross, Chesterfield S45 9EH

- 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 Michael Toth against the decision of North East Derbyshire District Council.
 - The application Ref 21/00539/FLH, dated 13 April 2021, was refused by notice dated 1 July 2021.
 - The development is a balcony.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The development has already been undertaken in accordance with the submitted plans. Accordingly, I am considering this appeal retrospectively.
3. Subsequent to the determination of the planning application, the Council adopted the new North East Derbyshire Local Plan (2021) (the Local Plan). Accordingly, these policies now carry full weight in the planning process. As the Council cited these emerging policies on the decision notice, I have proceeded on this basis.

Main Issue

4. The main issue relevant to this appeal is the effect of the development upon the living conditions of the occupiers of the neighbouring properties, with particular reference to privacy.

Reasons

5. The appeal site contains a semi-detached dwelling located within a residential area. The surrounding area contains many dwellings arranged in a variety of linear patterns. Owing to the pattern of development in the surrounding area, garden lengths are relatively short. The appellant's property contains a single-storey rear projection. It is on this structure that the balcony is sited.
6. The balcony takes up the full width and depth of the single-storey projection. This means that from the balcony, there are significant views into to the gardens of the neighbouring properties. In addition, views are possible into the rear windows of the nearby dwellings of 9 and 11 The Crescent. Owing to the relatively short separation distance between properties and the extent of views available from the balcony, the loss of privacy would be significant, as there would not be sufficient distance to diffuse any views from the balcony.

7. In addition, the height of the development is such that views from the balcony would be possible over the height of the appeal site's boundary treatments and the landscaping. This means that there is insufficient scope to overcome the previously described adverse effects. In addition, views of a significant proportion of the neighbouring gardens are possible. Therefore, the loss of privacy is particularly notable.
8. The balcony has the potential to be used on an intensive basis owing to its size and connection with the appellant's dwelling. Therefore, the loss of privacy to the occupiers of the neighbouring properties would be significant.
9. The balcony also contains screens that are located at its sides. However, these are not tall enough to mitigate the loss of privacy for the occupiers of neighbouring properties.
10. I understand that taller screens could be installed on the edge of the balcony. These might potentially provide a greater level of protection against a loss of privacy for the occupiers of the properties at 1 and 5 The Crescent. However, such screens would add to the massing of the development. This is because they would also be viewed alongside the massing of the single-storey rear projections.
11. Therefore, such additional screens would result in a greater adverse effect upon the occupiers of neighbouring properties owing to a larger loss of outlook to the occupiers of No. 1. I therefore do not find that this suggestion overcomes my previous concerns.
12. I therefore conclude that the development has an adverse effect upon the living conditions of the occupiers of the neighbouring properties. The development, in this regard, conflicts with the requirements of Policy LC5 of the Local Plan. Amongst other matters, this seeks to ensure that new developments avoid significant loss of privacy and amenity for the residents of neighbouring properties.

Other Matters

13. I have carefully considered the reasons why the appellant has applied for planning permission for the development. Given the nature of the information before me, as part of the appeal documentation, it would not be appropriate for me to outline the specific reasons why planning permission was applied for. Nonetheless, I have no doubt that the balcony results in improved conditions for the appellant's family. These are personal circumstances to which I attribute weight in favour of the appeal.
14. In weighing the personal circumstances in the planning balance, this must be considered against the very significant effect that the proposal has on the living conditions of the occupiers of the neighbouring properties.
15. I have had due regard to the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010, which specifies the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had regard to rights conveyed within the Human Rights Act.

16. In respect of the above, a refusal of planning permission is a proportionate, and necessary approach to the legitimate aim of ensuring that the existing and future living conditions of the occupiers of the neighbouring properties can be reasonably safeguarded. Furthermore, the protection of the public interest cannot be achieved by means that are less interfering of the family of the appellant's human rights.
17. Therefore, whilst I acknowledge the personal circumstances of the appellant's family, I conclude that this is not a matter that outweighs the harm that would be caused by the proposed development in respect of my previous conclusions on the other main issues.
18. I am aware of letters of support of the proposed submitted by the occupiers of neighbouring properties. However, I have also been directed towards adopted Development Plan policies that would be breached by the proposed development and from this, harm would emanate. Therefore, this matter does not outweigh my previous findings.

Conclusion

19. The development has an adverse effect upon the living conditions of the occupiers of the neighbouring properties. The development therefore conflicts with the development plan taken as a whole. There are no material considerations, including the National Planning Policy Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the preceding reasons, I conclude that the appeal should be dismissed.

Benjamin Clarke

INSPECTOR