



Appeal Decision

Site visit made on 12 August 2022

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 2 September 2022

Appeal Ref: APP/Y2430/D/22/3299652

5 Charnwood Drive, Melton Mowbray, Leicestershire LE13 0JZ

- 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 Mrs Rebecca McAllister against the decision of Melton Borough Council.
 - The application Ref 21/01074/FULHH, dated 16 September 2021, was refused by notice dated 4 March 2022.
 - The development proposed is alterations to the rear access stairs to form a balcony and new stair access.
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Decision

1. The appeal is allowed and planning permission is granted for alterations to the rear access stairs to form a balcony and new stair access at 5 Charnwood Drive, Melton Mowbray, Leicestershire LE13 0JZ in accordance with the terms of the application, Ref 21/01074/FULHH, dated 16 September 2021, and the plans numbered 616-A10, 616-A01, 616-A02, subject to the following conditions:

- 1) Unless within 3 months of the date of this decision a scheme to screen the flank elevations of the balcony and the return of the balcony from its south western end to the centre of the living room window, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 4 months of the local planning authority's approval, the use of the balcony shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 8 months of the date of this decision, the use of the balcony shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained until condition 2 requires the removal of the balcony.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The use of the balcony hereby permitted shall only be carried on whilst Mrs Rebecca McAllister is the occupier of the premises. When the premises cease to be occupied by Mrs Rebecca McAllister the balcony shall be removed.

Preliminary Matters

2. The proposed development has been carried out. It differs from that which has been applied for in that the slatted wooden screen and trellis above the height of the hand rail on the south western flank of the balcony has been extended part way across the front of the living room French windows. I have determined the appeal on the basis of the plans that accompanied the application which omits this detail.

Main Issues

3. The main issues in this appeal are:
 - the effect of the development on the living conditions of neighbours at 3 and 7 Charnwood Drive and on Sherwood Drive with regard to overlooking; and,
 - the appellant's need for a balcony.

Reasons

Overlooking

4. The appeal property is a mid-terraced house on a site that slopes from front to rear. As a result, the house has two storeys at the front and three storeys at the rear. The balcony and external stairs have replaced an external staircase that, in keeping with the design of a number of other houses along the terrace, was used to provide access to the back garden.
5. The landing at the top of the previous external staircase was small in size and could only realistically be used for the purposes of gaining access to and from the back garden. In contrast the balcony occupies the vast majority of the width of the rear elevation and projects further off the rear wall of the house. As a consequence, it is large enough to cater for a number of people as well as chairs and a small table.
6. The rear gardens to the houses on either side, Nos 3 and 7, contain children's play equipment and have areas of decking or paving close to the rear of the house that are used for sitting outside. Whilst these garden areas are overlooked by the rear windows of neighbouring houses, the balcony allows a significantly greater degree of overlooking. Moreover, the presence of people at an elevated height outside accentuates the degree of overlooking that occurs. The trellis end panel that has been erected above the balustrade along the south western side of the balcony mainly screens views of the roof of the rear ground floor extension at No 7, rather than the rear garden. As a result, it is not particularly effective at protecting privacy.
7. I recognise that all the neighbours that have contacted the local planning authority have written in support of the development. However, one of the functions of the planning system is to secure good living conditions for existing and future occupants of buildings, and in this regard the proposal falls short of this goal.
8. Screening both side elevations of the balcony and extending the screening partly across the living room window would materially reduce the extent to which the neighbouring rear gardens on both sides are overlooked. The reduction though would not be to the extent that good living conditions would exist in these private outdoor areas.

9. Owing to the large separation distance of over 30m between the rear of houses along Sherwood Drive and the balcony, and the tall rear boundary fences, material harm to the privacy of the occupiers of houses along Sherwood Drive would not occur.
10. My favourable findings in relation to privacy in the rear gardens on Sherwood Drive does not negate the harm that would be caused in relation to overlooking of the rear gardens of Nos 3 and 7. The harm caused would be sufficient to be contrary to policy D1 of the Melton Local Plan and the National Planning Policy Framework ('the Framework') which, respectively, requires that the amenity of neighbours is not compromised by new development and that a high standard of amenity is provided.

Need for a balcony

11. Decision makers are required by the Public Sector Equality Duty (PSED) set out in section 149 of the Equality Act 2010 to have due regard to advancing equality of opportunity and to eliminate unlawful discrimination in relation to, amongst others, people with disabilities.
12. The appellant is disabled and uses a wheelchair. As a result, she is unable to use the rear garden which can only be accessed via the external staircase. In providing outdoor amenity space which the appellant can access, the balcony therefore addresses this issue and ensures that she has acceptable living conditions. Provision of the balcony is therefore consistent with paragraph 130f of the Framework which requires, amongst other matters, that planning decisions create places that are safe, inclusive and accessible and which promote health and wellbeing.

Conclusion

13. I have found that overlooking from the balcony harms the living conditions of the neighbours at Nos 3 and 7, in conflict with policy D1 of the Melton Local Plan and the Framework. Imposing a condition to require improved screening would partly mitigate but not overcome that harm which carries noteworthy weight against a grant of planning permission.
14. In favour of the appeal, private outdoor spaces are necessary for health and wellbeing and the balcony provides the only private outdoor space at the house that is accessible by the appellant due to her disability. I attach significant weight to this consideration.
15. On balance, I am satisfied that the need for the balcony due to the appellant's disability outweighs the harm that would be caused by the overlooking of immediate neighbours. Material considerations therefore indicate that permission should be granted for development that is not in accordance with the development plan. This conclusion is consistent with the PSED which seeks the advancement of the equality of opportunity in relation to, amongst others, people with disabilities. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should be allowed.
16. To help mitigate overlooking, details of screening to the balcony need to be submitted, approved and implemented. On the basis of the screening that I saw in place during the site visit, it is evident that the extent of screening required by the

condition I have included strikes an acceptable balance between protecting neighbours from undue overlooking whilst also allowing the appellant to view children within her own garden. A strict timetable for compliance is included because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the outstanding matter before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met. In specifying the extent of screening, and the required timescales for compliance, account has been taken of the comments received from the main parties.

17. I have granted permission for the balcony due to the appellant's disability and the PSED. As a result, when she no longer occupies the house the justification for the balcony falls away and the balcony should be removed. I have also required this matter by condition.

Ian Radcliffe

Inspector