



---

# Appeal Decision

Site visit made on 23 August 2022

**by Stewart Glassar BSc (Hons) MRTPI**

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

**Decision date: 07 September 2022**

---

**Appeal Ref: APP/Z2260/W/21/3287560**

**135 Minnis Road, Birchington, Kent CT7 9NS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
  - The appeal is made by Mr M Baldwin against Thanet District Council.
  - The application Ref FH/TH/21/1386, is dated 1 September 2021.
  - The development proposed is described as 'forming a balcony on a flat roof to the rear of 135 Minnis Road'.
- 

## Decision

1. The appeal is dismissed and planning permission for forming a balcony on a flat roof to the rear of 135 Minnis Road is refused.

## Preliminary Matters

2. The appeal is against the failure of the Council to arrive at a decision within the relevant statutory period. Nevertheless, at appeal the Council has clarified that, had it been in a position to do so, it would have refused planning permission. I have approached the appeal in that context.
3. The enlarged balcony has been created and is currently in use. This has no bearing on my decision.

## Main Issue

4. The main issue is the effect of the proposed development on the living conditions of neighbours with particular regard to overlooking and loss of privacy.

## Reasons

5. The entire roof area of the two-storey rear extension has been enclosed by metal railings of some 1.2m in height. This currently provides a balcony terrace for the first floor flat.
6. I acknowledge that windows in the rear of the building would allow for some views of neighbouring properties regardless of the extent of any balcony. Similarly, the previously approved balcony area, and no doubt the previous fire escape, would have afforded some more direct views into the gardens of neighbouring properties.
7. Nonetheless, the current balcony terrace would project significantly further from the rear elevation of the property than the previous fire escape or approved balcony area. Notwithstanding the stated distances to the property to

the rear or its garden, the scheme introduces a new and more apparent vantage point from which to overlook the neighbouring gardens, to both the rear and to the sides. Furthermore, given its height above ground level and its floor area, users of it would also be more evident from neighbouring garden areas when compared to the previous situations. Consequently, there would be intrusion and loss of privacy, both real and perceived, to the neighbouring occupiers in this regard.

8. Taking all the above into account, I therefore conclude that the development causes harmful overlooking and a loss of privacy to neighbouring occupiers. As such, it is contrary to Policy QD03 of the Thanet Local Plan (TLP) 2020 which, amongst other things, seeks to protect neighbouring buildings and spaces from being overlooked.

### **Other Matters**

9. The Council's Statement erroneously refers to the first floor flat as being a 1-bedroom flat but the drawings clearly indicate it as having 2 bedrooms. Furthermore, the suggestion that the occupiers of the flat have access to the rear garden or that it is a communal area is refuted by the appellant. Accordingly, the appellant suggests that the terrace would provide the flat with approximately 16m<sup>2</sup> of garden/amenity space and that this would be appropriate for a 2-bedroom flat and accord with the requirements of the TLP.
10. However, permission for the 2-bedroom first floor flat with a small outside area has already been granted. Therefore, it is not the remit of this appeal to re-assess whether the unit should have a larger garden area. Rather, the purpose of this appeal is to assess the effects of an enlarged outside area on neighbour's living conditions, which I have done and found it to be unacceptable. Accordingly, the weight I could attribute to the scheme now meeting the requirements of the TLP with regard to the size of outside area would be limited and would not outweigh the harm I have identified to neighbouring occupiers and to which I ascribe substantial weight.
11. The proposal is said to meet Building Control requirements. However, the planning system has different and wider responsibilities. These ensure that a development not only protects the living conditions of occupants of the development but also occupants of neighbouring properties from such issues as overlooking and loss of privacy.
12. The appellant points to the absence of objection from adjoining neighbours. However, this in itself does not mean that the scheme is acceptable and does not in any event absolve me from making an assessment as to its effects in regard to the main issue of the case.

### **Conclusion**

13. The proposal would harm the living conditions of neighbouring occupiers and would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

*Stewart Glassar*

INSPECTOR