



Appeal Decisions

Site visit made on 20 March 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2023

Appeal A: APP/H0724/C/22/3305149

17 Butterstone Avenue, Hartlepool TS24 0GA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Miss Helen Broughton against an enforcement notice issued by Hartlepool Borough Council.
- The enforcement notice was issued on 11 August 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the enclosure of the balcony to the front with glass walls and roof, the installation of electric shutters to the ground floor window at the front, and the erection of a fence at the front.
- The requirements of the notice are (i) Remove the first floor glazed screening/conservatory to the original balcony to the front; (ii) Remove the shutter to the front elevation; (iii) Remove the fencing to the front; (iv) Restore the land and boundary to their condition prior to the breaches taking place; (v) Remove any debris associated steps (i) to (iv).
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Appeal B: APP/H0724/W/22/3305187

17 Butterstone Avenue, Hartlepool TS24 0GA

- 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 Miss Helen Broughton against the decision of Hartlepool Borough Council.
- The application Ref H/2021/0198, dated 21 April 2021, was refused by notice dated 27 July 2022.
- The development proposed is Enclosure of balcony to front with glass walls and roof, installation of electric shutters to the ground floor window at the front, erection of a fence to the front (approx. height 1.6m) and erection of fence to both side boundaries at the rear (approx. height 2.1m) (retrospective) and proposed installation of weatherboard cladding to the front.

Summary of Decision: The appeal is allowed in part and is dismissed in part as set out below in the Formal Decision.

Preliminary Matters

1. With regard to Appeal B, I have taken the description of development from the Council's decision notice, as agreed on the appeal form.
2. The Council said in its statement of case that the house, the subject of this appeal, was governed by a planning condition removing permitted development rights¹ for means of enclosure to the front of the property. The Council has since conceded, however, that this statement was made in error and that there is no such permitted development right restriction in place.

Main Issues

3. The main issues are the effect of (i) the development on the character and appearance of the host dwelling and wider area; (ii) the enclosed balcony on the living conditions of the occupiers of no. 15 Butterstone Avenue, having particular regard to privacy and (iii) the front fence on highway safety.

Reasons

Character and Appearance

4. The appeal site is part of a modern development of predominantly two-storey detached and semi-detached houses. It is located amongst a ribbon of dwellings which face the nearby coastline. Accordingly the front of the property is prominent, viewed from the adjacent highway and coastal footways beyond.
5. Although designs vary, the houses commonly feature brick, smooth render and / or weatherboarding in various colours. Other common features shared by many of the dwellings in the vicinity, including the appeal property itself, which are a key part of their character, are a forward projecting upper floor balcony and prominent gables above first floor level extending across the full or part width of the frontage. Despite their forward projection, their general lack of enclosure means that balconies tend to appear subordinate in comparison to the more dominant gables.

Balcony enclosure

6. The enclosure of the balcony, in this case with a black-framed, glazed, lean-to structure, is one of the developments targeted by the enforcement notice. From my visit it was apparent that this structure has a relatively limited footprint, sitting within the existing walls of the balcony and not projecting beyond the forward elevation of the integral garage below, albeit that it is forward of the main front elevation of the neighbouring dwelling at no. 15 Butterstone Avenue. In addition the structure, in itself, has a relatively recessive appearance because of its predominantly glazed construction.
7. However, despite its limited forward projection and glazed construction, the prominent lean-to design extends above the eaves height of, and across much of the width of, the gabled main frontage to the house. As such the structure visually jars with and begins to dominate the main gable elevation, such that the balcony feature is no longer subordinate to the main dwelling, having a 'top

¹ Granted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO)

heavy' and somewhat contrived and unsympathetic appearance. Furthermore, it is the only development of its type along this stretch of the coastal frontage, and whilst not interrupting any strong sense of uniformity along the street scene, it nevertheless detracts from the visual rhythm of open balconies next to prominent gables.

8. Accordingly the balcony structure is harmful to the character and appearance of the host dwelling and the wider street scene. As such it is in conflict with Policies HSG11 and QP4 of the Hartlepool Local Plan 2018 (LP) and with the National Planning Policy Framework (the Framework) insofar as they seek to promote high quality design that respects its surroundings.
9. I acknowledge the supporting statements based on the enclosure allowing for weather protection and therefore more flexible use, also the saving of energy all in the context of the alleged substandard build quality of the original dwelling. However, the development would not be justified by technical problems associated with the original build quality of the dwelling. Furthermore, any private benefits to the appellant, along with supporting comments from local residents, do not outweigh the harm identified. The appellant has also referred to other properties on the estate that have been changed in appearance in various ways. I have been provided with limited details in this regard, but in any event for the above reasons they do not justify the harm identified, with each case needing to be decided on its individual merits.

Front fence

10. The appellant has erected a vertical close boarded fence along the front side boundary with no. 15 Butterstone Avenue. The fence is approximately 1.5 metres in height, but is reduced to just over 1 metre in height where it comes within 1 metre of the highway.
11. Whilst there are other examples of fences forward of front elevations elsewhere on the estate these are very few and far between. It is also unclear from the evidence whether these structures have been authorised. I agree with the Council that the front fence is at odds with the predominantly open plan character of the frontages. The visual impact is exacerbated by the relatively tall height of the structure.
12. This development is therefore also harmful to the character and appearance of the area. Accordingly, it is in conflict with Policy QP4 of the LP and with the Framework insofar as they seek to promote high quality design that respects its surroundings. I am not persuaded that any suggested security benefits arising from the fence acting as a privacy screen, even if recommended by others, serve to outweigh the harm identified.
13. Notwithstanding this I am mindful that in accordance with Paragraph A.1 of Part 2 of Schedule 2 of the GPDO it would be possible to erect a fence not exceeding one metre in height adjacent to the highway at the front of the property, without the need for planning permission. It seems to me that if I required the demolition of the front fence in its entirety, a fence to a height not exceeding one metre could then be erected in its place. Accordingly I propose to vary the requirements of the notice to allow for the option of reducing the front fence to a maximum height of one metre, because this represents a

realistic fallback position and is an 'obvious alternative' that could be achieved with less cost and disruption.

Window shutter and other developments

14. The roller shutter targeted by the notice relates to a recessed window on the front elevation. The shutter housing takes the form of a metal box situated above the window. Overall the shutter is of limited scale and is similar in design to the adjacent roller shutter garage door. It is also unlikely that it would permanently be in a lowered position. Although the metal shutter housing projects forward of the window it is situated on a recessed part of the front elevation and is not a prominent addition. For the above reasons I do not concur with the Council's view that the shutter and housing constitute an incongruous and unsympathetic form of development. It is also noted that the dark coloured finishing of these alterations are visually assimilated against the similar dark colouring of the surrounding cladding.
15. The Council does not take issue with the rear fencing or the application, in principle, of weatherboarding to the front elevation. I see no reason to take a contrary view. The Council suggest the inclusion of a condition to control the colour of the weatherboard cladding, however this seems to me to be unnecessarily restrictive having regard to the surrounding area.
16. For the above reasons I conclude that the window shutter, rear fencing and weatherboarding do not result in harm to the character and appearance of the host dwelling or wider area. Accordingly they do not conflict with Policies HSG11 or QP4 of the LP or with the Framework. In permitting these developments I have considered the need for an 'approved plans' condition. However this will not be necessary given the retrospective nature of the development.

Privacy

17. During my visit I inspected the outlook from the enclosed first floor balcony. Whilst it is possible to view the front elevation of the neighbouring dwelling at no. 15, and the windows in that elevation, visibility is at a very acute angle. It is not therefore possible to view the interior of the respective rooms such that it would intrude on the neighbour's privacy. Furthermore, the immediate front apron area of the neighbouring property, including driveway, is screened from view by the side wall of the balcony. I am therefore in no doubt that the development has not resulted in harm to the living conditions of neighbouring residents due to overlooking and loss of privacy.
18. I have considered the argument that the development still leads to a perception of being overlooked, even if in reality this effect is not occurring. However this argument is not compelling given that residents would still be able to use the balcony area, and be perceived by the neighbours there, even in the absence of the enclosure. Accordingly the development does not conflict with Policies HSG11 or QP4 of the LP or with the Council's Residential Design Guide SPD (2019) insofar as they seek to protect the living conditions of neighbouring residents. This finding does not however overcome the concerns that I have raised above.

Highway Safety

19. From my visit it was apparent that Butterstone Avenue is not a particularly busy road. Furthermore the appeal site is close to a pronounced bend in the road which serves to slow the speed of traffic passing the site. The reduction in the height of the forward most part of the front fence also aids visibility. Therefore the argument that the fence would result in harm to highway safety with respect to drivers emerging from the appeal site, or from the neighbouring driveway at no. 15, is simply not compelling.
20. Accordingly I conclude that the development would not conflict with Policies HSG11 or QP5 of the LP insofar as they seek to safeguard road safety and to ensure that all developments are designed to be safe and secure. Again however, this finding does not overcome the concerns that I have raised above.

Other Matters

21. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations. The Act recognises that disability constitutes a relevant protected characteristic for the purposes of PSED. I have also considered the appellant's rights under Article 8 of the European Convention on Human Rights², as the notice's requirements amount to interference with those rights.
22. I have noted the appellant has referred to being registered disabled, but have been provided with little more detail than this. On the basis of the information before me I do not consider the requirements of the notice, as I propose to vary them, or the period that has been set for compliance with the notice to result in a disproportionate burden, when balanced against the harm that I have identified.
23. Separately, and for the avoidance of doubt, any dispute regarding the encroachment of fencing on neighbouring property would be a private matter and would be outside the remit of my considerations in this case.

Conclusion

Appeal A

24. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for part of the matters, but otherwise I will uphold the notice with variations and refuse to grant planning permission in respect of the other part. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.
25. Section 180 of the Act states that where after the service of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. Consequently the notice ceases to have

² As set out within the Human Rights Act 1998, which states that everyone has the right to respect for their private and family life, their home and correspondence.

effect with regard to the installation of electric shutters to the ground floor window at the front because this now benefits from planning permission and is therefore lawful for planning purposes.

Appeal B

26. For the reasons given above I conclude that the appeal should be allowed in part and dismissed in part.

Formal Decisions

Appeal A

27. The appeal is allowed in part and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the installation of electric shutters to the ground floor window at the front at 17 Butterstone Avenue, Hartlepool TS24 0GA.
28. It is directed that the enforcement notice be varied by the addition of the words:-
- “OR reduce the height of the fencing to the front to no greater than one metre” at the end of paragraph (iii) of Schedule 5; and
- “Subject to paragraph (iii) above” at the beginning of paragraph (iv) of Schedule 5.
29. The appeal is dismissed and the enforcement notice is upheld as varied and planning permission is refused in respect of the enclosure of the balcony to the front with glass walls and roof and the erection of a fence at the front at 17 Butterstone Avenue, Hartlepool TS24 0GA on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

30. The appeal is dismissed insofar as it relates to the enclosure of balcony to front with glass walls and roof and erection of a fence to the front (approx. height 1.6m). The appeal is allowed and planning permission is granted insofar as it relates to the installation of electric shutters to the ground floor window at the front, erection of fence to both side boundaries at the rear (approx. height 2.1m) (retrospective) and proposed installation of weatherboard cladding to the front at 17 Butterstone Avenue, Hartlepool TS24 0GA in accordance with the terms of the application, Ref H/2021/0198, dated 21 April 2021, so far as relevant to that part of the development hereby permitted.

R Merrett

INSPECTOR