



Appeal Decision

Site visit made on 1 June 2023

by S. Hartley BA(Hons) Dist.TP (Manc) DMS MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 21st June 2023

Appeal Ref: APP/D3505/W/23/3314050

Appleberry House, Folly Lane, Whepstead, Bury St. Edmonds, Suffolk IP29 4TH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Jeremy Ault against the decision of Babergh District Council.
 - The application Ref DC/22/05141, dated 17 October 2022, was approved on 1 December 2022 and planning permission was granted subject to conditions.
 - The development permitted is for a ground floor rear extension with balcony (extension previously approved).
 - The condition in dispute is No 3 which states that: *"prior to first use of the balcony, details of a privacy screen measuring 1.8 metres in height along the north boundary of the balcony shall be submitted to and approved in writing by the Local Planning Authority and thereafter retained in the approved form"*.
 - The reasons given for the condition is: *'to protect the privacy and amenities of the occupiers of neighbouring property'*
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Decision

1. The appeal is allowed and planning permission Ref DC/22/05141 for a ground floor rear extension with balcony (extension previously approved) at Appleberry House, Folly Lane, Whepstead, Bury St. Edmonds, IP29 4TH, granted on 1 December 2022 by Babergh District Council, is varied by deleting condition No.3.

Procedural Matters

2. The appellant describes the proposed development as a *'ground floor rear extension with balcony (extension previously approved)'* while the local planning authority (LPA) describes it as the *'installation of a glass balustrade balcony (over an approved rear extension)'*. I have used the appellant's description in the banner heading above and in my decision.
3. The appellant describes the address as being in Whepstead whereas the LPA describes it as being in Lawshall. I have used the appellant's site address in the banner heading above and in my decision.

Background and Main Issue

4. Planning permission has been approved for a flat roofed extension at the appeal site, where the flat roof is to be used as a balcony with glass balustrading around it. It was approved subject to condition No.3 requiring that the glass balustrade on the north facing elevation shall be 1.8 metres high, whereas the submitted plans show the balustrade to be approximately 1.0 metre high. It is this condition which is the subject of this appeal.
5. The main issue is, therefore, whether the condition No.3 of planning permission DC/22/05141 is reasonable and necessary, taking into account the living conditions of the occupiers of the adjoining property to the north in terms of privacy.

Reasons

6. Appleberry House is a two-storey, relatively large, detached dwelling with a neighbouring property immediately to the north. Planning permission has been granted previously for an extension where the appeal proposal is to be sited. The current appeal relates to an application for a flat roofed extension including a glass balustrade to its balcony roof. The approved plans show the balustrade to be approximately 1.0 metre high. The decision notice includes the appeal condition that the balcony on the north facing side shall be 1.8 metres high to restrict overlooking to the property on the north side.
7. The appellant has included a cross section showing that a person standing at the front of the balcony would be some 20 metres from the northern boundary of the host property. The LPA considers that the distance is some 15 metres. Notwithstanding this dispute, I was able to consider distances as part of my site visit. The cross section includes an intervening garden structure on the boundary.
8. The LPA has not provided any guidance as to advisory distances to protect privacy. However, on my site visit I was able to note that the intervening, substantial, open fronted garden structure with a pantile roof would provide significant screening from any overlooking and that there are some intervening boundary trees, albeit somewhat sparse, but of approximately 10 metres in height, located in the neighbouring garden. The boundary is marked by a close boarded fence of some 1.8 metres in height.
9. The adjoining property is a detached dwelling in substantial grounds. Its garden land immediately facing the appeal property is a relatively narrow piece of land relative to the main garden. Its elevation includes two obscurely glazed windows and a further window located behind the existing garden structure to the host appeal property. Thus, any overlooking from the proposed balcony would be substantially reduced by the existing garden structure and the existing trees.
10. I can appreciate that it might be possible to see into the neighbouring garden land on the eastern side of the neighbouring property, but this area would be at a somewhat greater distance from the proposed balcony than the neighbouring garden immediately facing it.
11. The host property already has windows and also an existing balcony at first floor level facing the neighbouring dwelling. I accept that the proposed additional balcony would bring its users somewhat closer. Nevertheless, given the distance

to the adjacent dwelling and the intervening garden structure and some tree planting in the neighbouring garden, I do not find that the balcony with the proposed height of the balustrading would lead to material overlooking in relative terms.

12. It is possible that the garden structure might not always be present, in which case the impact upon overlooking would be somewhat greater. However, given the distance involved and the presence of trees on the boundary side of the neighbouring property, I do not consider that this would be decisive. In any event, I have no evidence before me to indicate that the garden structure might be removed.
13. Furthermore, as some people may exceed a height of 1.8 metres, the condition relating to the height of the balustrade would not, in any case, be effective in all instances.
14. For the above reasons, I conclude that condition No.3 is not reasonable or necessary. The proposed development, without it, would accord with paragraph 130(f) of the National Planning Policy Framework 2021 which requires a high standard of amenity for existing and future users. Consequently, the appeal should be allowed.

S. Hartley

INSPECTOR