



Appeal Decision

Site visit made on 16 August 2023

by A. J. Boughton MA (IPSD) Dip.Arch. Dip.(Conservation) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2023

Appeal Ref: APP/J1535/D/23/3322201

33 Forest Lane, Chigwell, IG7 5AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Michael McGarr against the decision of Epping Forest District Council.
 - The application Ref EPF/0499/23, dated 06 March 2023, was refused by notice dated 04 May 2023.
 - The application sought planning permission for '*Two Storey side, part two storey rear and single storey rear extension. Single Storey front extension. Raising of the roof, installation of front, rear and side dormers, Construction of vehicular entrance gates and railings*' without complying with a condition attached to planning permission Ref EPF/0160/22, dated 31 March 2022.
 - The condition in dispute is No. 5 which states that: '*Access to the flat roof over the extension hereby approved shall be for maintenance and emergency purposes only and the flat roof shall not be used as a seating area, roof garden, terrace, patio or similar amenity area*'.
 - The reason given for the condition is: '*To safeguard the privacy of adjacent properties, in accordance with Policy DBE9 of the Adopted Local Plan and Alterations 1998 & 2006, policy DM9 of the Local Plan Submission Version 2017 and the NPPF 2021*'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The architect's covering letter for the root permission (ref EPF/0160/22) refers to an objection by the Parish Council to a previous application as being '*the proposed rear balcony would cause overlooking into the neighbouring properties*', going on to say: '*This part of the scheme has been removed, and there are now traditional windows serving the bedrooms*'. However, from my site visit it was apparent that what appeared on approved elevations to be a capped flat roof area below windows had been constructed as an indented walkable surface enclosed by a tiled upstand which could be easily accessed from adjoining bedrooms through full height patio doors, in contradiction with

the explanation quoted above. Whilst I note the appellant disputes the terminology used by the Council, it is clear that the appellant has created a terrace upon a roof surface and the disputed condition intended to prevent planning harm arising from such an occurrence; it is on that basis I have determined the appeal within the powers granted under Section 73A of the Planning Acts. The appellant has submitted details of proposed side screens which I have taken into account in my decision.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of neighbouring users.

Reasons

4. Forest Lane is populated by very substantial high-value dwellings which sit within well-segregated individual plots behind, for the most part, gated entrances. It is apparent that the appeal site (No.33) and its adjoining neighbours enjoy a high level of privacy in their rear amenity areas from well-planted spacious surroundings; in circumstances where existing levels of amenity and privacy are high, any reduction in privacy or perception thereof would be detrimental.
5. No.33 is a three storey house which has been significantly extended and altered and the disputed condition relates to the roof surface of a single storey rear extension forming part of those approved works. These works have been implemented in such a way that occupiers can, with ease, emerge and walk upon a significant area across the width of the house at first floor level, affording opportunities to stand in proximity to the side boundaries and overview not merely the extensive garden at the rear of No.33 but also parts of the adjoining properties through boundary planting where it is immature or incomplete.
6. The appellant suggests that the use of the terrace is in some way equivalent to balconies on other properties. Plainly, in the case of 'juliet' or conventional balconies where the scope of outlook is contained by the relatively small surrounding structure and, in the case of the neighbouring properties, such are located somewhere near the middle of the width of each plot at some distance from the side boundaries. What is found at No.33 would, in contrast, permit a relatively large number of people to step out and enjoy a much greater arc of outlook including the opportunity to stand close to the end of the roof terrace and look down upon adjoining properties on one side or the other.
7. The appellant proposes to insert etched-glass screening at the ends of the terrace, and has supplied a sketch of such with an annotated version of the previously-approved plan. I have considered whether such screens would address the problem of overlooking adjoining properties, but my observations direct that in the proposed location at the respective ends of the terrace, what is proposed would be only partly effective. The angled shape would still allow a degree of intervisibility between adjacent garden areas with persons standing in specific parts of the terrace. Further, even if users were fully contained by the screens, occupiers in the outdoor spaces of both adjacent properties would likely be aware of activity from the translucent nature of the screens suggested. In that regard proximity and height would likely create a perception of overbearing and privacy loss even if it were not possible to directly overlook.

8. I note the examples and justification provided by the appellant, however different circumstances exist in each location, so it is quite possible that open balconies (or terraces) in some locations would not present the same risk to privacy as that found at No.33.
9. I therefore conclude that significant planning harm would arise from the variation of Condition 5 as proposed. However, even if I were minded to determine otherwise, the drawings would not, in my view, be adequate to define a new permission granted under Section 73A. This is because it is not clear (as my preliminary matter sets out) how what is sought to be approved would differ from what was previously approved in terms of the construction of the terrace. Any conditions attached thereto in relation to plans approved would be unlikely to meet the test of enforceability.
10. Consequently, for the reasons given and taking all matters raised into account I find the proposal would conflict with Policy DM9 of the Epping Forest District Local Plan 2011-2033 which seeks high quality design and at [I (iii)] to ensure development proposals avoid overlooking and loss of privacy detrimental to neighbouring users. The proposal would fail to accord with the development plan taken as a whole and, in consequence, the appeal cannot succeed.

Andrew Boughton

INSPECTOR