



Appeal Decision

Site visit made on 30 January 2024

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th February 2024

Appeal Ref: APP/N4720/W/23/3334472

6 Eden House, Alwoodley Lane, Alwoodley, Leeds LS17 7DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Zor Maung against the decision of Leeds City Council.
 - The application Ref 23/05182/FU, dated 22 August 2023, was refused by notice dated 11 October 2023.
 - The application sought planning permission for 'Residential Development of one 3 storey block of 7 No. apartments and associated works including demolition of existing three storey dwelling' without complying with a condition attached to planning permission Ref 16/07483/FU, dated 17 July 2017.
 - The condition in dispute is No 3 which states that: *Before the development hereby approved is commenced, and notwithstanding the details shown on the plans hereby approved, detailed drawings shall be submitted to and approved in writing by the Local Planning Authority that shows the balcony to the south west corner of the proposed development nearest to the common boundary with number 380 Alwoodley Lane shall be re-configured to prevent it being a walk on balcony. Any such approved details shall thereafter be implemented and retained for the lifetime of the development.*
 - The reasons given for the condition is: *In the interests of the privacy and amenity of occupiers of 380 Alwoodley Lane.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is retrospective. At the time of my visit, I was able to obtain access to the balcony.
3. In December 2023, the Government published a revised National Planning Policy Framework (the Framework). The revisions do not relate to anything that is fundamental to the main issues in this appeal. Consequently, the views of the parties have not been sought in this instance. Updated paragraph numbers have been referenced where relevant.

Background and Main Issue

4. Planning permission was granted for an apartment block, which included a condition requiring amendments to prevent access to the approved balcony feature. The appellant seeks to vary the condition to allow access on to the balcony. The Council refused the variation of the condition on the basis that the development would result in overlooking of the garden of 380 Alwoodley Lane (No 380), and therefore a loss of privacy to the occupiers of that property.

5. Taking the above into account, the main issue is whether the variation or removal of the condition would harm the living conditions of the occupiers of No 380 with particular regard to privacy in the garden.

Reasons

6. Eden House is a three-storey apartment block and its grounds. It is located in a residential area comprising large properties, some of which are individual dwellings and others are flats. Like the appeal building, properties are set within spacious grounds with varying levels of vegetation and planting around site boundaries. The appeal property is on the uppermost storey, close to the garden boundary with No 380. The balcony comprises a paved area with a low wall and fixed clear glazed panels and timber rail. It is accessed via French doors from a room providing living room accommodation. Trellis planters with large gaps have been placed on the balcony to the sides facing No 380. These are not significantly higher than the timber rail.
7. The property at No 380 has a paved patio area close to the main house. This patio is also close to the joint boundary with Eden House. No 380 also had a long garden which was surrounded by residential gardens. I observed tall mature trees within the grounds of No 380 which were planted beyond the hard paved patio area.
8. The balcony is at third floor level which affords extensive views across the grounds of No 380. I was able to see most of the garden from the balcony when stood up, and part of the rear of the garden when seated on the chairs which were placed on the balcony. The trees would provide a screen when in full leaf for the rear part of the garden of No 380, but they did not appear to be planted in a position which would screen the patio garden area close to house even in full leaf particularly when viewed from the side of the balcony.
9. Whilst the trellis to the side could provide an effective privacy screen when seated, the low height and large open gaps of the trellis still allows views into the neighbouring garden and at very close proximity. It is expected that areas close the house would be well used, and the occupiers of the property would be aware of the presence of people on the balcony. The proposed trellis screening placed here is not high enough or permanent enough to prevent views into the neighbours' garden. Whilst I note an application for a screen was refused by the Council this is not the proposal before me.
10. The balcony would provide benefit to the appellant in the form of additional private amenity space. However there are wider grounds at Eden House and the appeal property already has an existing balcony accessed from a bedroom. The bedroom balcony is also at the third storey, but not as deep. Although there are similar elevated views, given the nature of the room from which it is accessed combined with its size and distance to the boundary it does not provide the same degree of overlooking or prospect for gatherings or visitors on it. The appeal balcony could accommodate more people than the bedroom balcony, which also affords a closer view over the neighbouring garden, and as such would make it less private and attractive to use.
11. Accordingly, I find that the proposal would harm the living conditions of the occupiers of No 380 with particular regard to privacy in the garden. Consequently, the proposal would fail to accord with requirements of Policy GP5 of the Leeds Unitary Development Plan (Review 2006) and Policy P10 of

the Leeds City Council Core Strategy (as amended by the Core Strategy Selective Review 2019) which seek to, amongst other things, protect the residential amenity of surrounding properties and areas. Consequently it is necessary to retain condition No 3.

Other Matters

12. The appellant has drawn my attention to planning approvals by the Council which they consider to be similar to this proposal. I have carefully considered these examples, and I note the similarities with the context in that they propose balconies on the rear of properties and are all located in close proximity to the appeal site.
13. The plans of 378 Alwoodley Lane show the balconies are at second storey level, which to my mind would not provide such an elevated view. They would also be accessed from bedrooms. This also appears to be an individual property with alternative private space for people to congregate at a lower level as opposed to the appeal property where private garden space is limited. It is not clear from the plans how close the balconies at Highwinds on Harrogate Road are from its boundaries to the side. There is an absence of floor plans, and I am unable to ascertain which rooms the balconies are accessed from. Furthermore the evidence suggests there are solid sides to the upper floor balcony. Whilst it is stated No 515 Harrogate Road feels no ill effect, this has not been substantiated.
14. The development shown under application 18/00907/FU appears to share similarities with the appeal proposal in that it has a third storey balcony served from living accommodation set a similar distance away from boundaries as the appeal proposal. However, the development was constructed within the side garden of No 374 and it is not clear if this was therefore considered part of a comprehensive scheme. The opposing side appears to have more vegetation alongside a small watercourse.
15. However, in all cases the proposals would have required site specific judgements to be made. It is not possible to ascertain the nature of the private gardens, boundaries and height of these balconies relevant to the neighbouring properties. In any event, I must consider this development on its own merits. The presence of similar developments does not outweigh my findings that the proximity and height of the balcony would give rise to an increased level of overlooking that would cause material harm.
16. The appellant suggests the proposal would be a sustainable form of development in compliance with paragraph 10 of the Framework. However, the Framework shares similar aims to the development plan of protecting the living conditions of neighbouring occupiers. Hence, I find that the policies of the Framework taken as a whole, do not weigh in favour of allowing the appeal.

Conclusion

17. For the reasons set out above and taking into account all other matters raised, I conclude the appeal should be dismissed.

K Williams

INSPECTOR