
Appeal Decision

Site visit made on 7 March 2023

by Rebecca McAndrew, BA Hons, MSc, PG Dip Urban Design, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21ST March 2024

Appeal Ref: APP/U3935/D/24/3336722

8 Robinsgreen, Covingham, Swindon SN3 5AY

- 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 Mr A Hunt against the decision of Swindon Borough Council.
 - The application Ref S/HOU/23/1288/NICL, dated 11 October 2023, was refused by notice dated 6 December 2023.
 - The development proposed is the erection of a metal railing to a flat roof and ladder for fire escape from the first floor (retrospective).
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Decision

1. The appeal is dismissed.

2. Procedural Matter

3. I have taken the description in the banner above from the Council's decision notice as it is more concise than that included on the planning application form.

Main Issue

4. The main issue is the effect of the development on the living conditions of the occupiers of No. 7 Robinsgreen, in respect of privacy and noise.

Reasons

5. The railings form a barrier around the perimeter of a flat roof element of the appellant's property. This creates a large, enclosed space at first floor level. I note that no door opens onto this area, so it can only be accessed from within the dwelling via first floor windows or by the ladder which is attached externally to the ground floor of the property. However, it is large enough to accommodate seating so has the potential to be used as a roof terrace.
6. Given the raised position and proximity of this roof area to the joint boundary with No. 7, there are direct views into the neighbour's private garden. As such, this space offers the potential to be highly intrusive. The enclosed roof area unacceptably overlooks the adjacent garden which, if used as a roof terrace, would cause a significant loss of privacy.
7. Any noise experienced from the use of this space as a roof terrace would be likely to be comparable in level to that which would be expected from the existing patio area at ground floor level. Also, planning decisions must be

based on an assumption that occupiers reside in a considerate manner. Legislation is in place to deal with those who do not. In view of these factors, I am satisfied that the proposal would not cause unacceptable levels of noise and disturbance to the occupiers of the neighbouring property.

8. I recognise that the appellant does not want to use this space for recreational purposes. He states that it is solely to provide a fire escape, specifically referring to the special medical circumstances of a close relative. However, I consider that this requirement could be addressed in a more sympathetic manner. Notwithstanding the appellant's intentions, it would be difficult to enforce the use of this considerable area solely as a fire escape. Also, there is no certainty that any future occupiers of the property would not use it as a roof terrace for outdoor sitting.
9. In conclusion, whilst the scheme is acceptable in terms of noise disturbance, it unduly harms the privacy of the neighbours' rear patio and garden area. As such, overall, the scheme unacceptably affects the living conditions of the neighbouring occupiers. The appeal scheme is therefore contrary to Policies DE1 and SD1 of the Swindon Borough Local Plan 2026 (2015) which, taken together, seek to secure good quality development which protects the privacy of neighbours.

Other Matters

10. I acknowledge that there are special medical circumstances associated with this development. I have carefully considered all information submitted in this respect.
11. Refusal of the scheme would engage Human Rights matters. Having regard to Article 8 and Article 1 of the First Protocol, there would be interference with the occupier's rights in respect of private and family life, and the peaceful enjoyment of possessions respectively. However, there are legitimate aims in protecting the living conditions of neighbouring occupiers. The scheme falls short of acceptability in this respect. The harm would be permanent and long standing. Consequently, these personal circumstances do not outweigh the significant harm I have described. Such a conclusion is necessary and proportionate in this case.

Conclusion

12. I have found the appeal scheme conflicts with the development plan when taken as a whole. There are no other considerations which outweigh this conflict. I therefore conclude the appeal should be dismissed. The scheme does not unacceptably violate the family's rights under Articles 1 and 8. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

Rebecca McAndrew

INSPECTOR