



Appeal Decision

Site visit made on 9 May 2024

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 16 May 2024

Appeal Ref: APP/D0840/W/23/3330246

The Flat, 30 Fore Street, Fowey, Cornwall PL23 1AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr K McLoughlin against the decision of Cornwall Council.
 - The application Ref is PA22/08381.
 - The development proposed is described as the replacement of existing composite decking and existing handrail with new composite decking and handrail to new dimensions (retrospective).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As at the time of my site visit, the decking and handrail had been erected at the appeal site. The application has been submitted retrospectively, and consequently I have dealt with the appeal on that basis.

Main Issue

3. The main issue in this appeal is the effect of the proposed development on the living conditions of the occupiers of 32 Fore Street, with particular reference to overlooking, loss of privacy, noise and disturbance.

Reasons

4. Amongst other matters, Policy 12 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan) confirms that proposals should protect individuals and property from overlooking and unreasonable loss of privacy, and from unreasonable noise and disturbance.
5. The appeal proposal concerns retrospective permission for the erection of decking and a handrail, which forms a terrace balcony positioned at the rear of the appeal building. The appeal building is situated within the town centre, and is located within the Fowey Conservation Area. Adjacent to the appeal building are listed buildings at 32 Fore Street and at The Old Quay House Hotel.
6. The appeal proposal extends across an area of flat roof and adjoins a bedroom window of the attached neighbouring property at 32 Fore Street. When standing close to the handrail of the balcony terrace, there is a direct line of sight into the window of the neighbouring property. Given the proximity of the balcony to the neighbouring window, there is potential for significant overlooking into the neighbouring property. The neighbouring window is set down at the level of the replacement decking, and as such standing users of

the terrace balcony would be able to see directly down and into a bedroom at 32 Fore Street. When standing in the affected bedroom at 32 Fore Street, a person of average height is able to see directly out of the window and across the terrace without the need to stand on ladders or other objects.

7. Whilst it was noted that a section of the balcony incorporated frosted glass which prevented overlooking for those who may be seated on the terrace, users who were standing on the terrace would be able to see directly down into the neighbouring property. As such, there is significant potential for overlooking which, in my view, would result in an unacceptable impact on the occupiers at 32 Fore Street with regards to loss of privacy.
8. The new composite decking and new handrail replaced previous decking and a handrail which comprised a terrace balcony area at the appeal building. However, the evidence before me confirms that the appeal proposal has a larger footprint area than the balcony it replaced. The balcony terrace has been extended and now provides greater opportunity and potential for overlooking into a habitable room at the neighbouring property. Whilst it is acknowledged that there would have been a degree of overlooking and loss of privacy from the previous smaller balcony terrace, the appeal proposal extends the balcony closer to the affected window at the neighbouring property, exacerbating the harm in terms of overlooking and unacceptable loss of privacy.
9. The Appellant maintains that concerns regarding overlooking and loss of privacy could be overcome by providing further screening in the form of additional planting in the corner of the terrace near to the neighbouring window. However, I have not been provided with any details in that regard and it is likely that additional planting placed only within the corner of the terrace would not prevent overlooking into the neighbouring property by users standing at the balustrade.
10. The Appellant has also put it to me that users of the terrace would take advantage of the views of the River Fowey rather than using the terrace in order to look into other neighbouring properties. In that respect, the Appellant has drawn my attention to an appeal decision which concerned a replacement balcony at Perranporth. However, I have not been provided with any details of the application or plans in respect of the appeal decision at Perranporth, and it is noted that the Inspector in that appeal considered that the presence of privacy screens would limit the extent of any increase in overlooking. For the reasons given above, that would not appear to be comparable to the appeal scheme before me. In any event, I have determined this appeal on its own merits and based on the evidence before me and observations made on my visit.
11. Further to the above, the increased size of the terrace area, when compared to the previous position, provides for a larger space for occupiers of the appeal building to gather. The balcony area is large enough for a number of people to sit and congregate for lengthy periods of time, particularly during the summer months when the weather is warmer, and the days are longer.
12. I acknowledge that the activities that may take place on the balcony could be similar in nature to the use of the previous smaller terrace. However, the increased size of the balcony would mean that the level of disruption which could occur would likely be much greater than would be experienced from the smaller terrace. Therefore, the balcony has the potential to be a source of

unacceptable noise and disturbance which would be detrimental to the living conditions of occupiers at 32 Fore Street.

13. The evidence before me confirms that the appeal building is in use as a holiday let, and it has been put to me that the booking conditions for the holiday let stipulates that a maximum of four people can stay at the appeal building at any given time. As such, the Appellant maintains that the increased terrace size would not result in additional capacity and therefore would not lead to further noise and disturbance. However, the booking conditions applied by the Appellant are essentially a private matter which could be subject to changes, and there is nothing before me to suggest that the booking conditions would also prevent those staying at the holiday let from inviting others into the property during their stay.
14. In light of the above reasons, I conclude that the proposed development would have an unacceptable impact on the living conditions of occupiers at 32 Fore Street with regards to overlooking, loss of privacy, noise and disturbance. Consequently, the appeal proposal would conflict with Policy 12 of the Local Plan. The appeal scheme would also fail to accord with paragraph 135 of the National Planning Policy Framework (December 2023) which, amongst other matters, requires that planning decisions ensure that developments provide a high standard of amenity for existing and future users.
15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise.
16. The benefit of providing an enlarged balcony terrace would be a private benefit for the owners and occupiers of the appeal building. I attach only very limited weight to the private benefit of the proposed roof terrace. However, the identified harm to the living conditions of nearby residents and the resulting conflict with the development plan, to which I attach significant weight, would outweigh the benefits of the appeal scheme.

Other Matters

17. As noted above the appeal building is located within the Fowey Conservation Area and within the setting of listed buildings. However, as I am dismissing the appeal for the above reasons, it has not been necessary for me to consider further the effect of the appeal scheme on those designated heritage assets.

Conclusion

18. For the reasons given above the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR