

Appeal Decision

Site visit made on 11 June 2024

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2024

Appeal Ref: APP/X3540/D/24/3342293

7 Western Avenue, Felixstowe, Suffolk IP11 9SB

- 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 Andrew Cann (Planning Direct) against the decision of East Suffolk Council.
 - The application Ref DC/24/0003/FUL, dated 2 January 2024, was refused by notice dated 27 February 2024.
 - The development proposed is retrospective householder planning application for a first floor balustrade and fire escape.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the first floor balustrade on the living conditions of the occupiers of No 5 Western Avenue, with regard to privacy.

Reasons

3. The appeal property is a detached chalet bungalow within a residential road near the seafront comprising similar properties as well as two storey dwellings.
 4. The metal and glass balustrade encloses the flat roof of a single storey projection to the rear of the appeal property, which is next to the shared boundary with No 5. Access to the roof and a metal ladder to the side of the roof is via sliding doors serving a bedroom. The ladder provides an alternative fire escape route from the first floor, which is required under Building Regulations because the internal stairs have been replaced with a lift.
 5. The properties are laid out on linear plots with good sized rear gardens. There is a mature magnolia tree at the corner of the flat-roofed area, which obscures views of much of No 5's garden from the roof. However, the appeal property is of greater depth than its neighbour. Consequently, the area enclosed by the balustrade is directly adjacent to the extensive patio area at the rear of the neighbouring property, which is not obscured by the tree. Due to the relatively modest size of the flat roof and the openness to the side, it is possible to gain extensive views of the private patio area, which is clearly used for sitting out due to the presence of garden furniture.
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6. I acknowledge the appellant's contention that the roof can currently be used for sitting out and it is for the occupiers to decide whether it would be safe to do so, irrespective of the balustrade's presence. However, from the site inspection I agree with the Council that the presence of the balustrade provides a greater degree of incentive and practical support for a recreational use. In particular, views from closer to the edge of the roof next to No 5, which are less likely without the enclosure, are more intrusive with regard to privacy, including views into the rear windows of the neighbouring dwelling.
7. While the existing occupiers of the appeal property may not intend to use the roof for sitting out, the balustrade is a permanent feature and the effects on neighbours' privacy needs to be considered in the long term. I accept also that the purpose of the balustrade, in conjunction with the external ladder, is to meet the regulatory requirement for safe access. However, the Council indicates that an alternative approach was suggested, involving a smaller enclosed area in the form of a direct walkway to provide access across the roof. This was proposed to discourage the use of the roof for sitting out. As such, an alternative approach appears to be possible to achieve the required safe access, which would address the safety and security requirements of Policy SCLP11.2 of the East Suffolk Council - Suffolk Coastal Local Plan (2020).
8. Providing obscured glass for the existing balustrade would have little effect in reducing the effects described, because of the limited height of the enclosure. A taller privacy screen to the side adjacent to No 5 is unlikely to be practicable under the existing arrangements due to the presence of the ladder to the same side.
9. I acknowledge that there were no objections, including from the current neighbours. However, given the permanent nature of the balustrade, the effects need to be considered in the long term, with regard to both current and future occupiers of the neighbouring property. The fact that future occupants may still choose to live in the property despite the presence of the balustrade is not sufficient reason to set aside findings of material harm to neighbouring amenity due to overlooking and loss of privacy.
10. The appellant draws attention to examples of mutual overlooking at properties along The Pines, close to the appeal property. However, as the Council explains, this row of properties all have overlooking to the rear since their original construction and their rears are visible from the public realm along Cliff Road. As such, they are not directly comparable to the layout of No 7 and neighbouring dwellings. Moreover, it has been found that the balustrade results in material harm in its own right and therefore other examples referred to are not sufficient reason to outweigh or set aside this finding.
11. Accordingly, for these reasons, I conclude that the balustrade has a materially harmful effect on the living conditions of the occupiers of No 5 Western Avenue, with regard to privacy. Consequently, the proposal is contrary to Policy SCLP11.2 of the East Suffolk Council - Suffolk Coastal Local Plan, which seeks to safeguard residential amenity including with regard to privacy/overlooking. It is also contrary to the National Planning Policy

Framework, which requires that decisions should ensure that development has a high standard of amenity¹.

Conclusion

12. The proposal results in material harm and is contrary to the development plan. Accordingly, it is concluded that the appeal should be dismissed.

J Bell-Williamson

INSPECTOR

¹ Paragraph 135f).