
Appeal Decision

Site visit made on 3 January 2025

by **S. Hartley BA (Hons) Dist.TP (Manc) DMS MRTPI MRICS**

an Inspector appointed by the Secretary of State

Decision date: 08 January 2025

Appeal Ref: APP/A4710/D/24/3354029

11 Aislaby Heights, Pellon, Halifax, Calderdale HX2 0SH

- 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 and Mrs Thwaite against the decision of Calderdale Metropolitan Borough Council.
 - The application is reference 24/00757/HSE.
 - The development proposed is a rear balcony.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A new National Planning Policy Framework was published in December 2024 (the 2024 Framework). This replaces the previous version of the Framework, published in December 2023. So far as the main issues are concerned, the 2024 Framework remains essentially unaltered relative to the December 2023 version. Therefore, it has not been necessary for me to seek comments from the main parties in respect of the 2024 Framework.
3. The appeal is made retrospectively for development already constructed.

Main Issue

4. The main issue is the effect of the proposed development upon the living conditions of the occupiers of No. 4 Aislaby Heights and No.152 Moor End Road in terms of privacy.

Reasons

5. The host property is a detached dwelling which stands on its own amongst a relatively recent development comprising two lines of facing terraced rows of 3 storey townhouses. All the dwellings, including the host property, have a similar design and appearance. The other dwellings in the development are sited approximately in a line with the host property, have first floor wooden constructed balconies over their ground floor integral garages, facing the line of properties directly opposite. A similar balcony has been constructed at the appeal property, like the others, directly facing the line of properties opposite including No 4. Aislaby Heights.

6. On my site visit, I was able to note that the distances between the two lines of properties is not the same, with that between the appeal property and No. 4 Aislaby Heights being noticeably shorter. In view of such differences, I consider that the presence of the other balconies is not directly comparable to the appeal's location. While the local planning authority (LPA) considers the latter distance to be 15.3 metres, the appellant states it to be 14.8 metres.
7. The appeal balcony faces the first-floor bedroom windows at No. 4 Aislaby Heights.
8. Policy BT2, annex A of the Calderdale Local Plan 2023 (LP) considers that a minimum distance between bedroom windows and a principal window should be 18 metres. I appreciate that a balcony is not a principal window, but I consider that as the purpose of such a minimum distance is to protect privacy, it is nevertheless reasonable to consider such a requirement in this case if only as a guide to what might be acceptable from a privacy point of view.
9. I appreciate that there is some flexibility afforded by the policy regarding such separation distances, and also that I have no objection before me from the occupants of the dwelling opposite. Nevertheless, I am required to consider privacy in terms of both existing and future occupiers of properties given paragraph 135(f) of the Framework. I do not consider that approximately 15 metres can be justified if the privacy of the current or future occupiers of the dwelling opposite is to be reasonably maintained.
10. The appellant considers that the 18 metres as contained in the LP policy might, in other circumstances, be reduced in its length by permitted development rights, giving rise to situations little different to the appeal situation. The appellant also considers that the presence of the public highway between the host property and the dwelling opposite prevents the existing distance between them from being reduced any further. However, I have no such examples before me of the LP distance being reduced acceptably in this way and in any event, I have determined the appeal upon its individual planning merits.
11. The host property adjoins No.152 Moor End Road and there are views into the neighbouring amenity space from it. Such arrangements are often considered to be quite normal. However, the balcony permits more direct views into the adjoining garden area, and such views from people using the balcony are likely to be longer lasting and more intrusive, despite some intervening boundary vegetation. However, had I felt able to allow the appeal, such intrusiveness could have been mitigated by a condition requiring the inclusion of an obscure screen to the side of the balcony facing the adjoining property.
12. For the above reasons, I conclude that when the development is considered as a whole it fails to accord with the amenity and design requirements of LP Policy BT2 and with chapter 12 of the Framework.

Other Consideration

13. I have some sympathy with the appellant in that it seems that the balcony has been constructed in the belief that planning permission was not required. Nevertheless, this does not alter or outweigh my conclusion upon the main issue.

Conclusion

14. There are no material planning considerations that indicate the application should be determined other than in accordance with the development plan. Therefore, the appeal should be dismissed.

INSPECTOR

S. Hartley