



Appeal Decision

Site visit made on 7 March 2025

by N Perrins MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 April 2025

Appeal Ref: APP/D1265/W/24/3351508

Flat 3, 12 Ventnor Road, Portland, Dorset DT5 1JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) to remove a condition imposed on the grant of planning permission.
 - The appeal is made by Mr David Symes against the decision of Dorset Council.
 - The application Ref is P/FUL/2023/06275.
 - Planning permission was granted on 19 March 2024 under Ref: P/FUL/2023/06275 to retain flat roof. Retain roof dormer, altered to remove external door and replace with window and Juliet balcony.
 - Condition 3 of planning permission Ref: P/FUL/2023/06275 states that prior to the removal of the existing external door in the roof dormer and / or the installation of the Juliet balcony (as shown on dwg no. 22/4/01-1), the existing metal balustrade / barrier located on top of the existing flat roof, shall be completely removed and the flat roof shall not to be used as a roof terrace / balcony or for any other purpose than a roof, for the lifetime of the development hereby approved.
 - The reason give for the condition is to protect neighbouring amenity.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published in December 2024. The updated Framework does not raise any new matters that are determinative to the outcome of this appeal.
3. Planning permission Ref: P/FUL/2023/06275 was granted to retain flat roof, retain roof dormer, altered to remove external door and replace with window and Juliet balcony. Condition 3 of planning permission Ref: P/FUL/2023/06275 required the removal of existing metal balustrades that have been erected around the flat roof area in order to protect neighbouring amenity. The appeal has been made seeking to remove condition 3 to be able to retain the metal balustrades around the flat roof area. As observed from my site inspection and confirmed in the information before me, the development has been started and is, therefore, partly retrospective. I have assessed the appeal on this basis.

Main Issue

4. The main issue is the effect of the development on the living conditions of neighbouring properties.

Reasons

5. The appeal property is a flatted dwelling within a three-storey building that has been converted to three flats. The appeal property is the top flat of the converted building within a tightly compact terrace of properties. Accordingly, the appeal site is near to adjoining properties and garden areas below.
6. In view of the tightly compact urban grain that exists, the railings that have been installed are required to be removed by condition 3 of planning permission Ref: P/FUL/2023/06275 to prevent the external area from being used and to protect neighbouring amenity. Given the height and proximity to neighbouring properties, I agree that the external flat roof area would allow for direct and unimpeded views into the neighbouring gardens areas if it were used as an amenity area for the flat. This would create an intrusive environment and result in unacceptable harm to the living conditions of neighbouring properties.
7. I acknowledge that the appellant contends that the flat roof area will only be used for maintenance purposes and should not be regarded as creating any additional usable floorspace. However, the removal of condition 3 would result in a situation where there would be no restrictions to prevent use of the flat roof area in the future. To this end, condition 3 serves a clear planning purpose to prevent its use as an external amenity area in perpetuity, which as identified above would be detrimental to neighbouring living conditions if used as such.
8. I note support has been provided by local contractors regarding the purported maintenance and safety benefits of retaining the railings. However, whilst these highlight there are some efficiency and cost advantages of the railings, they do not demonstrate that there are no other options available to carry out maintenance and fire safety. A risk assessment also has not been provided that confirms the railings need to be retained for safety reasons. All the other properties will require maintenance to their roofs at some point but have not needed to install similar flat roofs and railings, which indicates that in practice there are other maintenance options available. I am, therefore, not satisfied that it has been conclusively confirmed that the railings are necessary to be retained on maintenance and / or safety grounds.
9. The external area would also have to be accessed externally in any event from ladders or scaffolding given that the non-usable Juliet balcony, which forms part of the approved plans, would prevent access to the flat roof from the appeal property. This further confirms to me that the railings are not fundamental to maintaining health and safety at the property.
10. The railings also do not provide any material benefits in terms of privacy as they have an open bar design that would, when not covered, allow for views through that denudes any effectiveness of them as a visual screen. I also find that the presence of the railings has the opposite effect as it gives a perception that the flat roof area is being used as an external amenity area that would intrusively overlook the gardens below. I am therefore not persuaded that retaining the railings has any material benefits in maintaining privacy to the appeal property or neighbours to the extent that it would justify their retention.
11. I have also had regard to letters of support from residents in other flats in the terrace. However, Policy ENV16 of the Weymouth and Portland Local Plan 2015 (the Local Plan) requires me to also consider the impacts of future residents. Whilst

existing residents may not be impacted by the development, this does not mean to say that future residents will not in view of the potential for living conditions of neighbours to be significantly adversely affected by the retention of the railings and potential use of the flat roofed area. As such, the support from existing residents does not provide sufficiently compelling evidence to justify the harm identified and I give this only limited weight in this decision.

12. I note that reference has been made to precedent with Flat 1, 11 Ventnor Road that has wooden balustrades / railings. However, no details are provided in terms of the planning history for Flat 1 or its overall impact other than reference to there being differences in elevation, height and materials. These differences indicate that there are material differences to the proposal in this case. Notwithstanding, I am required to assess this appeal on its own merits, which for the reasons stated I have found would result in an unacceptable impact on neighbouring amenity if condition 3 were removed or amended. The railings at Flat 1, 11 Ventnor Road, therefore, do not provide any justification for the harm identified.
13. I also acknowledge the appellant's contention that the railings do not cause any material harm to the character and appearance of the area. This, however, is not a relevant matter in this appeal as the key issue is to assess the impact on living conditions of neighbouring properties.
14. To conclude, the proposed removal of condition 3 would result in the potential for unrestricted use of the external flat roof area, which would be intrusive to and unacceptably harm the living conditions of neighbouring properties. I am not satisfied, therefore, that condition 3 is no longer necessary or unduly restrictive from the information before me. Retention of the railings and enabling an unrestricted use of the external flat roofed area would be contrary to Policy ENV16 of the Local Plan, which requires development to be designed to minimise impact on both existing and future residents. The proposal would also be contrary to Paragraph 135 of the Framework, which requires development to create places that promote health and well-being with a high standard of amenity for existing and future users.

Other Matters

15. The removal or variation of condition 3 of planning permission Ref: P/FUL/2023/06275 to enable the railings to be retained would result in a conflict with the approved plans as they do not show the railings to form part of the development. Had I found the appeal to be acceptable this would have needed to have been resolved. However, as I have not, I do not need to consider this further in this decision.

Conclusion

16. For the reasons given, the development is not consistent with the policies of the development plan as a whole and there are no material considerations that would lead me to a different conclusion. I therefore conclude that the appeal should be dismissed.

N Perrins

INSPECTOR