



Appeal Decision

Site visit made on 11 July 2018

by R J Maile BSc FRICS

an Inspector appointed by the Secretary of State

Decision date: 27 July 2018

Appeal Ref: APP/V2255/D/18/3199807

84 Scarborough Drive, Minster on Sea, Sheerness, Kent, ME12 2NQ.

- 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 Tony Potter against the decision of Swale Borough Council.
 - The application ref: 17/505078/FULL, dated 15 September 2017, was refused by notice dated 15 January 2018.
 - The development proposed is: "Add privacy screening to east and west sides of existing first floor parapet to overall height of 1.8m and add access doors within two existing window aperture widths, to create rear balcony."
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Application for costs

1. An application for costs was made by Mr Tony Potter against Swale Borough Council. This application is the subject of a separate decision.

Decision

2. The appeal is allowed and planning permission is granted for privacy screening to east and west sides of existing first floor parapet to overall height of 1.8m and add access doors within two existing window aperture widths, to create rear balcony at 84 Scarborough Drive, Minster on Sea, Sheerness, Kent, ME12 2NQ, in accordance with the terms of the application ref: 17/505078/FULL, dated 15 September 2017, subject to the conditions set out in Annex A to this decision.

Main Issue

3. The main issue in this case is the impact of the privacy screening and use of the existing flat roof as a balcony upon the living conditions of existing and future residents of neighbouring property.

Reasons

4. 84 Scarborough Drive comprises a detached post-war house that has been the subject of a number of alterations and extensions in recent years. It is located on a sloping site within a mixed residential area.
5. There is a flat roof at first floor level, to which there is currently no access from the two rear-facing bedrooms. The scheme before me includes works to create casement doors from each of those bedrooms in order to utilise the flat roofed area as a balcony/roof terrace.

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6. The Planning Officer's report refers to the fact that in 2006 following the grant of planning permission for extensions and alterations (ref: SW/05/1166) the development of the site was not proceeding in accordance with the approved plans. Specifically, the openings above the roof to the single storey extension had been constructed for doors giving access to this roof area in place of the approved windows.
7. Following discussions with Officers, the owner agreed to build the openings in accordance with the approved plans, as it was clear that use of this roof as a balcony would have significantly overlooked the private amenity spaces of the dwellings to either side. Once those works had been completed, an Article 4 Direction was secured removing Permitted Development rights for alterations to these openings to give the Council control over any future similar works and to enable an assessment to be made of the impact of use of the flat roof as a balcony.
8. As referred to above, the proposal before me at this appeal seeks to reinstate the casement doors from the two bedrooms and, in order to address concerns regarding privacy, to erect obscure screens above the existing upstand of the roof which surrounds the proposed balcony.
9. Policy DM14 of the Local Plan¹ sets out general development criteria, including that development should not cause significant harm to amenity and other sensitive uses or areas (Criterion 8). Policy DM16 relates to alterations and extensions, Criterion 6 requiring such works to protect residential amenity. The Council's adopted SPG² advises applicants to consider the amenities of their neighbours. It also suggests that the use of flat roofs as balconies will not normally be allowed.
10. I have noted the numerous letters of objection that have been received from neighbours in Scarborough Drive and also those living to the rear in Southsea Avenue. However, the dwellings to the rear are sited in excess of 40m from the proposed balcony area and are partially screened by trees and hedging, such that use of the flat roof as a balcony would not permit any significant overlooking or loss of privacy.
11. The objectors in Scarborough Drive refer to the fact that the appellant is above average height, whereas the screens would be only 1.8m above the level of the balcony floor. They have also drawn to my attention the fact that it would be possible to stand upon the threshold of the casement doors or to peer over the rear elevation of the balcony, where no screening is proposed.
12. The height of the obscure screens will measure 1.8m above finished floor level. This is identical to the height of a standard boundary fence and is marginally above the 1.7m that is generally accepted as normal eye height.
13. As part of my site visit I was able to view the proposal from within the rear gardens of 86 (Zanskar) and 70 Scarborough Drive, both of which immediately abut the appeal site.
14. The balcony would be sited away from no. 86 and the hedging and trees along the flank boundary of that property would provide adequate screening. The distance between the easterly screen and the boundary with no. 86 is approxi-

¹ Bearing Fruits 2031: The Swale Borough Local Plan (adopted July 2017).

² Planning and Development Guideline No. 5: Designing an Extension – A Guide for Household.

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mately 7m. Given this separation distance and the existing boundary treatment I am satisfied that the screen would not appear overbearing as viewed from no. 86. As to no. 70, which lies to the west, there is only approximately 1m between the flank wall of no. 84 and the common boundary with that property. However, the screen would be set in approximately 3m from the common boundary.

15. For these reasons, I am satisfied that the privacy screening would not appear overbearing as viewed from nos. 86 or 70; neither would it be possible to peer over it into the garden of either property, notwithstanding the height of the appellant. The possibility of standing on the threshold of the casement doors would also fail to permit overlooking to either side.
16. I acknowledge that it would be possible for a person to stand immediately adjacent to the rear upstand of the balcony where no screen is envisaged and to peer into the rearmost part of the garden to no. 70. That area, however, contains garages closest to the common boundary with an access drive running from the front of the dwelling.
17. There is some form of chalet or summerhouse in the northwest corner of no. 70 which it may be possible to overlook by standing at the rear of the balcony. However, this would require persons to stand at the very rear of the balcony and to make a point of peering into the far corner of the garden to no. 70. In any event, no. 84 already has a clear view of the gardens on either side from a large, rear-facing picture window serving its second floor living room, which I inspected during my site visit.
18. Mention has been made of the potential for noise disturbance arising from use of the balcony. I am nevertheless satisfied that the form and height of the privacy screening will act as an effective barrier to the transmission of sound and that use of the balcony would not give rise to noise levels in excess of what might be expected either from the normal use of no. 84 as a dwelling or its garden area for recreational purposes.
19. I appreciate the understandable concerns of immediate neighbours as to the potential for overlooking, loss of privacy and noise disturbance. However, I have concluded that the height of the screening and the relationship of the balcony with the neighbouring dwellings render the scheme acceptable in this regard.
20. I therefore find upon the main issue that development as proposed would not unacceptably impact upon the living conditions of existing and future residents of neighbouring property, as required by Policies DM14 and DM16 of the Local Plan and advice set out in the Council's adopted SPG as referred to above.

Conditions

21. I have considered the three conditions put forward by the Council against the tests of the Framework and advice provided by the Planning Practice Guidance issued on 6 March 2014. I find all of them to be reasonable and necessary in the circumstances of this case.
22. My reasons for the conditions are:
23. Condition 1 is the standard commencement condition imposed in accordance with section 91(1) (a) of the Town and Country Planning Act 1990.

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24. Condition 2 is necessary to safeguard the privacy and amenity of neighbouring occupiers while Condition 3, which requires the development to be carried out in accordance with the approved plans, provides certainty.

Conclusion

25. For the reasons given above, I conclude that the appeal should be allowed.

R. J. Maile

INSPECTOR

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Schedule of Conditions**Annex A**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The obscure glazed screens shown on the approved drawings shall be erected in full prior to the first use of the balcony area hereby permitted and shall be permanently retained thereafter.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan: scale 1:1250.

Block Plan: scale 1:300.

Site Plan A Version 1.0: Existing and Proposed Rear/Side Elevations – scale 1:100; Existing and Proposed First Floor Plans – scale 1:100.

Site Plan Section Version 1.1: Details of Existing and Proposed First Floor Rear (north) Elevation – scale 1:50; Detailed Screen Dimensions (not to scale).



Costs Decision

Site visit made on 11 July 2018

by R J Maile BSc FRICS

an Inspector appointed by the Secretary of State

Decision date: 27 July 2018

Costs application in relation to Appeal Ref: APP/V2255/D/18/3199807 84 Scarborough Drive, Minster on Sea, Sheerness, Kent, ME12 2NQ.

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Tony Potter for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for: "Add privacy screening to east and west sides of existing first floor parapet to overall height of 1.8m and add access doors within two existing window aperture widths, to create rear balcony."
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. 84 Scarborough Drive has already been the subject of a number of alterations and extensions, the most relevant being those for which planning permission was granted in 2006 (ref: SW/05/1166). The Council subsequently secured an Article 4 Direction that removed Permitted Development rights for alterations to the windows serving the two rear-facing bedrooms to prevent access onto the flat roof of the rear extension. The intention was to enable the Council to monitor any future proposals for works likely to affect the residential amenity of nearby occupiers.
4. The Officer's Report recommended that planning permission be granted subject to a total of four conditions. However, given the number of objections from nearby residents and the fact that the appellant is a member of staff of Swale Borough Council, the application was called in.
5. At its Meeting on 7 December 2017 the Committee indicated its approval of the scheme, subject to an amendment that required the height of the screen to be increased by 400mm. The justification for this increase was to ensure that the screen would be the same height as the existing window heads and to address privacy concerns arising from the potential for a person to stand on the door threshold. This suggestion by the Committee that the height of the screen be increased is dealt with at paragraphs 7.09 and 7.11 of the Officer's Report.

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6. Following the Meeting on 7 December 2017 the appellant asked to meet with the two Councillors who had voiced their concerns and had suggested the amendment to increase the height of the screen. The appellant contends that had such a meeting taken place the issues with the planning application would have been resolved and the appeal would have been unnecessary.
7. Notwithstanding the appellant's contention, there is no certainty that the matter would have been resolved by such a meeting. In its response the Council points to the fact that as a quasi-judicial body it would have been inappropriate for two members of the Planning Committee to meet with the appellant at his property. It would also have been highly unusual. Moreover, it is an accepted principle of the Planning Practice Guidance relating to the award of costs that members are entitled to disagree with the advice of their Officers.
8. The appellant also states that he did not have sight of photographs taken by one of his neighbours and produced at the Committee Meeting on 7 December 2017. It is, however, unlikely that photographs taken from a neighbour's garden showing the rear elevation of the property would have influenced the Committee's decision, which was to approve the application subject to minor amendments.
9. I can fully appreciate that a lay member of a Planning Committee would not be aware of the normally accepted eye height of a human and they may have been influenced by the objectors' reference to the height of the appellant and the possibility of standing on the threshold of the new casement doors.
10. The fact that the Council had previously seen fit to serve an Article 4 Direction in order to protect the amenity of neighbours would provide an indication of the need for the application to be considered with great scrutiny.
11. Given the background to this case and the particular concerns of neighbours, I consider that the Committee was entitled to seek to ensure that the purpose of the Article 4 Direction be scrupulously enforced by means of what it reasonably considered a compromise solution. This would have allowed access to and use of the flat roof as a balcony, whilst at the same time preserving the residential amenity of the two most adjacent neighbours.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

R. J. Maile

INSPECTOR