



Appeal Decision

Site visit made on 11 June 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st July 2024

Appeal Ref: APP/T4210/D/24/3340383

1 Pitt Street, Radcliffe, Bury M26 3TF

- 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 Ray Ellis against the decision of Bury Metropolitan Borough Council.
 - The application Ref is 70189.
 - The proposed development was originally described as balcony on roof of extension with a toughened obscure glazed balustrade with stainless steel post and top rail at 1100mm high.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form indicates the development was completed, and I was able to see this during my site visit. I have determined the appeal on that basis, as did the Council. Further to a request made by the Council I undertook an 'Access Required Site Visit' to a neighbouring property 23 Crossfield Drive.
3. On 21 March 2024, after the appeal was submitted, the Council adopted the Development Plan Document "Places for Everyone" (DPD). In the interest of natural justice and to ensure neither of the main parties were prejudiced by this matter, I offered an opportunity for the main parties to comment on this matter. No further comments were made.

Main Issues

4. The main issues are the effect upon the living conditions of neighbouring occupiers, with particular regard to privacy, noise and disturbance; and if any harm arises, whether there are material considerations, including personal circumstances, that outweigh such harm.

Reasons

5. The appeal site is within a residential area. The appeal property (No 1) and its semi-detached neighbour at No 3 are dormer bungalows. Due to the development pattern of the area, the rear elevations and/or gardens of properties along Crossfield Drive (odd numbers) face towards the flank and/or rear elevation of No 1.
6. The balcony is accessed from patio doors serving a bedroom in the rear dormer and occupies the flat roof of an existing single storey rear extension (the extension). Although the extension does not occupy the full width of the rear

elevation, it projects to a significant depth, such that it forms an area of about 20m², with a modest lantern window in the centre serving the extension below.

7. Due to its siting, sheer scale, depth and width, the balcony enables an extremely wide angle of view towards the rear of properties along Crossfield Drive. Such views include those of rear gardens at an elevated position, and also through windows within rear elevations serving bedrooms. Direct views are also available into the rear garden of the adjoining neighbour at No 3.
8. The most direct views are available towards No 23 Crossfield Drive, which has a modest rear garden with a boundary just 3m from the balcony. During my visit I was able to see the reciprocal view from within the two rear bedrooms serving No 23, which confirmed that views from the balcony were uncomfortably close.
9. Consequently, the degree of overlooking from the balcony to neighbouring properties is significant. This is not adequately mitigated by the use of an obscurely glazed panel balustrade of 1.1m height, creating an unacceptable reduction in privacy for neighbouring occupiers.
10. The appellant suggests that issues of overlooking are irrelevant as the appeal property with its extension pre-dates the construction of nearby properties along Crossfield Drive, and at the time those properties were first occupied, only a post and rail fence was in place at the rear boundary. Furthermore, the appellant claims that views of the adjoining neighbour's rear garden were always available from the bedroom window within the rear dormer of the appeal property. As such, the appellant maintains that there has always been an overlooking relationship to nearby properties.
11. However, this position fails to take account of the fact that it is the subsequent use of the flat roof of the extension as a balcony that has fundamentally altered the relationship with neighbouring properties. Moreover, the reciprocal angle of view from a window within the first floor of properties is markedly more restricted compared to views from a balcony, even more so in comparison to a balcony of such a scale as that before me.
12. The appellant claims that the obscure screen would obstruct reciprocal views between the rear dormer windows of the appeal property and those directly opposite, compared to the view without it. In this regard, I agree, but this does not justify the adverse harm that arises from the use of the roof of the rear extension as a balcony, nor has it been demonstrated that this is the only way to achieve any further desired levels of privacy.
13. The fact of the matter is that the use of the roof above the rear extension as a balcony significantly changes the privacy relationship with neighbouring properties, such that the scope for overlooking is considerably increased to the extent that the privacy of neighbouring occupiers is unacceptably diminished.
14. Due to its sheer size, the balcony is capable of accommodating a large number of people. The appellant's submissions state that no lighting is installed on the balcony. However, during my visit I saw that the balcony included power supply points and some very limited solar lighting around various ornamental displays. Consequently, the proposed development could give rise to noise and disturbance from activities on the balcony, as well as disturbance from external lighting.

15. The appellant states that the intended use of the balcony is a tranquil and peaceful space for existing occupiers and is willing to accept conditions to control such matters, although no proposed condition is before me. While a breach of such a condition would not be impossible to detect, it would be unreasonably onerous to do so.
16. I therefore conclude that the proposed development would unacceptably harm the living conditions of neighbouring occupiers, with particular regard to privacy, and noise and disturbance. It conflicts with Saved Policies H2/3 and EN7/2 of the Bury Unitary Development Plan 1997, and the guidance within Supplementary Planning Document 6: Alterations and Extensions to Residential Properties. Taken together, these policies and guidance seek to ensure that house extensions and alterations do not unacceptably harm the amenities of neighbouring occupiers.

Other material considerations

17. The appellant's appeal submissions refer to personal health circumstances of the appellant, and the need to access fresh air in the event of a need to isolate from others, including members of his family.
18. I have therefore had regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. Age and disability are relevant protected characteristics to which the PSED applies. Article 8 of the HRA requires that decisions ensure respect for private and family life and the home. However, these are qualified rights whereby interference may be justified in the wider public interest.
19. The purpose of the proposal would be a positive consideration, in terms of eliminating discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons, and fostering good relations between them and others.
20. Although I am sympathetic to the appellant's personal health circumstances, it has not been demonstrated that the proposed development is the only way of meeting the personal health needs of the appellant, nor that it would represent the least harmful option.
21. I am therefore satisfied that the PSED considerations and appellant's personal circumstances do not outweigh the unacceptable harm that I have identified and that if I were to dismiss the appeal, it would be a necessary and proportionate approach to the legitimate aim of protecting the living conditions of neighbouring occupiers and their families, in the wider public interest.

Conclusion

22. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

J Moore

INSPECTOR