



## Appeal Decision

Site visit made on 30 October 2007

by **Bern Hellier BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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Decision date:  
15 November 2007

**Appeal Ref: APP/H0738/A/07/2048791**

**1a, 1b, 1c and 1d South View, Eaglescliffe, Stockton-on-Tees, Cleveland, TS16 0JA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr R Johnson against the decision of Stockton-on-Tees Borough Council.
- The application Ref 07/0723/ARC, dated 5 March 2007, was refused by notice dated 16 May 2007.
- The application sought planning permission for residential development of four detached dwellinghouses together with associated garaging and landscaping without complying with a condition attached to planning permission Ref 04/2237/FUL, dated 1 December 2004.
- The condition in dispute is No 2 which states that: *The development hereby approved shall be carried out in accordance with the following approved plans unless otherwise agreed in writing with the local planning authority : drawing numbers SBC001, SBC002, Dwg No 2c,3,4,5,6.*
- The reason given for the condition is : *To define the consent.*

### Decision

1. I dismiss the appeal.

### Background

2. The application describes the proposal as *to resite handrail over rear balcony (to vary Condition 2)*. However, in order to vary a condition in this way, it is necessary to reapply for the whole development. I consider the description set out in the summary above is more accurate.
3. The approved plans for the four houses referred to in Condition 2 show an internal rear balcony area protected by a metal balustrade flush with the rear wall. The houses have been built with the balcony extended out over the flat roof of the rear porch and the balustrade located around the perimeter of this roof. The appellant is seeking to vary Condition 2 so that it relates to amended plans showing the rear balconies and balustrades as now built.

### Main Issue

4. I consider the main issue is the effect of the rear balconies on the privacy of the occupiers of 1a – 1d South View and other nearby properties.

**Reasons**

5. External balconies by their nature give rise to direct overlooking of their immediate surroundings which can often lead to an unreasonable invasion of privacy. I consider that is the case here. From Nos 1b and, to a lesser extent, from 1c there are views down onto the back gardens of properties on Croft Road. I was not able to gain access to Nos 1a or 1d. It appears that No 1a looks directly into the rear gardens of Wootton Cottage and a derelict house in South View. At the other end of the cul-de-sac No 1d looks into the back of 3 Westlands Road. There is, in addition, mutual downward overlooking of the back gardens of the four houses themselves which, in my view, is particularly intrusive.
6. There are evergreen trees to the rear of Nos 1c and 1d, protected by a Tree Preservation Order, which screen direct views towards Croft Road. There is also planting between No 1a and Wootton Cottage. Nevertheless, I consider the existing degree of overlooking of gardens as described is seriously detrimental to the privacy of the occupiers of 1a – 1d South View and other nearby properties, contrary to the objectives of Policy HO12 of the adopted Stockton-on-Tees Local Plan.
7. There would still be overlooking from the internal balconies if the balustrade was relocated as approved. However, the overlooking would be less intrusive and the smaller balcony area would encourage a less intensive use. The present occupiers of the appeal properties do not object to the proposal but occupiers will change and I have taken into account a wider public interest. I also acknowledge that there is generally an adequate separation distance between the balconies and the rear windows of overlooked properties. I have taken account of these positive aspects and all other matters raised but they do not outweigh the harm I find the present overlooking of gardens causes to living conditions.
8. I conclude, therefore, that Condition 2 should not be varied so as to approve the balconies as constructed and that the appeal should be dismissed.

*Bern Hellier*

INSPECTOR