



Appeal Decision

Site visit made on 19 November 2008

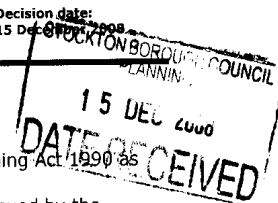
by **Martin Joyce** DipTP MRTPI

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

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Decision date:
15 Dec 2008



Appeal Ref: APP/H0738/C/08/2076940

1D South View, Eaglescliffe, Stockton-on-Tees TS16 0JA

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr I Peerless against an enforcement notice issued by the Stockton-on-Tees Borough Council.
- The Council's reference is 22.0.1.46.
- The notice was issued on 14 May 2008.
- The breach of planning control alleged in the notice is failure to comply with condition No 2 of a planning permission Ref: 04/2237/FUL granted on 1 December 2004.
- The development to which the permission relates is a Reserved Matters application for the residential development of 4 no detached dwellinghouses together with associated garages and landscaping. The condition in question is No 2 which states that:
"The development hereby approved shall be carried out in accordance with the following approved plan(s) unless otherwise agreed in writing with the Local Planning Authority.
Drawing Number(s):- SBC001, SBC002, Dwg No 2c, 3, 4, 5, 6."
The notice alleges that the condition has not been complied with in that the railings erected around the flat roof to the rear of the property to create a balcony are not in accordance with approved plan drawing No 3 & 4 of approval 04/2237/FUL dated 1/12/04.
- The requirements of the notice are to:
 - (i) Remove the railings from around the flat roof area to the rear of the property which creates the balcony area; and,
 - (ii) Erect the railings to the rear of the flat roof area as per the approved plans granted consent on 1st December 2004 (ref 04/2237/FUL) attached to the notice as Plan B.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) of the Town and Country Planning Act 1990 as amended. The deemed application for planning permission also falls to be considered.

Decision

1. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

Main issue

2. The main issue is the effect of the development on the living conditions of neighbouring occupiers at Nos 1C South View, 3 Westlands Road and 5 Croft Road in terms of overlooking and loss of privacy.

Reasoning

- 3 The erection of balustrade railings around the edge of the ground-floor single-storey rear porch has created an enlarged elevated outdoor terrace for the occupants of the appeal property. This contrasts with the approved plans for this development of four detached houses, which show a narrow walkway between the rear first-floor bedrooms, separated from the flat roof by similar railings.
- 4 This departure from the approved plans, in respect of all four properties, has been the subject of a previous appeal, in October 2007, following the Council's refusal of an application to vary Condition 2 of the relevant planning permission so as to retain the handrail in its present position (CLG Ref: APP/H0738/A/07/2048791). The Inspector who determined that appeal found that harmful overlooking of rear gardens from the balconies that had been created would occur, and the appeal was dismissed.
5. I find no reason to disagree. Whilst it is a matter of fact that views across and into neighbouring rear gardens would be available both from the rear walkway and from rear bedroom windows, a materially greater outlook is possible from the balcony area that currently exists. In the case of the appeal property, which the previous Inspector did not have access to, direct views into the adjoining rear garden of No 1C South View are available such that virtually no part of that garden is hidden. Consequently, occupiers of this house would have virtually no private garden space in which to enjoy recreational pursuits if the present situation were to remain. The views towards the rear gardens of Nos 5 Croft Road and 3 Westlands Road are filtered and blocked to varying degrees by vegetation on the boundary between the properties, and by the presence of some substantial garden buildings, thus I do not consider that the loss of privacy is as great for these properties, especially the former. In this context it is also relevant that some of the vegetation is covered by a Tree Preservation Order. There is also a degree of overlooking of the rearmost part of the garden of No 16 The Crescent, but the fact that over half of that garden, nearest to the rear elevation of that dwelling, would not be seen obviates the degree of harm caused. Nevertheless, the total loss of privacy for neighbouring occupiers of No 1C is such that I find that the development materially conflicts with Policies GP1 and HO12 of the adopted Stockton-on-Tees Local Plan.
5. I have taken account of the fact that other residents in this recent development do not object to the retention of the balcony areas, but that does not mean that seriously harmful overlooking and loss of privacy would not lead to problems of un-neighbourliness in the future. The creation of a larger balcony area at first-floor level is likely to lead to greater usage of that area than would be the case in respect of the approved layout. This is demonstrated by the fact that the occupiers of No 1C have sited a table and chairs on their enlarged terrace, which indicates the likelihood that prolonged usage would occur, probably at times when neighbours would most value privacy in their own gardens.
7. My conclusion on the main issue is that the lack of compliance with the approved plans has led to materially harmful overlooking and loss of privacy for neighbouring residents of No 1C South View contrary to the relevant provisions

of the Development Plan. The appeal on ground (a) fails and planning permission will not be granted.

- 8 All other matters raised in the written representations have been taken into account, but they do not outweigh the conclusions reached on the main issue of this appeal.

Martin Joyce

INSPECTOR