



Appeal Decision

Site visit made on 18 October 2022

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 November 2022

Appeal Ref: APP/R3325/W/22/3297723

Land Adjoining Three Corners, Stoopers Hill, Combe St Nicholas, Chard TA20 3LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Paul Newman against the decision of South Somerset District Council.
 - The application Ref 21/03447/S73A, dated 16 November 2021, was refused by notice dated 6 January 2022.
 - The application sought planning permission for 'the erection of dwelling and associated formation of access. (Section 73 application to vary Condition 2 (approved plans) of 18/00467/FUL) to add a balcony and basement store' without complying with a condition attached to planning permission Ref 21/01234/S73A, dated 8 September 2021.
 - The condition in dispute is No 2 which states that: *The development hereby permitted shall be carried out in accordance with the following approved plans: PL-1459-500 Rev B (Proposed Site Plan); PL-1459-501 Rev B (Proposed Basement and Ground Floor Plan); PL-1459-502 Rev B (Proposed First Floor Plan & Section); PL-1459-503 Rev B (Proposed Elevations); PL-1459-504 Rev B (Proposed Elevations).*
 - The reason given for the condition is: *In the interests of proper planning and for the avoidance of doubt.*
-

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission for the erection of a dwelling at the site was originally granted in 2018¹. An application to vary that proposal was made in 2021². The changes included the erection of a balcony but, despite the description of development in the banner heading above, the balcony element was omitted before permission was granted. This was confirmed by condition 2, which required that the development be carried out in accordance with the approved plans.
3. The appellant now seeks to vary condition 2 of consent 21/01234/S73A to amend the proposal by adding a balcony, including a 1.8m high obscure privacy screen. The main issue is the effect of the proposed balcony on the living conditions of the occupiers of Treen House and Higher Alderhey, with regard to privacy, noise and disturbance.

¹ LPA reference 18/00467/FUL

² LPA reference 21/01234/S73A

Reasons

4. The balcony is proposed to be installed on the rear elevation of the proposed dwelling, which is yet to be built. This elevation would face a narrow country lane, beyond which are two dwellings, known as Treen House and Higher Alderhey. These properties have rear gardens, with that serving Treen House being particularly lengthy and extending well beyond the site of the proposed dwelling and balcony.
5. The lines of sight from the balcony to the rear elevations of Treen House and Higher Alderhey would be at an oblique angle. Furthermore, the dwellings are located some distance away from the balcony. These factors mean that there would be sufficient space and orientation from the rear windows of these dwellings and the balcony, for adequate privacy to be maintained within the dwellings themselves.
6. However, the balcony would be higher than the approximate height of the boundary hedge, and the position of the balcony would allow direct views down into the rear gardens of Treen House and Higher Alderhey. The proposed 1.8m high obscure glazed privacy screen would help to restrict views from the balcony but is only proposed at one end of it. The lower screen serving the rest of the balcony would not be high enough to screen some views towards Treen House and Higher Alderhey. Similarly, an existing tall tree, telegraph pole and the summerhouse at Treen House would do little to prevent such views.
7. A window that would face the neighbouring gardens, serving a bedroom and so having some effect on privacy within the gardens, has already been approved. There may also be some noise from the proposed garden or the adjacent road, and the balcony is of modest size. However, the proposal would provide additional amenity space for the proposed dwelling with the potential for a greater level of use.
8. The balcony would have a higher position than the road and the approved garden. In contrast to the approved window, the balcony would have a semi-open nature and would be closer to the affected dwellings. These factors mean that use of the balcony would potentially generate significant noise and disturbance, even from normal use. This is likely to be greater than that generated from the development without the balcony, particularly in warmer months when the balcony would be used more intensively.
9. Most of the garden serving Higher Alderhey is to the front or side of the property, and so is concealed by the dwelling. However, there is some private space to the rear, and this would be affected by the proposal, as would much of the rear garden serving Treen House. As rear gardens, the occupiers of these properties would have a reasonable expectation of privacy and tranquillity when using these spaces, which the proposal would significantly diminish. As such, the proposal would therefore have an intrusive impact on the living conditions of the affected properties.
10. I therefore conclude that the proposal would have a harmful effect on the living conditions of the occupiers of Treen House and Higher Alderhey, with regard to privacy, noise and disturbance. It would therefore conflict with Policy EQ2 of the South Somerset Local Plan 2006-2028 (adopted March 2015) which requires proposals to protect the residential amenity of neighbouring

properties. For similar reasons it would also conflict with the advice in the Framework that requires a high standard of amenity.

Other Matters

11. The approved dwelling has a contemporary design and I accept that the proposed balcony is a feature in keeping with the contrasting design of the dwelling. However, this does not change or overcome my conclusions on the main issue.

Conclusion

12. For the reasons given, there would be conflict with the Development Plan, read as a whole. No material considerations have been shown to have sufficient weight to warrant a decision other than in accordance with it. I therefore conclude that the appeal should be dismissed.

O Marigold

INSPECTOR

