
Appeal Reference:	2023/A0093
Appeal by:	Mr John Mason
Appeal against:	The refusal of full planning permission
Proposed Development:	Proposed external balcony at first floor level to the rear of an existing townhouse
Location:	9B Garden Avenue, Portstewart
Planning Authority:	Causeway Coast and Glens Borough Council
Application Reference:	LA01/2022/0952/F
Procedure:	Written representations and Commissioner's site visit on 6 th August 2024
Decision by:	Commissioner Laura Roddy, dated 14 th August 2024

Decision

1. The appeal is allowed and full planning permission is granted, subject to the conditions set out below.

Reasons

2. The main issue in this appeal is whether the proposed development would have an unacceptable impact on the residential amenity of neighbouring residents.
3. Section 45(1) of the Planning Act requires that regard must be had to the local development plan (LDP), so far as material to the application. Section 6(4) of the Act requires that where in making any determination under the Act, regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
4. As Causeway Coast and Glens Borough Council has not, as yet, adopted a Plan Strategy for the district, the Northern Area Plan 2016 (NAP) acts as the local development plan for the area in which the appeal site is located. In it, the appeal site lies within the settlement limit of Portstewart and within an Area of Archaeological Potential. The NAP has no plans or policies that are relevant to the appeal proposal.
5. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out the transitional arrangements that will apply until a local authority has adopted a Plan Strategy for its council area. The SPPS retains certain existing Planning Policy Statements (PPSs) including the Addendum to Planning Policy Statement 7: Residential Extensions and Alterations (APPS7). There is no conflict between the provisions of the SPPS and those of retained policy regarding issues relevant to this appeal. Therefore, in accordance with the transitional arrangements set out in

the SPPS, the appeal should be determined in accordance with the retained policies of APPS7.

6. Policy EXT1 of APPS7 indicates that planning permission will be granted for a proposal to extend or alter a residential property where all four criteria are met. The Council have only raised concerns regarding criterion b which requires that the proposal does not unduly affect the privacy or amenity of neighbouring residents. Policy EXT 1 states that the guidance set out in Annex A will be taken into account when assessing proposals against the criteria.
7. The appeal site is a mid-terrace property located on the western side of Garden Avenue. It is the middle property in a row of 3 no. three storey townhouses. Each townhouse has a long garden to the rear, measuring approximately 9m x 4m. There is a paved area extending some 2.4m from the rear elevation of each dwelling with a path which leads to the rear gate. The gardens are enclosed by 1.8m high fencing. The rear elevation of each property comprises double doors on the ground floor which lead to the garden area, double doors with a Juliette balcony on the first floor and a recessed balcony on the second floor.
8. The proposed balcony would be on the rear elevation of the property, extending from the first floor living area. It would measure approximately 2.4m x 3.4m and would have 2m high smoked/opaque glass panels at each side, reducing to 1.2m, with a 1.2m high clear glass panel to the front.
9. APPS7, at paragraph A28, states that few households can claim not to be overlooked to some degree. The protection of the privacy of the occupants of residential properties is an important element of the quality of a residential environment. It is a particularly important consideration where an extension or alteration is proposed adjacent to existing properties. Balconies, roof terraces, decking, dormer windows, windows in side elevations and conservatories all have the potential to cause overlooking problems, due to their position and orientation, particularly from upper windows.
10. Paragraph A30 states that overlooking of gardens may be unacceptable where it would result in an intrusive, direct, and uninterrupted view from a main room to the most private area of the garden, which is often the main sitting out area adjacent to the property, of your neighbours' house. As a general rule of thumb this area is the first 3-4 metres of a rear garden, closest to the residential property.
11. Due to the existing Juliette and recessed balconies there is already overlooking from 9B Garden Avenue into the adjacent rear gardens. This is evidenced by the photographs provided in the appellants Statement of Case (SoC). The Council argue that views from these balconies are directed to the rear of the garden and that views into the most private area of the gardens would not be possible from the Juliette balcony without leaning over the balustrade and looking to either side. However, it is clear from these photographs that the majority of the adjacent gardens, particularly the first 3-4m, are clearly visible from the Juliette balcony and recessed balcony at the appeal site. The photographs are clearly taken from a standing position, above and behind the railings. If the photographs were taken leaning over the balustrade, the railings would not be visible.

12. The existing properties adjacent to the appeal site have limited private amenity to the rear. They are already overlooked due to the design of the properties and the existing balconies at the first and second storey. While the proposed balcony would protrude some 2.4m from the rear elevation, compared to the existing balconies which are flush with the rear elevation, I do not consider that this would result in significant additional overlooking. To the contrary, the proposed balcony with a depth of some 2.4m would reduce overlooking of the first 2-3m of the adjacent gardens from the appeal site. When looking down from the Juliette balcony, the proposed balcony would block some of the views into the adjacent gardens. The proposed 2m high smoked/opaque glass panels to the side mean that views into first 2-3m of the adjacent gardens would not be possible. While the screens are only 2m in height for the first 1.4m, the height reduces gradually until it meets the front panel at 1.2m in height. The smoked/opaque panels would be above eye level and head height for the majority of the balcony's depth, and for at least the first 2m. Views would not become available from the point where the balustrade screen reduces in height as alleged by the Council.
13. The Council argue that there would be full views of the rear elevation of 9A and 9C, including the rear windows, when looking back from the balcony end towards the dwellings. There are already full views of the windows on the first and second storey from the rear gardens, and also from the surrounding public vantage points and car parking area to the rear. The balcony, with its 2m high smoked side panels, would limit views into the adjacent windows. To obtain the type of views alleged by the Council those using the balcony would have to lean out over the side panels which I consider would be highly unlikely. Overall, I find there would be no intrusive or direct views of the adjacent gardens, especially of the first 3-4m and most private area of the gardens. I consider views of windows on adjacent properties would be difficult to achieve.
14. Annex A of APPS7 states that an extension or alteration such as a balcony, roof-terrace or high level decking can all increase the level of noise and general disturbance experienced by residents of adjacent properties and will be subject to particular scrutiny. I disagree with the Council that a balcony of this size would allow a congregation of people. I consider a limited number of people could be accommodated by the 8sqm balcony and not sufficient people to cause a significant increase in the level of noise. I do not consider that the use of the proposed balcony, due to its small size, would result in significantly higher noise than if the doors to the first floor living room to the Juliette balcony were opened, or if the recessed balcony above was in use.
15. The appellant has referred to a number of other planning approvals for balconies in the Causeway Coast and Glens area stating that there is a precedent for first floor balconies within the seaside and that balconies have been found to be acceptable in terms of amenity and privacy. Most of the examples relate to balconies to the front of properties rather than the rear, and only one example is for a first floor balcony to the rear of a terraced property (45 Causeway Street, Portrush, LA01/2021/0304/F). Having visited this property, it is clear that the context is different with the majority of the adjacent properties also having first floor balconies. I find that the examples provided are not on all fours with the appeal site and do not lend support to the appeal proposal. Similarly, the appeal referred to by the Council is not comparable or determining as it related to a

proposed gable end balcony on an elevated corner site which would directly overlook an amenity/garden area opposite (2012/A0005).

16. Nevertheless, for the reasons given above, I find the appeal proposal would not unduly affect the privacy and amenity of neighbouring residents and would therefore comply with APPS7 and the related provisions of the SPPS. As the Council's reason for refusal cannot stand, the appeal shall succeed.
17. As smoked/opaque side panels are required to retain the privacy of the adjacent properties, I find a condition requiring this to be installed prior to the balcony coming into use to be reasonable and necessary.

Conditions

- 1) Prior to the balcony hereby approved coming into use, the smoked/opaque side panels shall be installed as shown on Drawing no. 02A. These shall be permanently retained.
- 2) The development shall be begun before the expiration of five years from the date of this decision.

This decision relates to the following drawings:-

Drawing No.	Title	Scale	Date Received by Council
01A (22/320A P001A)	Existing Site Layout Plan, Floor Plans and Elevations Site Location Plan	1:100@ A1	28 th November 2022
02A (22/320A P002A)	Proposed Site Layout Plan, Floor Plans and Elevations	1:100 @A1	28 th November 2022
03	-	-	-

COMMISSIONER LAURA RODDY

List of Documents

Planning Authority:-

Statement of Case by Causeway Coast and Glens
Borough Council
Rebuttal Comments by Causeway Coast and Glens
Borough Council

Appellant(s):-

Statement of Case by Studio Sixty Six on behalf of Mr John
Mason