

Town and Country Planning
Appeal Statement

on behalf of Mr XXXX

XXXX
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XXXX
XXXX

Erection of balcony

XXXX

Appeal Statement
XXXX

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1.0 PROPOSED DEVELOPMENT

- 1.1 The appeal relates to application Ref XXXX seeking planning permission for alterations to the existing dwelling with new first floor balcony. The Council (West Devon Borough Council) issued a split decision on 3 November 2009. Planning permission was granted for the alterations to the dwelling comprising the erection of a walkway to the front of the dwelling. Planning permission was refused for the erection of a balcony to the rear of the dwelling. The reason for refusal states:

The proposed balcony would, by reason of its design, siting, height and proximity to the boundary, result in unacceptable overlooking and loss of privacy to the detriment of the amenity of neighbouring residents. The proposal is therefore contrary to the West Devon Borough Local Plan Review 2005 Policy H40 and Devon Structure Plan 2001 to 2016 Policy CO6.

2.0 SITE AND LOCATION



Figure 2.1 Rear elevation of Nos 5 and 6 XXXX (No 6 to the right)

- 2.1 The appeal relates to XXXX, a two storey semi-detached property situated at the far end of a residential road within the built-up area of Tavistock. The property benefits from a small rear garden occupying an elevated position overlooking the site of the former Kaminski Yard to the south. This site is currently being developed to provide new build houses and flats. As can be seen from the photograph in Figure 2.1, the dwelling already includes large ground floor and first floor windows to the rear elevation. In common with the other properties in XXXX, it should be noted that this already permits a degree

of mutual overlooking. This is an important material consideration and we deal with this in greater detail below.

3.0 PLANNING HISTORY

- 3.1 None relevant to this appeal.

4.0 POLICY CONTEXT

- 4.1 The development plan for the area includes the saved policies of the adopted Devon Structure Plan 2001 to 2016 (SP) and adopted West Devon Borough Local Plan Review (LP). The Council relies on two policies, SP Policy CO6 and LP Policy 40.
- 4.2 SP Policy CO6 is a general purpose policy which seeks broadly to protect local character and environmental quality by requiring good design and layout in new development. LP Policy H40 is a permissive policy which states that permission will be granted for extensions and alterations provided that certain criteria are satisfied. Criterion ii is relevant to the circumstances of this appeal and seeks to ensure that there is no significant adverse effect on the privacy or amenity of nearby residents.

5.0 STATEMENT OF CASE

- 5.1 The main issue in this appeal is considered to be the effect of the proposed balcony on the living conditions at neighbouring properties. The Council's reason for refusal fails to identify the property or properties supposedly affected by the development. However, we understand that the Council is concerned about possible overlooking of the adjoining property at XXXX.
- 5.2 The only other properties which could possibly be affected by the balcony are the new dwelling units currently under construction at the former Kaminski Yard. However, these new units are at a substantial distance and considerably lower level. The Inspector will see that the proposed balcony would afford only long distance views over the rooftops of the adjacent new development. There is no possibility of any significant overlooking of the new dwelling units.
- 5.3 In terms of the effect on the adjoining property, XXXX, the starting point must be the existing situation, whereby a limited degree of mutual overlooking already exists by virtue of the large first floor windows in the rear elevation of both dwellings. These windows permit a restricted view down onto the adjacent rear gardens (see figure 5.1 overleaf, also showing adjacent development at former Kiminski Yard). Such a situation is unavoidable in the case of semi-detached properties with small rear gardens, as here.



Figure 5.1 Existing outlook from first floor window at XXXX

- 5.4 It has long been accepted that complete freedom from overlooking and other forms of intrusion is difficult or, in many cases, impossible to achieve. Moreover, this is neither necessary nor desirable, given important national policy objectives, as set out in Planning Policy Statement 3 *Housing*, for making full and effective use of previously developed land. This is particularly the case in an urban environment, such as this, where a limited degree of overlooking is widely accepted.
- 5.5 Careful consideration was given to the design of the proposed balcony to ensure that the development would not materially increase the limited degree of overlooking which inevitably occurs between the adjoining properties. This is achieved in two ways, as described in detail below.
- 5.6 First, the balcony is limited in size, in particular, having a very shallow depth. This ensures that the balcony would not project significantly and, furthermore, that any use of the balcony would be very low-key, limited to perhaps two or three people at most sitting or standing on the balcony in order to enjoy the commanding southerly views. The Inspector is invited to observe the outlook from the existing first floor window. This amply demonstrates that the attention of anyone sitting or standing on the balcony would naturally be diverted to the southerly views, and not towards the adjoining property.
- 5.7 Secondly, the plans include the provision of a 1.8m high panel at the western end of the balcony. This serves as a privacy panel preventing any possible overlooking of any of the windows at XXXX and severely restricting any views down onto the adjacent rear garden.
- 5.8 With the privacy panel in place, only very oblique views across the rearmost part of the adjacent garden would be possible. Even then, because of the short

length of the rear gardens, this would only be possible if someone were standing on the balcony very close to the privacy panel and leaning forward. Even allowing for this very limited degree of overlooking, this is no different to the existing situation. The proposal would not therefore cause any material increase in overlooking.

5.9 Privacy panels are commonly employed in new build residential schemes as a solution to meeting the government's objectives for raising densities and making efficient use of land in new housing developments by providing outdoor space, light and amenity without compromising privacy.

5.10 The provision and retention of the privacy panel can easily be secured by means of a condition. Such a condition satisfies the tests for conditions set out in Circular 11/95, because it is reasonable and necessary and relevant to the development proposed, allowing permission to be granted. The condition is enforceable by means of a simple visual inspection, precise and reasonable in all other respects. An example of a suitably worded condition is given below:

Before the balcony hereby permitted is brought into use, a 1.8m high solid panel shall be erected and retained in perpetuity thereafter in accordance with the details shown on drawing No 3229/SK-01C or such other details as may be submitted to and approved in writing by the local planning authority.

5.11 Subject to the above, we are firmly of the opinion that the proposed balcony would not cause any significant overlooking of the adjoining property. Certainly, it would not make the existing situation, whereby a limited degree of mutual overlooking already exists, materially worse.

5.12 Whilst the lack of objection from the current occupiers of the adjoining property is not, of itself, an over-riding reason to allow the appeal, the fact that the proposal has generated no local objections illustrates the minor nature of the proposed development.

5.13 The Inspector should also be aware that many of the new residential units at the Kiminski Yard development include balconies with significantly greater potential for overlooking than the appellant's very modest balcony (plan extracts of the Kiminski Yard scheme are attached at Appendix A). This clearly demonstrates that the Council has failed either to consider the general standards of the area or to apply a consistent approach. Overall, we can see no sound planning grounds why permission should be withheld for the proposed balcony.

6.0 SUMMARY AND CONCLUSIONS

6.1 For the reasons set out above, we consider the Council's reason for refusal, on the grounds of overlooking and loss of privacy, to be entirely unfounded. We have demonstrated that there is no conflict with SP Policy 6 and LP Policy H40,

on which the Council relies, because there would be no material increase in overlooking or loss of privacy at neighbouring properties. There are no other material considerations that weigh against approval and, in our opinion, there is no sound planning reason why permission should not be granted. We therefore respectfully ask the Inspector to allow the appeal and grant planning permission for the development, subject to such conditions as may be considered reasonable and necessary, including the provision and retention of a privacy panel.

APPENDIX A

APPROVED RESIDENTIAL DEVELOPMENT
AT FORMER KIMINSKI YARD, TAVISTOCK