



Appeal Decision

Site visit made on 27 November 2019

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 9 December 2019

Appeal Ref: APP/Z0116/C/19/3234107

140 Fishponds Road, Eastville, Bristol BS5 6PT

- 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 S Singh against an enforcement notice issued by Bristol City Council.
 - The enforcement notice was issued on 24 June 2019.
 - The breach of planning control as alleged in the notice is: the installation of a means of enclosure, comprising walling and railings on the flat roofed single storey extension creating a roof terrace at the rear of the property.
 - The requirements of the notice are as follows:
Revert to the approved plans under planning application 14/00482/H for proposed part two storey and part single storey rear extension as follows:
 - Remove French doors at first floor level and install a window as per the approved plan Drawing No 2713-4A Proposed Elevations (January 2014).
 - Remove the wall at first floor level, on the south east side of the elevation in line with the approved plans Drawing No 2713-4A Proposed elevations and Drawing No 2713-3A Proposed Plans.
 - Remove all the railings around the edge of the flat roof located on the first floor at the rear of the property and cease the use as a roof terrace.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on ground (a) only as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed.

Background information and planning history

2. The semi-detached appeal property is located on the south-west side of Fishponds Road and does not lie within a conservation area. Planning permission was granted in January 2014 (14 00482/H) for alterations to the rear of the property, which included works to both the ground and first floor. These works resulted in, amongst other things, a rear extension with a flat roof. The appellant then formed a French Window, opening out from the bedroom at the rear of the house, on to the flat roof of this extension. A roof terrace was formed with a metal railing. This is the subject of the notice.

3. The Council became aware of the French door and terrace and informed the appellant that '*some resolution was required in one form or another*'. A planning application (18/03312/H) was submitted for the '*Retention of the terrace at rear first floor level*'. This was refused on 3 August 2018. The reasons for refusal (RR) related to the effect on the character and appearance of the locality and the effect on the living conditions of the occupants of Nos 138 and 142 Fishponds Road.

4. A further application was submitted (18/06350/H) later in 2018 and it is stated that this amended proposal, which included measures to overcome the Council's concerns (and those of the neighbours) regarding loss of privacy by way of further graphic illustrations, '*demonstrated the flaws in the previous arguments proffered by the Council concerning any allegations of overlooking*'. This application was refused on 5 February 2019 for the same reasons as the first application. The roof terrace remained in place and the Council considered it expedient to take enforcement action. The notice was issued on 24 June 2019.

Main issues

5. The main issues are as follows:

- The effect of the works on the character and appearance of this part of Bristol and,
- The effect on the living conditions of the occupants of Nos 138 and 142 Fishponds Road.

Reasons

Effect on character and appearance

6. Having seen the unauthorised works from within the garden, the rear access and from a distance, I do not consider that the French window or the railings are noticeably harmful, in themselves, to the character and appearance of this part of Bristol. They are typical domestic features in a residential area. However, they must be considered in the overall context of the intended use and the fact that they would facilitate the use of the roof terrace. I deal with this issue below.

7. Although I find that the window and railings in themselves to be acceptable in design terms, I am concerned about the three-dimensional visual effect which would be caused by the proposed mitigation measures. In my view the glazed screen and flank wall would appear as obtrusive and alien elements which would be harmful in appearance to the locality.

8. The side wall in particular be perceived as a bland protrusion from the main wall of the house and would be out of keeping with the rear elevations of the properties along this part of Fishponds Road. Together with the glazed screen the flat roof of the rear extension would take on an open-plan box-shaped appearance which would detract from and, in my view, harm the appearance of the rear elevation of the house. This would clearly be seen from Coombe Road as well as from the rear gardens to the adjoining properties. Thus, it would be detrimental to the character and appearance of the area.

9. I therefore find that the proposal would be contrary to policy BCS21 of The Bristol Local Plan Core Strategy (LPCS) and to policy DM30 of the Site Allocations and Development Management Policies Local Plan (DMPLP). In addition I consider that the scheme as now proposed would be contrary to the policies within section 12 (Achieving good design) of the National Planning Policy Framework (NPPF) since the appearance would be obtrusive and does not constitute good design. The side elements would be seen for what they are. That is, an attempt to mitigate the harm caused by overlooking.

Effect on living conditions

10. Having inspected the works as carried out and having viewed the adjacent gardens from the flat roofed terrace, I agree with the Council and the occupiers of the adjacent dwelling at No 142 that the unauthorised works have already resulted in a loss of privacy for the occupiers. The views of the roof terrace from the

adjacent garden, the rear access and Coombe Road reinforces my view that the loss of privacy for the occupant of both adjacent properties is significant and unacceptable in this tight urban situation.

11. I acknowledge that these two gardens could still be seen from the approved window but this would be a normal expectation in relation to a rear extension. I have also noted the '*zones of opportunities*' drawings showing the options for a Juliette Balcony (option A) and the one with screens (option B). However, having stood on the flat roof as well as noting the relationship of the terrace and the neighbouring properties from ground level I consider that even with the wall and screen in place with the latter option there could still be situations where overlooking and thus loss of privacy could occur.

12. Thus whilst acknowledging that the glazed screen and flank wall would help to reduce overlooking, in my view it would not do so to the extent that should normally be expected where neighbouring properties can be overlooked. In any case I have already found that these mitigation measures would be harmful in terms of their effect on the character and appearance of his part of Bristol.

13. Due to the orientation of the terrace I consider that there would be some impact relating to direct sunlight reaching the property at No 142. Although this would not be a significant impact, there would be some loss of direct sunlight caused by the flank wall in the early to late afternoon periods. This in itself might be just about acceptable but I find another issue relating to the flank wall. By raising the wall to the height the proposed it is my view that the resulting wall on this part of the boundary would result in an overbearing effect in part of the garden to No 142. I conclude, therefore that the mitigation measures would be contrary to policies BCS21 of the LPCS and policies DM27 and DM30 of the DMPLP.

Overall conclusion

14. I have concluded that the works as carried out and/or proposed to be carried out are contrary to both local and national policies which seek to protect residential areas in terms of character and appearance and effects on amenity. It follows that I do not consider that planning permission should not be granted for either the scheme as built or the one proposed. The appeal, therefore, fails on ground (a).

Other Matters

15. In reaching my conclusions I have taken into account all other matters raised on behalf of the appellant; by the Council and by interested persons. These include the full planning history; the initial appeal submissions; the subsequent statements and comments; the third party representations and the appellant's response to this in the final comments. However, none of these carries sufficient weight to alter my conclusions or to change my decision that the appeal should be dismissed.

Formal Decision

16. The appeal is dismissed and the enforcement notice is upheld. The application deemed to have been made under section 177(5) of the Act is refused.

Anthony J Wharton

Inspector