



Appeal Decisions

Site visit made on 14 July 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2020

Appeal A Ref: APP/Z0116/C/19/3240653

Appeal B Ref: APP/Z0116/C/19/3240654

19 Dundonald Road, Bristol BS6 7LN

- The appeals are 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 Mrs Lisa Rimell (Appeal A) and Mr Spencer Rimell (Appeal B) against an enforcement notice issued by Bristol City Council.
- The enforcement notice was issued on 30 October 2019.
- The breach of planning control as alleged in the notice is the installation of a metal balcony/terrace structure at the rear of the top floor flat.
- The requirements of the notice are: Remove the structure in its entirety and remove all the demolition material from the land.
- The period for compliance with the requirements is two months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice upheld.

Appeal A

Ground (a) appeal

Main Issues

1. The main issues in this ground of appeal are:
 - The effect of the structure on the character and appearance of the host building and the surrounding area.
 - The effect on the living conditions of occupiers of adjoining residential property, having regard to privacy.

Reasons

Character and appearance

2. The host building is a substantial early 20th Century residential property arranged over three floors, converted to flats. It is situated towards the middle of a terrace of properties of similar age, scale, style and materials. The surrounding area includes similar terraces, together with groups of two storey dwellings reflecting later architectural traditions. More recent alterations and

enlargements to properties in the vicinity tend to vary in terms of their scale and appearance, but for the most part have a reasonably low profile. As a result, the surrounding area has a pleasant and relatively unspoilt residential character and appearance.

3. The structure enforced against consists of a platform around 2 m wide and 1 m deep, supported by brackets either side and enclosed by railings. Due to its largely functional design and materials, the structure has a somewhat utilitarian, 'go anywhere' appearance. This is entirely at odds with the more refined elevational design and traditional materials of the host building, adjacent properties and residential development in the surrounding area. Moreover, being at second floor level the structure occupies a raised position on the rear elevation of the host building. The substantial rear elevations of the host building and the terrace are open to view along Greendale Road. There are no similar structures on the rest of the terrace. As a result, the structure is perceived in its surroundings as an obvious, alien addition to the host building and the terrace.
4. Painting the structure black would not change its inherent design qualities or significantly alter its overall appearance. Therefore, this would not achieve a satisfactory level of integration with the host building and the surroundings. There was no firm evidence to suggest that raised balconies at the rear of some properties in the wider area benefitted from planning permission. None of those balconies had a similar visual impact to the structure in any event. As a result, the presence of other balconies in the wider area is not a good reason for granting permission for the structure.
5. Previously, an external metal staircase occupied a similar position to the structure, connecting with the first floor roof terrace. I am given to understand that the pre-existing staircase was in a poor condition prior to its removal. However, as far as I was made aware, the staircase did not benefit from planning permission. The replacement of development undertaken without planning permission is not a good reason to permit further unacceptable development. Therefore, the pre-existing staircase does not weigh in favour of permitting the structure.
6. Consequently, the structure has caused unacceptable harm to the character and appearance of the host building and that of the surrounding area. As the structure does not contribute positively to the area's character and identity and does not reinforce local distinctiveness, it fails to accord with criterion in Policy BCS21 of the Bristol Local Plan Core Strategy (CS). The failure to respect the materials, details and overall design and character of the host building does not accord with criterion in Policy DM30 of the Site Allocations and Development Management Policies Local Plan (LP). As LP Policy DM31 concerns the conservation of heritage assets and their settings its relevance is unclear.

Living conditions

7. The structure is accessed by an external door from the second floor flat. I was not made aware of any other external amenity space available for occupiers of the flat. Although of modest size, in my estimation the structure could probably accommodate a couple of chairs and a small table. In their representations, interested local residents drew attention to incidences of the structure being used by occupiers of the host building for socialising. Therefore, whilst the primary purpose of the structure might be as a secondary

means of escape, in my view it is also likely to function as an external amenity space at times. The expansive views available from the structure also reinforces my conclusion in this regard.

8. I accept that, having regard to the built-up nature of the surrounding area, residential occupiers might reasonably expect a degree of overlooking from adjoining property. The structure has not resulted in unacceptable overlooking of the host building's other flats. Nevertheless, the structure is in proximity to the boundary with the adjoining dwelling at 17 Dundonald Road (No 17) and as noted above, occupies a raised position. As a result, persons using the structure can from a limited distance look directly into No 17's private garden, as well as into a roof window lighting ground floor living accommodation and an upper floor window lighting a bedroom. Additionally, persons using the structure can overlook other adjoining property, albeit at a greater distance. The raised position of the structure also emphasises the sense of being overlooked from adjoining property. Previously, overlooking from the host building would have been much less apparent; persons using the roof terrace at first floor level do not overlook No 17 or other adjoining property in a similar fashion to users of the structure. Accordingly, the structure has significantly and harmfully eroded the levels of privacy enjoyed by adjoining residential occupiers.
9. Whilst the pre-existing staircase might also have been used informally as external amenity space, its platform is likely to have been much smaller than the structure, as well as further from the boundary with No 17. Therefore, the staircase is unlikely to have had a similar effect in terms of the privacy of adjoining occupiers to that of the structure. In any event, as noted above replacing the staircase is not a good reason to permit the structure.
10. A planning condition restricting use of the structure as an external amenity space would be unreasonable, as it would effectively take away the benefit of granting permission. Also, in practice, it would be almost impossible to properly monitor and detect breaches of such a condition. As a result, a condition would not meet the tests in paragraph 55 of the National Planning Policy Framework. Although a clause restricting the use of the structure could be inserted into future tenancy agreements, I cannot take that into account in my decision as such matters are outside the scope of the planning legislation.
11. Therefore, the structure has caused unacceptable harm to the living conditions of occupiers of adjoining residential property. As the amenity of existing development has not been safeguarded, the structure fails to accord with criterion in CS Policy BCS21. The structure also does not accord with criterion in LP Policy DM27, as appropriate levels of privacy for existing development have not been achieved. For similar reasons, the structure does not accord with criterion in LP Policy DM30.

Other matters

12. A metal chain ladder attached to the structure can be extended down to the first floor roof terrace. Provision of a secondary means of escape is beneficial to occupiers of the second floor flat. I can understand why the appellant wanted to provide additional peace of mind to both themselves and the occupiers in the event of a fire occurring. However, as no legislative requirement concerning such provision has been drawn to my attention, this matter only weighs slightly in favour of granting permission.

13. Removing the structure would leave the external door to the second floor flat in situ. However, there is no good reason to think that this door could not be safely secured. Therefore, this matter carries little weight.

Conclusion on ground (a)

14. The structure has unacceptably harmed the character and appearance of the host building and that of the surrounding area, it has unacceptably harmed the living conditions of occupiers of adjoining residential property and does not accord with the Development Plan. Therefore, the ground (a) appeal does not succeed.

Appeals A & B

Ground (f) appeals

15. The ground of appeal is that the requirements of the notice are excessive for its purpose.
16. At s173 (4), the Act provides that an enforcement notice can remedy a breach of planning control, including by (a) restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.
17. The notice requires the structure to be entirely removed, as opposed to the undertaking of works to modify it in some fashion. Therefore, the purpose of the notice must be to remedy the breach, within paragraph (a) above. Given that context, painting the structure would leave it in situ and so would not remedy the breach. As a result, this does not represent an obvious alternative to the notice requirements.
18. Therefore, the notice requirements are not excessive for its purpose and the ground (f) appeals fail.

Conclusion

19. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application arising from Appeal A.

Formal Decision

20. The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177 (5) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR