
Appeal Decisions

Site visit made on 15 September 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal A Ref: APP/Z0116/D/20/3252264

83 Stonebridge Park, Eastville, Bristol BS5 6RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Robert Ellis against the decision of Bristol City Council.
 - The application Ref 19/05930/H, dated 8 December 2019 was refused by notice dated 25 February 2020.
 - The development proposed is a terrace, balcony and pergola.
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Appeal B Ref: APP/Z0116/C/20/3252208

Appeal C Ref: APP/Z0116/C/20/3252209

83 Stonebridge Park, Bristol BS5 6RN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Ms Shankari Raj and Appeal B is made by Mr Robert Ellis, both against an enforcement notice issued by Bristol City Council.
 - The enforcement notice was issued on 7 April 2020.
 - The breach of planning control as alleged in the notice is:
Without the grant of planning permission the erection of a rear deck/terrace structure.
 - The requirements of the notice are:
Demolish in its entirety the rear deck/terrace structure and remove all demolition materials from the site.
 - The period for compliance with the requirements is 2 months.
 - Appeal B is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended, whilst Appeal C is proceeding on the grounds set out in Section 174(2) (b), (c) and (f).
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for a terrace balcony at 83 Stonebridge Park, Eastville, Bristol BS5 6RN in accordance with the terms of the application, Ref 19/05930/H, dated 8 December 2019, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 900_SP_GE Existing and proposed elevations
 - 900_SP_GP Proposed floor plans
 - 900_SP_GS Proposed section B
 - 901_SP_GE Proposed side elevation A
 - 901_SP_GS Proposed section C and elevation D

- 2) The privacy screens on the boundary with 81 Stonebridge Park shall be retained at all times.
- 3) If, within 6 months of the date of this decision, the pergola as shown on the approved plans has not been installed, the supporting columns above the height of the balcony handrail shall be removed.

Appeals B and C – the enforcement notice appeals

2. Appeals B and C are allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a rear deck/terrace structure at 83 Stonebridge Park, Bristol BS5 6RN as shown on the plan attached to the notice and subject to the following conditions:
 - 1) The privacy screens on the boundary with 81 Stonebridge Park shall be retained at all times.
 - 2) If, within 6 months of the date of this decision, the pergola approved on appeal under Ref: 19/05930/H has not been installed, the supporting columns above the height of the balcony handrail shall be removed.

Appeal A – the s.78 appeal

Procedural matters

3. The description of the development given on the application form is in a lengthy, narrative form, and I have shortened it to that of a balcony, terrace and pergola.
4. Most of the development was carried out prior to the date of the application and therefore I shall treat the application as one made partly under s.73A of the Act, and partly as a prospective application.

Main issues

5. The main issue is the effect of the development on the character and appearance of the surrounding residential area.

Reasons

6. Since the issue of the enforcement notice, the Council has granted planning permission under Ref: 20/20/01084/H for an amended scheme, which includes the balcony, decking and stairs as carried out. The approved scheme does not include the pergola which is included in this appeal proposal.
7. The grant of the 2020 permission is a material consideration of some importance, as clearly, as the development has already been carried out, if this appeal were to fail, the appellants would fall back on the permitted scheme. Thus, the only feature of the proposal which is in dispute over and above the elements already permitted is the proposed pergola.
8. The supporting plans illustrative material shows that the pergola would provide a metal frame to support planting, to provide shade for those occupiers using the terrace. As the terrace is south-facing, I consider that this is a reasonable desire on the part of the occupiers. The pergola and terrace would be on the rear elevation, which, as acknowledged in the Council's Supplementary

Planning Document 2 A Guide for Designing House Alterations and Extensions, has the least visual impact on the neighbourhood and the character of the street.

9. Even without planting, the lightweight construction of the pergola would make it an insubstantial feature, which would not be dominant or intrusive in the rear garden scene. Nor would the pergola screen or detract from any architectural features of importance. Accordingly, I consider that it would not result in material harm to the character and appearance of the building or that of the wider area.
10. Moreover, in order to give effect to the appellant's intentions to provide shade to the terrace, I consider that it is more likely than not that planting would be carried out, and in order to be effective as a shade, the foliage would need to be plentiful, in which case it provides the potential to act as an attractive and positive addition to the building.
11. I therefore conclude on the main issue that the proposal would not result in material harm to the character and appearance of the surrounding residential area, or conflict with Policy BCS21 of the Bristol Core Strategy which deals with the quality of urban design or with Policies DM26 or DM27 of the Site Allocations & Development Management Policies Local Plan, which in turn concern local character and distinctiveness and layout and form. The Council has alleged a conflict with its SPD, but has not referred me to any specific advice. It does not refer to pergolas, and I consider that the proposal would conform with the general guidance on design.

Conditions

12. The Council has suggested the imposition of conditions to require that the development should be carried out in accordance with the approved plans and to require the privacy screen to be put in place. Compliance with the approved plans is necessary to ensure certainty for all parties. The privacy screen has been erected, but it is necessary to ensure that it is retained, and I shall therefore impose a condition to that effect.

Conclusion

13. For the reasons given above, I conclude that the appeal should be allowed and that planning permission should be granted.

Appeals B and C

Reasons

Appeal on ground (b) – that the matters stated in the notice have not occurred

14. As a matter of fact, a rear deck/terrace structure has been erected, and thus the matters stated in the notice have occurred. This ground of appeal has been ill-conceived and must fail.

Appeal on ground (c) – that the matters stated in the notice do not constitute a breach of planning control

15. There is no dispute that the development requires the benefit of planning permission; however, the appellants argue that the breach does not consist of unauthorised development, but is one of a breach of condition, in that planning

permission has been granted for a rear deck/terrace structure, under ref: 19/00076/H, but it has not been carried out in accordance with the approved plans.

16. The development as constructed differs from the approved scheme in a number of ways. The most significant differences comprise the design of the stairs and the provision of steel columns, intended to provide a pergola. The approved stairs show a single flight descending from the terrace to the garden level. Instead, a flight of four steps descends from the terrace in the same position as approved, but it then meets a landing, and a further flight of steps descends at 90° to the upper flight. The bottom two steps are in unfinished timber. The four steel columns rise about 1.8m or so above the height of the handrail to the balcony. The design of the railings also differs from that approved; the number of vertical bars is almost double the number shown on the approved plans, and the railings in situ also lack the gap between the top of the horizontal rail and the handrail.
17. Looked at as a whole, I consider that the development as carried out is materially different from that approved, and that the Council was correct to allege operational development carried out without planning permission. Planning permission was granted for a modified proposal after the issue of the enforcement notice which includes the amended stair and railing design, but omits the pergola. This does not alter the position that at the time of the issue of the notice, the development being enforced against was unlawful.
18. Accordingly the appeal on ground (c) fails.

Appeal on ground (a) – that planning permission should be granted

19. The deemed application is for the development as constructed at the time that the notice was issued, and therefore deemed planning permission cannot be granted through these appeals for the continuation of the construction of the pergola. However, I have explained in relation to Appeal A that the development is acceptable on its planning merits, and it is unnecessary for me to repeat my findings.
20. The appeal therefore succeeds on this ground, and I shall grant planning permission, subject to conditions which give similar effect to those of the s.78 permission. However, conditions cannot force a developer to implement another planning permission. If the pergola were not completed, the columns would have no purpose and would appear as bizarre. I have therefore included a requirement that should the pergola not be provided within 6 months, the columns will be required to be removed.

21. The appeal therefore succeeds on ground (a) and the notice will be quashed.

Appeals on grounds (f) and (g)

22. As the notice has been quashed it is unnecessary for me to deal with these grounds.

Overall conclusion

23. For the reasons given above, I conclude that Appeal B succeeds on ground (a). I shall grant planning permission for the development as described in the

notice. The appeals on grounds (f) and (g) do not therefore fall to be considered.

JP Roberts

INSPECTOR