
Appeal Decisions

Site visit made on 16 November 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2020

Appeal A and B Refs: APP/Z0116/C/20/3252619 and APP/Z0116/C/20/3252620

79 Effingham Road, St Andrews, Bristol BS6 5AY

- The appeal is 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 Mr Bill Flinn and Appeal B by Ms Emily Ryan against an enforcement notice issued by Bristol City Council ('the notice').
 - The enforcement notice, numbered DJM/GD04.30, was issued on 16 April 2020.
 - The breach of planning control as alleged in the notice is without planning permission the installation of suspended platform and paviours, raised parapet and posts and wire enclosure to the roof of rear extension and the installation of a door at first floor level of main dwelling for access purposes onto the platform.
 - The requirements of the notice are: Remove the following unauthorised material additions/alterations from the flat roof of the rear extension [annotated as items 1 to 4 on the attached Appendix A. of this Notice]: Item 1 - suspended platform; Item 2 - paviours; Item 3 - raised parapet; and Item 4 - posts and wire enclosure. Remove the unauthorised door serving access onto the flat roof of the rear extension [annotated as item 5 on the attached Appendix A of this Notice] and reinstate the pre-existing window arrangement.
 - The period for compliance with the requirements is one month:
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/Z0116/D/20/3252413

79 Effingham Road, Montpelier, Bristol BS6 5AY

- 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 Bill Flinn against the decision of Bristol City Council.
 - The application Ref 19/06059, dated 16 December 2019, was refused by notice dated 5 March 2020.
 - The development proposed is First floor balcony over flat roof rear extension, with part roofed area and privacy screening.
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Decisions

1. **Appeals A and B** 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.
2. It is directed that the enforcement notice is varied by removing reference to "Item 1 - suspended platform; Item 2- paviours;" and "Item 3 -raised parapet" in Section 5 of the notice, 'What you are required to do'.

Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

3. **Appeal C** is allowed and planning permission is granted for First floor balcony over flat roof rear extension, with part roofed area and privacy screening at 79 Effingham Road, Montpelier, Bristol BS6 5AY in accordance with the terms of the application, Ref 19/06059/H, dated 16 December 2019, subject to the following conditions:
- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: TQRQM17259173051569 Location Plan as well as the plans required by condition 3.
 - 2) The flat roof shall not be used as a roof terrace until all works of mitigation have been completed. These works entail the mono-pitch roof proposed to link with the mono-pitch roof at 81 Effingham Road and the proposed balustrade, referred to in condition 3, and the acoustic screen along the boundary with 81 Effingham Road.
 - 3) All of the posts and wire enclosure along the edge of flat roof, and the door serving access onto the flat roof from the first floor of 79 Effingham Road, shall be removed and the pre-existing window arrangement in the rear wall at first floor level at 79 Effingham Road shall be reinstated within 1 month of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 months of the date of this decision a scheme showing the design of the mono-pitch roof to be erected at the west end of the flat roof, and the balustrade to be erected between the rear wall of 79 Effingham Road and the proposed mono-pitch roof, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
 - 4) All new external work and finishes and work of making good shall match existing original work adjacent in respect of materials used, detailed

execution and finished appearance except where indicated otherwise on the approved drawings.

Preliminary Matters

4. The description of development on the application form for Appeal B is very lengthy and much of what it says is not actually development. The description given by the Council in its decision notice is succinct and reflects what has been applied for. I have, therefore, used this in my decision.
5. Although the address for Appeals A and B differs from that for Appeal C, they relate to the same property. That for the former two appeals comes from the enforcement notice and that for the latter from the application form.
6. To clarify matters, Appeals A and B have been made against an enforcement notice that was directed against works that have been carried out at the property. Appeal C is made against the Council's decision to refuse planning permission for a development that is proposed at the property. The decisions have been linked in one decision letter, as they raise similar issues and are at the same property. Notwithstanding this, and whilst there will be some degree of overlap, each decision stands alone and is based on the reasoning given, below.
7. I am aware that there have been two appeals relatively recently¹ relating to the development and use of the flat roof at the rear of the property. I have taken these into consideration; however, my decisions stand alone on the basis of the totality of the evidence before me.

Appeal A

Ground (a)

Reasons

8. An appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. That is to say, the 'planning merits' of the breach of planning control that is alleged in the notice.
9. The main issues are the effect of the proposed development on: the character and appearance of the area; and the living conditions of the occupants of neighbouring properties, having particular regard to overlooking.

Character and Appearance

10. Effingham Road is a residential street lined on one side with terraces of properties that mostly, through the use of rooms in their roofs, have accommodation over three floors. There is a fall in the road and, therefore, 79 Effingham Road is higher than its neighbour, 77 Effingham Road. Each property in the road has a single storey element on one side of its rear elevation. These are joined to those of a neighbouring property and are, in the main, covered by dual-pitched roofs where one of the roof slopes covers the accommodation of one of the properties.

¹ APP/Z0116/D/18/3200962
APP/Z0116/D/19/3232836

11. No 79 differs from this general form inasmuch as its rear element, which is used as an annexe to the 'main house', has a more modern, flat-roofed design. The dwelling uphill from No 79, 81 Effingham Road, retains its original roof form, which creates a wall on the boundary between the two properties at first floor level. Accommodation in the main house is such that it has a study/bedroom, bedroom, kitchen-dining-living room and bathroom at first floor level.
12. A door has replaced a window at first floor level at the rear of the property, in the study/bedroom that provides access from the main house to the flat roof above the annexe. The notice states that 'paviours' have been laid on the roof. Their description as paviours is challenged by the appellant, but as it is clearly understood, I have used this in my decision for the sake of consistency.
13. Rising from, and it seems attached in part to, a low, raised parapet are metal posts from which wires are suspended. The fence that has been formed, together with the wall between Nos 79 and 81, creates an enclosed area on top of the annexe. This area is used as a raised garden to serve the main house, with the garden below, I am told, being mainly used by the occupant of the annexe.
14. It needs to be added that, at the time of my visit, a modification had been made to the fence. A portion of the screening that is proposed in the scheme that forms the basis of Appeal B had been erected for illustrative purposes though, from the evidence I have before me, this was not present when the notice was issued.
15. The appellant's submissions on the planning merits relate more or less entirely to the case for allowing the linked planning appeal (Appeal C), rather than what was created when the notice was issued. These are not germane to the enforcement appeal and will be referred to in my decision in that appeal, below.
16. Guidance on the provision of terraces and balconies is given in the Council's Supplementary Planning Document Number 2 - A Guide for Designing House Alterations and Extensions, October 2005 ('SPD'). Amongst its terms in this regard it points out that "The addition of a balcony or terrace to a property above ground floor level can be particularly problematic and in most circumstances would not be acceptable". The reasoning for this stance includes their effect on appearance.
17. The alterations that have been made and the use of the roof garden that they have facilitated, have resulted in a form of development that is uncharacteristic of the area. Although the fencing is fairly slender it nonetheless is readily visible and, from below, appears against the sky. The use of the roof as a garden results in activity and the placing of chattels, such as chairs and tables, that would not be screened by what was in-situ when the notice was issued. As such, both in terms of the fence itself and when combined with the use of the roof that it facilitates, the result is a development that has a significant adverse effect on the character and appearance of the area. Similarly, the creation of a door at first floor level where there was originally a window, is incongruous in this setting.

18. Therefore, I find that the development has an adverse effect on the area's character and local distinctiveness and is contrary to the terms of Policy BCS21 of the Bristol Development Framework Core Strategy, adopted June 2011), (the 'CS'). Further, it fails to respect the character of the host building and the broader street scene, that are amongst the requirements of CS Policy DM30 of the Site Allocations and Development Management Policies Local Plan, adopted July 2014, (the 'LP'), with which it also conflicts. The development also fails to follow the guidance in the SPD on the provision of roof terraces.

Living Conditions

19. It has been firmly established, in the decisions on the aforementioned appeals on the site, that users of the flat roof at the rear of No 79 are afforded clear views down into neighbouring gardens. I was able to walk out onto the terrace that has been formed, at my site visit. From there I was able to see into the rear gardens of properties in Belmont Road as well as the neighbouring properties in Effingham Road, especially No 77.
20. No 77 lies on the downhill side of the appeal site and this increases the overlooking that can be gained from the roof terrace. At its rear is a conservatory-style extension which can also be looked into from the terrace. Thus, the roof terrace that has been formed enables those using it to achieve views of the private habitable internal living space and rear garden of No 77, which is harmful to the living conditions of the occupiers of that property. Similarly, the scant screening provided by the fence does not mitigate the harmful overlooking that occurs to neighbouring properties in Belmont Road and No 81.
21. Amongst its terms, the guidance in the SPD, referred to above, makes reference to the problems that roof terraces may create through direct overlooking into neighbouring properties. In policy terms, both the eighth bullet point of CS Policy BCS21, and LP Policy DM30(iii) refer to the need to safeguard the amenity of occupants of neighbouring properties.
22. The evidence shows that what I saw in terms of screening, save for the 'mock up' of the screening that was provided for my assistance in the s78 appeal, is what was in-situ at the time that the notice was issued and is thus its subject matter. As such, it is this against which I have to assess the effects of the development on the living conditions of the occupants of neighbours.
23. Therefore, on this main issue I find that the lack of adequate screening around the roof terrace leads to significant harm to the living conditions of the occupants of neighbouring properties, having particular regard to overlooking. The development is therefore contrary to the terms of CS Policy BCS21, and LP Policy DM30(iii) and the guidance in the SPD.

Other Matters

24. A third-party representation made in connection with Appeal C referred to a light that has been installed on the rear wall of No 79. As its author asks that this is removed as part of the enforcement appeal process, I shall deal with this here. Established case law states that a decision on an enforcement notice appeal cannot increase the terms of the notice, leaving an appellant worse off.

As the Council did not refer to the removal of the light in the requirements of the notice, I am unable to require its removal in this decision.

25. In conclusion, on ground (a), I find that the development harms the character and appearance of the area and causes harm to the living conditions of the occupants of neighbouring properties, particularly 77 Effingham Road, by reason of overlooking and a consequent loss of privacy.

Ground (f)

26. This ground states that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
27. The appellant's case is that items 1-4 that are required to be removed in line with the terms of section 5 of the notice should be allowed to remain, with item 5 being altered rather than removed.
28. Although the Council has not identified what is meant by the term 'suspended platform', I take it to mean that there is some structure below the paviours that have been laid on the terrace. The appellant states that there is no platform of this kind and that the paviours are laid directly onto the membrane of the roof. He asks that the paviours be allowed to remain, as they have no adverse effect on the character and appearance of the area and, when seen from the house or its neighbours they give an improved appearance. Further, the paviours provide a degree of protection for the roof. It appeared to me that there was no suspended platform and I find that no harm would arise from the retention of the paviours. The terms of the notice can be varied accordingly.
29. The appellant states that the raised parapet is an integral part of the structure of the extension, rather than an addition to it related to the terrace. It was unclear to me whether this was the case or not. However, as the Council has brought little evidence forward to show otherwise, I have taken what the appellant says to be the case. Therefore, its removal would be excessive, and I will vary the notice by removing reference to this. In any event, even if it is a part of the development that is enforced against, its retention would have no adverse effect on the character and appearance of the area.
30. The door that has replaced a window to provide access to the terrace can be opened in two parts. Whilst fixing the lower portion would negate its use, it would not address the incongruity of a door at first floor level on the rear elevation of the house with little mitigating screening. Therefore, I find that its removal would not be excessive and I will not vary the notice in this regard.
31. To the extent that I have identified, above, the appeal under ground (f) succeeds.

Conclusion

32. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Appeal C

Main Issues

33. The main issue is the effect of the proposed development on the living conditions of the occupants of 77 Effingham Road, having particular regard to overlooking.

Reasons

34. It is proposed to use a little over half of the roof of the annexe as a terrace. The remainder of the flat roof, furthest from the house, would be covered with a mono-pitch roof that would join the similar roof to the rear of 81 Effingham Road. Thus, a dual-pitch roof would be formed in this area.
35. An acoustic/privacy screen 2 m high is proposed, running a short way along the boundary with No 81. On the other side of the proposed terrace, it is proposed to erect a balustrade along the length of the flat roof between the proposed mono-pitch roof and the main rear wall to No 79. A short length of balustrade was erected on the edge of the roof when I visited the site. To a degree, this accorded with details of the balustrade proposed in the unnumbered drawing entitled 'Balcony on single storey flat roof extension. Proposed balustrade design', purportedly shown at a scale of 1: 20.
36. I use 'to a degree' and 'purported' advisedly. The Council has reservations over the accuracy of the drawings. It is of the view that, when measured using the scale on the drawings, the height of the screen would be less than that which is annotated on the drawings and the height of the person shown would not be representative of all of the users of the terrace. It also refers to other inaccuracies. Whilst the appellant disagrees with this analysis, this does appear to be the case.
37. The drawings show that it is proposed to use the existing uprights to provide support for a simple shelf for plants to be sited slightly above the roof's parapet with a more elaborate planting shelf above. The latter would involve a horizontal shelf on which potted plants could be placed with a slatted structure angling back from it over part of the roof.
38. It appeared that the portion of balustrade that I saw accorded with what is shown in terms of annotation, rather than that which would be achieved by using the scale, on the drawing previously referred to.
39. From the heights of the screen balustrade and the person that have been annotated on that plan, and from what had been erected for my site visit, the overlooking that would otherwise result from the use of the proposed terrace would be mitigated to an acceptable degree. The screening that this would provide would preclude direct, unobstructed and clear views down into the rear garden and the glazed extension at No 77. Thus, the occupants of No 77 would not be overlooked to the degree that refusing permission would be justified.
40. The erection of a mono-pitch roof at the end of the flat roof, in the manner shown on the drawings, would mitigate any overlooking and consequent harm to the living conditions of the occupants of neighbouring properties in Belmont Road, as well as overlooking of parts of the rear gardens of Nos 77 and 81. In order to ensure that the Council has a complete set of accurate drawings, I

have however included reference to the need for the submission of details of the mono-pitch roof in my conditions, above.

41. Therefore, on the main issue I find that there would be no significant adverse effect on the living conditions of the occupiers of neighbouring properties, having particular regard to overlooking. Therefore, the development accords with the terms of CS Policy BCS21, and LP Policy DM30(iii) and the guidance in the SPD. As I have referred to the content of this policy framework and guidance in my decision on Appeals A and B, above, I need not repeat it here.

Other Matters

42. I referred to comments from a third-party neighbour in Belmont Road, in Appeals A and B. He objects on the grounds of noise generation, and disturbance as a result of a light on the rear wall of No 79. In terms of noise generation, this is a matter that an Inspector in a previous appeal found to be acceptable and the Council has not referred to this in its decision. I have been given no reason to find differently in my decision on this appeal. Similarly, the Council has not referred to disturbance from a light in its decision on the planning application. Whilst the photographs submitted with the representation show the light illuminated, it does not provide substantive evidence of harm. As such, I shall not refuse permission on this basis or require its removal by condition. I have noted the appellant's comment about agreeing to remove or change

Conditions

43. Given that the proposal is, in part, for works which have been undertaken, it would be inappropriate to apply the statutory commencement condition. There are discrepancies in the submitted drawings, for example between the heights annotated on the drawing, entitled 'Balcony on single storey flat roof extension. Proposed balustrade design' and those attained through scaling from the plan. However, as I have found that the scheme, as annotated, and the provision of the mono-pitch roof would address the main issue of overlooking in an appropriate manner, the inconsistency of the plans can be addressed through the use of a condition requiring the submission of an accurate scheme. As the development of the flat roof as it stands is inappropriate, the condition attached in this regard contains 'penalty' clauses should its terms not be complied with. Both parties were consulted on the use of this condition, were the appeal to be allowed, and neither objected. In its response, the Council also requested the use of a condition relating to the use of matching materials, in the interest of the character and appearance of the area. There was no objection to its use from the appellant, and I find that its use is necessary for the reason given.

Conclusion

44. For the above reasons, and having taken all other matters into account, I allow the appeal.

Roy Curnow

INSPECTOR