



Appeal Decision

Site Visit made on 11 October 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2021.

Appeal Ref: APP/Q0505/D/21/3278717 30 Trumpington Road, Cambridge CB2 8AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Dr Lala Akhter against the decision of Cambridge City Council.
- The application Ref 21/00438/S73, dated 27 January 2021, was refused by notice dated 22 April 2021.
- The application sought planning permission for Retrospective part single and part two storey side extensions without complying with conditions attached to planning permission Ref 16/1267/FUL, dated 24 May 2017.
- The conditions in dispute are Nos 1 and 4 which state:
 - Condition 1: The development hereby permitted shall be carried out in accordance with the approved plans as listed on this decision notice.
 - Condition 4: In the event that planning permission reference 15/0804/FUL is implemented, within 3 months of permission 15/0804/FUL being implemented, the eastern-most window on the north elevation at first-floor level serving the room labelled "extended bedroom 03" of the development hereby approved, as shown on drawing number EP627-15-06 Rev A, shall be obscure glazed to a minimum level of obscurity to conform to Pilkington Glass level 3 or equivalent prior to occupation and shall have restrictors to ensure that the window cannot be opened more than 45 degrees beyond the plane of the adjacent wall and shall be retained as such thereafter.
- The reasons given for the conditions are:
 - Condition 1: In the interests of good planning, for the avoid of doubt and to facilitate any future application to the Local Planning Authority under Section 73 of The Town and Country Planning Act 1990.
 - Condition 4: In the interests of residential amenity (Cambridge Local Plan 2006 policies 3/4 and 3/14).

Decision

1. The appeal is allowed and planning permission is granted for Retrospective part single and part two storey side extensions at 30 Trumpington Road, Cambridge CB2 8AQ in accordance with the application Ref 21/00438/S73 made on the 27 January 2021 without complying with conditions Nos 1 and 4 set out in planning permission Ref 16/1267/FUL, granted on 24 May 2017 by Cambridge City Council, but otherwise subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Approved Ground Floor Layout (Drawing No 07/21, dated 19/01/2021); Approved First Floor Layout (Drawing No 07/21, dated 19/01/2021); Approved Elevations (Drawing No 07/21, dated 19/01/2021); As Built Layout (Drawing No 07-21, dated 11-1-2021,

received by the Council on 25.02.2021); and As Built Elevations (Drawing No 07-21, dated 11-1-2021, received by the Council on 25.02.2021).

- 2) No construction work or demolition work shall be carried out or plant operated other than between the following hours: 0800 hours and 1800 hours on Monday to Friday, 0800 hours and 1300 hours on Saturday and at no time on Sundays, Bank or Public Holidays.
- 3) The flat roof shall not be used as a roof garden, balcony or other similar external amenity area until the safety rail, as shown on the approved plan 'As Built Elevations' (Drawing No 07-21, dated 11-1-2021, received by the Council on 25.02.2021), has been erected in accordance with details that have first been submitted to and approved in writing by the local planning authority. The approved safety rail shall thereafter be retained.

Preliminary Matters

2. The submitted application form lists the removal of condition 4 of permission 16/1267/FUL as the only condition to which the planning application relates. However, a number of other alterations to the property are also referred to in the application form and shown on the submitted proposed plans, and the appellant and Council agreed during determination of the application that the proposal also involved the proposed variation of condition 1 (approved plans) of the above permission. I have determined the appeal on this basis.
3. At the time of my site visit, I observed that several but not all of the proposed amendments to the appeal property had been carried out. I have dealt with the appeal on this basis.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of adjoining occupiers, with particular regard to overlooking of the new dwelling to the north from the eastern-most first-floor window on the northern elevation and of the occupiers of No 3 Porson Road from the proposed use of the flat roof as a roof garden.

Reasons

5. The two first-floor windows in the northern elevation of the appeal property face towards the new dwelling, which is currently under construction, to the north of the appeal site. Although the eastern-most of the two windows was required by condition 4 of planning permission 16/1267/FUL to be obscure glazed and have a restricted opening, the as-built window has clear glazing and provides views towards the new dwelling.
6. However, the views are limited to some extent by boundary treatment and existing soft landscaping, including some trees near the shared boundary. I observed on my site visit that the other of the two windows, which was not required to be obscured glazed or have a restricted opening, provides very similar views of the new dwelling as the eastern-most window currently does. Accordingly, and given that the two windows are relatively close together and serve the same room, it seems to me that obscure glazing the eastern-most window and restricting its opening would not significantly change the levels of overlooking of the new dwelling. Although the degree of separation between the two properties is relatively limited, this is also a residential area with

several dwellings located in reasonably close proximity. As such, a certain degree of mutual overlooking would not be unusual. Consequently, I am satisfied that the condition requiring the eastern-most window to be obscured glazed and have a restricted opening is neither necessary nor reasonable.

7. The proposed use of the flat roof as a roof garden would, given its position, increase the potential for overlooking of properties to the south of the site, particularly No 3 Porson Road. However, due to the significant degree of separation, overlooking from the proposed roof garden into habitable rooms of Nos 1, 3 and 5 Porson Road would be limited. Existing boundary treatment – which includes fencing and extensive soft landscaping – on the site's shared boundaries with those properties also provides significant screening between the site and those properties and their gardens. When the trees and other vegetation are in leaf, as was the case at the time of my site visit, the potential for overlooking of adjoining plots from the proposed roof garden would therefore be extremely limited.
8. I recognise that the potential for overlooking into adjoining plots, and particularly their rear gardens, would be greater when trees and other vegetation are not in leaf, as shown in the photographs submitted by a neighbour. However, it seems to me that the roof garden would be most likely to be used during the warmer months when the soft landscaping is more likely to be in leaf. In addition, the safety rail for the flat roof area, as shown on the submitted plans, would effectively provide a privacy screen along the front of the proposed roof garden. Subject to its erection in a suitable finish, the safety rail would therefore significantly reduce potential overlooking from the proposed roof garden throughout the year. Given the relatively built-up nature of the surrounding residential area, some mutual overlooking would, as set out above, also not be unusual. Accordingly, and subject to a condition securing full details of the proposed safety rail, which had not been erected at the time of my site visit, I am satisfied that use of the flat roof as a roof garden would not result in an unacceptable loss of privacy for adjoining occupiers.
9. For the above reasons, I conclude that the proposed development would not harm the living conditions of adjoining occupiers, with particular regard to overlooking of the new dwelling to the north from the eastern-most first-floor window on the northern elevation and of the occupiers of No 3 Porson Road from the proposed use of the flat roof as a roof garden. I therefore find that it accords with Policy 58 of the Cambridge Local Plan. Amongst other aspects, this sets out that alterations to existing buildings will be permitted where they do not unacceptably overlook neighbouring properties.

Other matters

10. The Council considers that the various alterations to the property are acceptable with regards to the character and appearance of the surrounding area. Having considered the development and visited the site, I concur and find that the appeal proposal would not harm the character and appearance of the surrounding area or the setting of the nearby Barrow Road Conservation Area.
11. A number of other matters have been raised by interested parties and I have taken them all into account. This includes safety considerations regarding the structure of the flat roof and contraventions of building regulations, errors in the submitted drawings, noise disturbance from construction works taking place outside of permitted hours, the appeal property not being built in

accordance with the approved plans, and other as-built alterations to the appeal property – including to fenestration and the design, mass and scale of the extensions – harming the living conditions of adjoining occupiers. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed.

Conclusion and Conditions

12. For the above reasons, the appeal is allowed.
13. The standard time limit condition is not necessary because the development has already commenced. Given that the main proposed alterations to the property have already been carried out, a condition relating to external materials is also – as indicated by the Council – not necessary. However, because the development has not been fully completed, a plans condition – listing the plans submitted to the Council in support of the application – is necessary in the interests of clarity and certainty. For the same reason and in the interests of adjoining occupiers' living conditions, a condition covering hours of construction is necessary.
14. In order to protect the living conditions of adjoining occupiers, a condition is also necessary to prevent use of the flat roof as an external amenity area until such time as the safety rail is constructed in accordance with details that have first been submitted to and approved in writing by the Council. Although it has been put to me that the appellant intends to incorporate wooden panels into the safety rail, this detail alone is insufficient to indicate that the safety rail would function effectively as a privacy screen. I have therefore retained the requirement for details of the safety rail to first be submitted to and approved by the Council.

T Gethin

INSPECTOR