



Appeal Decision

Site visit made on 17 May 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 June 2022

Appeal Ref: APP/H5390/C/21/3286006

28 Lilyville Road, London, SW6 5DW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Tim Metzgen against an enforcement notice issued by the Council of the London Borough of Hammersmith and Fulham.
 - The enforcement notice was issued on 16 September 2021.
 - The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 2019/01179/FUL granted on 1 July 2019.
 - The development to which the permission relates is: *"Excavation of the front and rear garden to form lightwells in connection with the enlargement of the existing basement; demolition and re-building of the ground floor back addition; installation of French doors with a Juliet balcony to replace the existing window to the rear elevation and new windows to replace the existing windows to the side of rear back addition at first floor level; installation of 12 no solar panels above the main flat roof at roof level, installation of railings atop the existing front boundary wall and erection of a bike shed within the front garden"*.
 - The conditions in question are no 5 which states: *"The roof of the single storey extension at ground floor level shall not be used as a roof terrace or other form of open amenity space. No alterations shall be carried out; nor planters or other chattels placed on the roofs in connection with its use as a roof terrace or other form of open amenity space. No railings or other means of enclosure shall be erected on the roofs, and no alterations shall be carried out to the rear elevation of the application property to form access onto these roofs"*; and no 13 which states: *"The development hereby permitted shall not be occupied until the replacement windows to the side elevation of the back addition at first floor level have been installed with obscure glazing to a height of 1.7 m above the internal floor level and are non-opening below the height of 1.7 m. The windows shall thereafter be retained as such"*.
 - The notice alleges that condition 5 has not been complied with in that the erection of potted plants on top of the roof of the existing ground floor extension facilitate its use as a roof terrace and that condition 13 has not been complied with by the installation of privacy film to the upper panes of the side elevation windows at first-floor level.
 - The requirements of the notice are: 1. Remove from the land the potted plants located on the roof of the single storey ground floor rear extension. 2. Install obscured glass to the top panes of both first-floor side elevation sash windows. 3. Remove all resultant materials from the land in connection [with] steps 1 and 2.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice upheld.

Preliminary Matter

2. As the relevant fee has not been paid, there is no deemed planning application arising from a ground (a) appeal. Therefore, planning merits considerations are not before me.

Ground (b) appeal

3. The ground of appeal is that the matters alleged in the notice have not occurred as a matter of fact. It is for the appellant to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.
4. The appeal property contains a mid-terrace dwelling. A single storey rear extension has recently been constructed as part of the works to alter and enlarge the dwelling the subject of the planning permission referenced in the banner heading.
5. Substantial trough planters containing artificial plants have been placed on either side of the flat roof of the rear extension. It is not physically possible to access the roof directly from the interior of the dwelling. The planters are not affixed to the roof. Nevertheless, the presence of the planters means that the roof is functioning as a form of open amenity space. My view in this respect is reinforced by the appellant's submissions that the planters were placed on the roof to provide colour, outlook and some screening. What the appellant described is a function closely akin to what would normally be associated with use as an amenity space. It is not clear what function the planters could have, other than being as part of an amenity space. The planters do not have to amount to development within s55(1) of the Act to be restricted by condition. The restriction on placing such features on the roof clearly relates to a planning objective within the scope of the permission. Accordingly, condition no 5 of the permission has been breached.
6. The works described in the permission have been substantially completed and occupied. The lower panes of the two replacement sliding sash windows installed in the first floor side elevation are obscure glazed. However, the upper panes have been fitted with clear glazing to which an opaque film has been applied on the inner sides. The use of opaque film is patently different to using obscure glass, as the glazing itself remains transparent. The film is not an integral part of the glazing, being an addition to the window not entirely unlike curtains or blinds. It is the transparency or otherwise of the glazing that is relevant for the purposes of determining whether the condition is satisfied, not whether it is possible to see through the windows. Parts of the upper panes of the windows in question are less than 1.7 m above the internal floor level. Consequently, condition no 13 of the permission has also been breached.
7. As the breaches of the conditions as alleged in the notice have in fact occurred, the ground (b) appeal fails.

Conclusion

8. For the reasons given above I consider that the appeal should not succeed.

Stephen Hawkins

INSPECTOR