



Appeal Decision

Site visit made on 31 May 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Appeal Ref: APP/E2340/C/22/3294640

125 Scotland Road, Nelson, Lancashire BB9 7XR

- The appeal is 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 Ms Sadaf Malik of Plan & Design Consultancy against an enforcement notice issued by Pendle Borough Council.
- The enforcement notice was issued on 8 February 2022.
- The breach of planning control as alleged in the notice is the development of a terrace on the roof of a single storey rear extension along with a timber structure with a polycarbonate roof erected above and attached to the rear elevation.
- The requirements of the notice are:
 - 1) Remove the roof that forms the floor of the roof terrace on the newly created rear extension.
 - 2) Remove the newly created white bay window extension.
 - 3) Remove the first floor doorway that accesses the roof terrace and reinstate to former condition.
 - 4) Remove all timber and plastic structures from the roof terrace including the timber structure with polycarbonate roof attached to the rear elevation.
 - 5) Remove the exterior white door and canopy on the ground floor of the rear extension and reinstate to former condition.
 - 6) Remove newly formed breeze block along the whole of the rear extensions that has created a balustrade for the terrace.
 - 7) Remove from the land all materials and debris associated with compliance of the above requirements.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld with a correction and variations.

Procedural Matter

1. I have noted that the appellant's grounds of appeal support a planning application and challenges the enforcement notice. Although there is an appeal on ground (a) that planning permission should be granted, there is no appeal against the refusal of a planning application itself. Consequently, this decision relates solely to the appeal against the enforcement notice issued by the Council.

The appeal on ground (c)

2. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The erection of a terrace on the roof of the single storey extension and timber structure with a polycarbonate roof erected above and attached to the rear elevation comprises operational development within the

meaning of s55 of the Act for which, s57 indicates, planning permission is required. The appellant contends that various elements of the development can be built under permitted development rights, although no specific details are given with reference to particular provisions under the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

3. The evidence before me is that the authorised use of the appeal property is as a sui generis public house and no permitted development rights or applications have been exercised or applications made to change the use to residential or, indeed, any other alternative use or uses. There are no permitted development rights for public houses in the GPDO and therefore the development that has been carried out requires permission which has not been granted. Therefore, the development constitutes a breach of planning control and the appeals on ground (c) fail.

The appeal on ground (a)

4. The ground of appeal is that planning permission should be granted. The main issues are the effect on the character and appearance of the area and on the living conditions of the occupants of neighbouring residential properties with particular reference to overlooking and loss of privacy.
5. The side and rear elevations of the appeal property face onto a public car park and can be seen from a number of public vantage points. Before the development the subject of the enforcement notice took place the building was a relatively simple stone built structure with a mono-pitched side extension with slate roof. It is also my understanding that windows and other openings were of a traditional vernacular design, similar to other buildings in the area.
6. The roof terrace along with its associated timber and polycarbonate structure does not reflect the materials used on the host building, nor its overall design and appearance as a traditionally built stone and slate structure. The timber and polycarbonate structure has little architectural merit and is at odds with the original building, jarring with its simple design and appearance. It has been poorly conceived and poorly constructed and is harmful to the character and appearance of the original building.
7. In addition, given its prominent location near to a public car park, Clayton Street and Back Clayton Street and its close proximity to the rear of residential properties along East Street, the development is a visually prominent and intrusive addition to the street scene, harmful to the surroundings from a visual perspective. Consequently, on this issue I conclude that the development is harmful to the character and appearance of the area and is in conflict with Policy ENV2 of the Local Plan for Pendle Core Strategy 2011-2030 Adopted 17 December 2015 (the CS) and the National Planning Policy Framework. Among other objectives, these seek to ensure that all new development delivers the highest possible standards of design, using materials appropriate to the setting.
8. The purpose of the development is to provide outdoor living space where people can spend time outdoors in the fresh air. The close physical relationship between the terrace and nearby residential properties on East Street (or Back Clayton Street) means that those using it will be able to see directly into the rear of those properties at close quarters. The rooms in question appear to be bedrooms and other habitable space such as living rooms. The level of overlooking is unacceptable to the extent that would be harmful to the privacy

of the occupants. The appellant has stated that he would be willing to erect a privacy screen or similar, but in this case that would not constitute 'part of the matters' to which the enforcement notice relates. As such, that would be beyond the scope of the appeal on grounds (a) and (f).

9. Therefore, on this issue I conclude that the development is harmful to the living conditions of the occupants of neighbouring residential properties with particular reference to overlooking and loss of privacy. As such it conflicts with the Framework which, among other objectives, seeks to ensure that development creates well-designed places.

The appeal on ground (f)

10. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of control which may be constituted by those matters. The purpose of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control s173(4)(a) or to remedy injury to amenity (s173(4)(b)).
11. The breach of planning control alleged in the enforcement notice is the development of a terrace on the roof of a single storey rear extension along with a timber structure with a polycarbonate roof erected above and attached to the rear elevation. Since the notice requires the removal of the roof that forms the floor of the roof terrace, removal of the white bay window extension, removal of the first floor doorway that accesses the roof terrace, removal of all timber and plastic structures from the roof terrace, removal of the exterior white door and canopy on the ground floor to the extension, removal of the newly formed breeze block along the whole of the rear extensions that has created a balustrade for the terrace and removal of all materials and debris from the land, it seems to me that the Council's purpose of serving the Notice is to remedy the breach.
12. However, some of the requirements are excessive in relation to the alleged breach of planning control set out in the Notice. Requirements (1) remove the roof that forms the floor of the roof terrace on the newly created rear extension and (7) remove from the Land all materials and debris associated with compliance with the requirements are required in order to remedy the breach of planning control. In addition, requirement (4) is also reasonable insofar as it relates to the timber and polycarbonate roof erected above and attached to the rear of 125 Scotland Road. The current wording of requirement (4) is excessive in that it requires the removal of an additional timber and plastic structure from the roof terrace which is currently on the side elevation of the property, rather than attached to the rear elevation. Furthermore, requirement (6) to remove the newly formed breeze block wall align the rear of the extension is reasonable with a correction that the word "extensions" in the second line in requirement (6) is amended to refer to the singular rear "extension". Subject to this correction, requirement (6) should remain.
13. Requirements (2), (3), (5) relate to specific items; namely a white bay window extension, first floor doorway and exterior door and canopy on the ground floor which do not form part of the alleged breaches of planning control and are excessive in order to remedy the breach of planning control as alleged in the Notice.
14. Therefore, to a limited extent the appeal on ground (f) succeeds.

Conclusion

15. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant permission on the deemed application.

Formal Decision

16. The enforcement notice is corrected by:

a) the deletion from section (6) of paragraph 5 of the word "extensions" and the substitution therefore of the word "extension";

and varied by:

b) the deletion of requirements (2), (3) and (5) of paragraph 5;

c) the deletion of requirement (4) of paragraph 5 and the substitution therefore of the words "(2) remove the timber structure with polycarbonate roof attached to the rear elevation";

d) renumbering requirement (6) of paragraph 5 of the Notice as (3); and

e) renumbering requirement (7) of paragraph 5 of the Notice as (4).

17. Subject to this correction and variations 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.

A A Phillips

INSPECTOR