



Appeal Decisions

Site visit made on 10 October 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2023

Appeal A: APP/Z1775/C/22/3302616

Appeal B: APP/Z1775/C/22/3302617

Land at 63D Festing Grove, Portsmouth PO4 9QB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs Letitia Jenkinson (Appeal A) and Mr David Jenkinson (Appeal B) against an enforcement notice issued by Portsmouth City Council.
 - The enforcement notice was issued on 7 June 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, (a) the erection of railings on the flat roof of the dwellinghouse, (b) use of the roof as a roof terrace.
 - The requirements of the notice are: a) Remove the unauthorised railings from the roof of the dwellinghouse, b) Cease the use of the flat roof as a roof terrace.
 - The period for compliance with the requirements is 6 months.
 - The appeals are 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

1. The appeals are allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

The ground (c) appeals

2. For the appeals to succeed on ground (c) the onus is on the appellants to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
3. The Council has alleged two separate breaches of planning control. One relating to operational development, namely the railings, and one relating to the use of the roof as a roof terrace. This ground of appeal is restricted to the allegation that the use of the roof as a roof terrace then amounts to a breach of planning control.
4. Given this relates to use, the provisions of, or comparators with, permitted development rights for operational development, are not relevant.
5. The existing dwelling has a flat roof. This forms part and parcel of the residential planning unit. The use of the roof as a roof terrace is then an incidental residential use within this planning unit. There is then very little evidence before me that it is a well-established planning position that the use

of a roof of a domestic property as a roof terrace requires planning permission. As a matter of fact and degree, a material change of use has thus not arisen.

6. Accordingly, the use of the roof as a roof terrace does not constitute development for the purposes of Section 55 of the Act.
7. The appeals on ground (c) therefore succeed to this extent.

The ground (a) appeal

Main Issues

8. The main issues are:
 - whether the development would preserve or enhance the character or appearance of the Conservation Area; and,
 - whether the development is harmful to the living conditions of neighbouring occupiers.

Reasons

9. The site relates to a three-storey flat roofed terraced dwelling situated on a corner plot. The surrounding area is characterised by a variety of residential dwellings. The site is located just outside the Craneswater and Eastern Parade Conservation Area (the CA).
10. The development before me relates to the erection of railings on the flat roof of the dwelling. This facilitates its safe use as a roof terrace, albeit as I have already found, it is not a material change of use.

Character and appearance

11. In determining this appeal, I have duties to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
12. The area dates from the late nineteenth century with an architectural predominance of Victorian and Edwardian buildings. The most important feature of the CA is that it is almost entirely residential in character, which thus defines its significance.
13. The dwelling forms part of a short row of terraces, which is outside of the CA. It is a more modern building than the majority of those around it. The railings, owing to their height and design, then soften the otherwise stark appearance of this flat roofed dwelling. They consequently do not jar with it. Given their elevated position, the railings are not prominent within the street-scene and do not result in an unsympathetic appearance that fails to relate appropriately to the host dwelling.
14. The railings are therefore appropriate in appearance and materials in relation to this particular context. The setting of the CA is not experienced differently as a consequence, and neither would the significance of the CA be affected.
15. I conclude the development would preserve the character and appearance of the Conservation Area and wider area. It therefore accords with Policy PCS23 of The Portsmouth Plan, January 2012 (the LP), which requires amongst other things that development should be appropriate in appearance and materials in relation to the particular context. For the same reasons the development

accords with the conserving and enhancing the historic environment objectives of the National Planning Policy Framework.

Living conditions

16. The roof terrace provides an area akin to a small garden space. During my site visit I could see that it was possible to glimpse into some neighbouring gardens. However, views were generally distanced and oblique and only possible when standing by the railings and intentionally observing downwards. There was also mutual overlooking already experienced by the majority of neighbouring properties.
17. The views were then akin to standing in various rooms in the dwelling and intentionally observing out of the windows and down, as I observed during my site visit. I am therefore not persuaded that harmful overlooking has been introduced.
18. I appreciate because of the elevation of the roof terrace, there is the potential for the prospect of noise transmission. However, the size of the roof terrace does not automatically equate to a large number of people frequently using it. Moreover, this is a developed residential area, and there is very little evidence that it is somehow a particularly quiet area because of the care home or why that translates into a tangible harm arising from the incidental residential use of the roof terrace. I therefore do not accept that there is potential for significant noise and disturbance.
19. I conclude the development is not harmful to the living conditions of neighbouring occupiers and therefore accords with Policy PCS23 of the LP. This policy, amongst other things, requires development to provide a good standard of living environment for neighbouring and local occupiers.

Conclusion

20. For the reasons given above I conclude that the appeal should be allowed. No planning conditions have been suggested by the Council, and I do not consider it necessary to impose any in light of my above findings and that the development has been substantially completed.

Overall Conclusion

21. For the reasons given above I conclude that the appeals should succeed. The enforcement notice will be corrected, quashed, and planning permission granted. The appeals on ground (f) therefore do not need to be considered.

Formal Decisions

Appeals A and B

22. It is directed that the enforcement notice be corrected by:

- deletion of sections 3. b) and 5. b) in their entirety.

23. Subject to this correction, the appeals 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 railings on the flat roof of the dwellinghouse on land at 63D Festing Grove, Portsmouth PO4 9QB referred to in the notice.

Paul T Hocking

INSPECTOR