



Appeal Decision

Site visit made on 15 November 2023

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd November 2023

Appeal Ref: APP/Z2260/C/22/3294744

16A Wyndham Avenue, Margate CT9 2PR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Moira Barnett against an enforcement notice issued by Thanet District Council.
- The notice was issued on 9 February 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a rear roof terrace with fire escape and installation of UPVC door.
- The requirements of the notice are to remove the unauthorised roof terrace and fire escape. Remove the unauthorised UPVC door and reinstate the casement window and make good.
- The period for compliance with the requirement are three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. 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.

Preliminary Matters

2. The reasons for issuing the notice refer to the effect of the development on the residential amenities of the occupiers of No. 14 Wyndham Avenue in terms of overlooking and loss of privacy. The Council has advised however that its concerns relate to the overbearing and enclosing impact of the development. I have dealt with the appeal on the basis of the reasons for issuing the notice.

The appeal on ground (a) and the deemed planning application

3. The main issue is the effect of the development on the living conditions of the occupiers of 14 Wyndham Avenue.
4. The appeal site was previously a semi-detached house that has been divided into two flats, with a ground floor flat at No. 16, while No. 16A is formed from the first and second floors. No. 14 lies adjacent to the site and is in use as a House in Multiple Occupation (HMO).
5. The roof terrace is attached to the rear part of the side of the house and is part of a fire escape with a staircase leading to the rear garden. While its purpose is to provide a secondary staircase, an emergency fire escape route, and convenient direct access to the garden, the roof terrace is wide enough to allow it to be used as an external amenity space.

6. The flank wall of No. 14 contains several windows, some of which are obscure glazed. Of the ones that have clear glass, it is evident that the roof terrace provides a line of sight into habitable rooms. Due to the proximity of the roof terrace and its elevated position in relation to the windows to habitable rooms at No. 14, the development has worsened the living conditions of occupiers of the HMO as a result of overlooking, causing a loss of privacy.
7. The existing windows in the rear and side elevations of No.16A also allow a degree of mutual overlooking. I also acknowledge that the door in the rear elevation leading to the roof terrace replaced a larger window. Nonetheless, the roof terrace has created an external space that could be used for prolonged periods of time. It is closer to the windows in No. 14 than the existing windows and allows a greater degree of overlooking as well as a perception of being overlooked.
8. The potential installation of a privacy screen to the roof terrace has been suggested, which could improve the privacy for both the appellant and the occupiers of No. 14. However, as the two properties are relatively close to one another, the privacy screen is likely to be in close proximity to windows serving habitable rooms at No. 14. Even if the screen were to be made from a lightweight material allowing the transmission of light, it could still restrict outlook from the neighbouring windows, resulting in a sense of enclosure. I do not therefore consider that the installation of a privacy screen is a matter that could be dealt with through a condition as it may cause other planning harms.
9. The development provides a convenient and safe direct access to the garden which benefits the appellant's family. It also provides a means of emergency access for the flat. However, I have seen no evidence that the development is essential to meet fire safety regulations. The benefits of being able to get to know the neighbours and the convenience of the access to the garden are not matters that override the need to ensure that the living conditions of the occupiers of No. 14 are not adversely affected.
10. I therefore conclude that the development is harmful to the living conditions of the occupiers of No. 14 Wyndham Avenue. It is therefore in conflict with Policy QD02 of the Thanet Local Plan 2020, insofar as it seeks to ensure that development is compatible with neighbouring buildings. It is also in conflict with the National Planning Policy Framework.

Other Matters

11. The site is in Northdown Road Conservation Area (CA). I have a duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character and appearance of the CA. The development is at the side/rear of the property and is not readily apparent from the street scene or public viewpoints. The Council has not raised concerns with its visual effects, and I have no reason to disagree. I therefore conclude that the development preserves the character and appearance of the CA.

Conclusion

12. The development is therefore in conflict with the development plan as a whole and there are no material considerations that indicate that planning permission

should be granted. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

N Thomas

INSPECTOR