



## Appeal Decisions

Site visit made on 11 December 2023

**by H Davies MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 04 January 2024**

**Appeal A Ref: APP/Y3940/C/23/3322371**

**Appeal B Ref: APP/Y3940/C/23/3322377**

**23 Mascroft Road, Trowbridge, Wiltshire BA14 6GD**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
- Appeal A is made by Mrs Kay Bodimeade and Appeal B is made by Mr Bodimeade against an enforcement notice issued by Wiltshire Council.
- The notice was issued on 19 April 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the removal of a first-floor window and installation of French doors and a Juliet balcony as shown in the photograph attached to the notice for identification purposes.
- The requirements of the notice are:
  - a) At first floor level remove the unauthorised balustrade and remove the French doors. Restore the opening to its former depth and size by stopping up the wall and finishing to match the surrounding area of wall and reinstating a window similar to that which existed prior to the unauthorised development taking place.
  - b) Remove from the Land all materials and debris resulting from compliance with 5a) above.
- The period for compliance with the requirements is 6 months.
- Appeal A and B are proceeding on the ground set out in section 174(2)(a) of the Act. Since the appeals have been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary decision: The appeals are allowed, the enforcement notice is corrected and then quashed and planning permission is granted, in the terms set out in the formal decision below.**

### The notice

1. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council. The description of the breach, when combined with the photograph attached to the notice for identification purposes, is sufficiently clear to specify the allegation. However, the notice would be more precise if it specified that the removed window was in the rear elevation, and that the doors and balcony installed were in place of the window. I am satisfied that I can correct the notice in this way without causing injustice, as set out in the formal decision.

### The appeals on ground (a) and the deemed planning application

2. The appeals on ground (a) are that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed planning application are derived from the allegation, as corrected. Hence, the development for

which planning permission is sought is the removal of a first-floor window in the rear elevation and installation of French doors and a Juliet balcony in place of the window.

### *Main Issues*

3. Having regard to the reasons for issuing the notice, the main issue in Appeal A and Appeal B, is the effect of the development on the living conditions of the occupants of neighbouring dwellings, with regard to privacy.

### *Reasons*

4. 23 Mascroft Road is located within a modern residential development. It is located at first floor level, above garages, so the Council consider it to be a flat, which does not benefit from the permitted development rights of a dwellinghouse.
5. The doors which have been installed are no wider than the original window, and do not extend any further upwards, but do extend further down. As would be expected from its description as a 'Juliet' balcony, the balcony does not have a platform. A balustrade of open metal bars spans the doors and is attached to and projects a small amount from the rear elevation. The doors open inwards at the centre. I have not been provided with opening details of the window that has been removed. Notwithstanding this, during my site visit I observed that surrounding dwellings, which form part of the same development, have windows at first floor in rear elevations, which are hung at both sides and are fully openable, outwards at the centre. I have no reason to conclude that the window which has been removed at the appeal site was any different. As such, the location and orientation of the doors, in relation to adjoining properties, and their ability to be opened at the centre, is not significantly different to the original window which they replaced.
6. 6 Bisham Lane (No 6) is located directly to the rear of the appeal site, with its small garden partially offset. No 6 has no windows at first floor in the rear elevation but the appeal development provides relatively direct views into its garden. 4 Rodsley Walk (No 4) is to one side of the appeal site. Due to the layout, the appeal development does not provide for views of the rear elevation of No 4, or the area of garden next to the house which is where greatest privacy is generally to be expected. An area at the side of the garden of No 4 is visible from the development, but only at an obtuse angle. The appeal development also allows for views towards the garden at 8 Bisham Lane, but again at an obtuse angle and not the area nearest the house.
7. Due to the layout and close relationship of the surrounding dwellings and gardens there is inevitably overlooking into neighbouring gardens, and this will always have been the case. In addition to the original window at the appeal site overlooking the gardens of No 4 and No 6, the first floor rear windows of No 4 overlook the garden of No 6, as do the first floor front windows of a dwelling on the other side of Rodsley Walk. The matter for consideration under these appeals, is not whether the doors and Juliet balcony allow overlooking to take place, but rather, whether they have increased the level of overlooking and, if so, whether any increase has an unacceptable impact on neighbouring privacy.

8. I acknowledge that the door extends down to the internal floor, so views are possible from a lower level than would have been the case for the window. The result is that someone sitting low down or kneeling at the door, could look into neighbouring gardens, which from the window would only have been possible from a standing position or sitting on a higher chair. I also acknowledge that the doors open inwards meaning that when open, overlooking in any direction is not through glass. The window, even when open, would have meant that overlooking to each side would have been through glass. In theory, it would be possible to hang out of the doors, over the balcony, and overlook a small additional area of No 4. I consider this to be unlikely, particularly for any period of time, and would have been possible, though harder, from the window.
9. While the above elements do amount to a change in the on-site situation, the replacement of the window with doors and a Juliet balcony has not resulted in an increase in the extent of the neighbouring gardens which can be overlooked. Nor has it resulted in any significant increase in the type or likely frequency of overlooking. Therefore, adequate levels of privacy at neighbouring properties has been maintained.
10. I conclude that the development does not have an unacceptable impact on the living conditions of the occupants of neighbouring dwellings, with regard to privacy. Consequently, it is in accordance with element vii of Core Policy 57 of the Wiltshire Core Strategy (January 2015), which seeks to ensure that development achieves appropriate levels of amenity and privacy.

#### *Other matters*

11. I have been presented with no substantive information which would lead me to conclude that the change from a window to doors has resulted in any significant increase in noise, as experienced by neighbours. Property values are not a matter for consideration under these appeals.
12. I have found the development as built to be acceptable. Consequently, it is not necessary for me to consider whether the addition of screening would make the development acceptable.

#### *Conclusion on ground (a) and the deemed planning application*

13. The appeals on ground (a) succeed. I shall quash the notice, with correction, as set out in the formal decision, and planning permission is granted, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

#### **Formal Decision**

14. It is directed that the enforcement notice is corrected as follows:
  - In section 3, which concerns the matters which appear to constitute the breach of planning control, in part (i), after the words "first-floor window", insert the words "in the rear elevation", and, after the word "balcony", insert the words "in place of the window"; and
  - In section 5, which concerns what you are required to do, in part a), after the words "At first-floor level", add the words "of the rear elevation".
15. Subject to these corrections, 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 removal of a first-floor window in the rear elevation and installation of French doors and a Juliet balcony in place of the window, at 23 Mascroft Road, Trowbridge, Wiltshire BA14 6GD.

*H Davies*

INSPECTOR