



Appeal Decision

Site visit made on 5 December 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 Jan 2024

Appeal Ref: APP/Z0116/C/23/3327961

78 Shirehampton Road, Bristol BS9 2DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Maple Construction & Design Ltd against an enforcement notice issued by Bristol City Council.
 - The notice was issued on 2 August 2023.
 - The breach of planning control as alleged in the notice is without the grant of planning permission, the erection of a structural enclosure on the rear flat roof element.
 - The requirements of the notice are to demolish and remove from the property all material comprising the structural enclosure on the rear flat roof element of the building.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) 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.
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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 Matter

2. The revised National Planning Policy Framework (the Framework) was published on 19 December 2023. I have taken the Framework into account in determining the deemed planning application arising from the appeal made on ground (a).

Ground (b) and (c) appeals

3. The ground (b) appeal is that the matter alleged in the enforcement notice has not occurred. Although the appeal was initially made under this heading, points more appropriate to ground (c)- 'that those matters (if they occurred) do not constitute a breach of planning control'-were included in the appellant's written submissions. Consequently, I intend to consider the appeal as if it had been made on ground (c) too. There would be no prejudice, as the Council has also been given an opportunity to make representations in this respect. On both grounds, the onus is on the appellant to show why their appeal should succeed, the relevant test of the evidence being on the balance of probability.
4. The appeal site contains a three storey, mid-terrace building. A timber frame structure has been erected on the flat roof of a single storey extension at the rear of the building. The structure encloses much of the flat roof. Therefore, the matter alleged has in fact occurred and the ground (b) appeal fails.
5. Turning to the ground (c) appeal. The structure is formed of vertical timber posts in excess of 1m high, arranged in rows parallel to both the side

elevations and the rear elevation of the extension. The posts are fixed to a horizontal timber frame at the base. A timber railing is attached between the posts, towards the top. The structure rests on the extension roof mostly by means of its own weight, but the frame is also secured to one side of the extension by fixings. When applying the accepted tests of size, permanence and physical attachment, as a matter of fact and degree the structure falls within the definition of a building in s336 (1) of the Act. Removal of the railing and/or the fixings connecting the structure to the extension are unlikely to make any significant difference in this regard. Erection of the structure therefore amounts to a building operation, falling within the definition of development set out in s55 (1) of the Act. Planning permission is required to carry out any development of land, having regard to s57 (1) of the Act.

6. No planning permission has been granted to erect the structure. The definition of a breach of planning control at s171A (1) of the Act includes carrying out development without the required planning permission. Therefore, the ground (c) appeal also fails.

Ground (a) appeal

Main Issues

7. The main issues in this ground of appeal are:

- The effect of the structure on the living conditions of the existing and future occupiers of neighbouring property, having regard to outlook and privacy.
- The effect on the character and appearance of the building and the surrounding area.

Reasons

Living conditions

8. The site is in commercial use on the ground floor, the upper floors being in use as residential accommodation. Properties on either side are in a similar mix of commercial and residential uses, with private outdoor amenity spaces as well as vehicle parking areas at the rear.
9. Given the slender profile of the upright and horizontal components, together with the spacing between them, the structure is of modest scale and does not add significantly to the extent of built form apparent from neighbouring property. As a result, although the structure projects above the extension roofline in proximity to the side boundaries, it does not significantly erode the sense of space enjoyed by the neighbouring occupiers at the rear of their property, nor has it provided them with an appreciably more enclosed or restrictive outlook.
10. Nevertheless, erecting the structure has meant that much of the extension roof is enclosed in a manner generally associated with use as a raised outdoor amenity space. The presence of the structure on the extension roof is highly likely to mean that neighbouring occupiers have experienced a significant increase in the sense of being overlooked at close quarters, even if none occurs in practice. Moreover, if access were to be made possible by removing the Juliet balcony on the rear elevation of the building, there would be direct close-up views available from the extension roof towards windows in the rear elevations of neighbouring property as well as over neighbours' private outdoor amenity space. Consequently, the structure significantly erodes the standard of privacy previously enjoyed by neighbouring occupiers at the rear of their properties. Although an interested party did not object to the structure, there is no assurance that neighbours would continue to hold similar views in future.

11. Therefore, the structure causes unacceptable harm to the living conditions of the existing and future occupiers of neighbouring property. This conflicts with criterion in Policy BCS21 of the Bristol Development Framework: Core Strategy (CS), which requires the amenity of existing development to be safeguarded and for high-quality environments for future occupiers to be created. There is also conflict with criterion in Policy DM27 of the Bristol Local Plan: Site Allocations and Development Management Policies (LP), which requires development to achieve appropriate levels of outlook and privacy. Furthermore, the structure conflicts with criterion in LP Policy DM30, which requires development to safeguard the amenity of neighbouring occupiers.

Character and appearance

12. The terrace in which the building sits incorporates design mannerisms and external materials normally associated with the 'Mock Tudor' architectural style. The prevalent architectural features, including half-timbered front and side elevations and steeply sloped front gables, contribute significantly to the distinctive appearance of the terrace, which in turn serves to reinforce the pleasing suburban visual qualities of the surroundings.
13. Given its modest scale in the context of the more substantial proportions of the building and the terrace, the structure appears as an insubstantial, subservient built feature. In addition, being located at the rear of the building, the structure is viewed in the context of the plainer, more functional elevations of the terrace and is not at odds with any of the key architectural features. Consequently, the structure is not seen as an alien feature in relation to the building, the rest of the terrace or to its wider setting.
14. As there is no unacceptable harm to the character and appearance of the building or that of the surrounding area the structure does not conflict with criterion in CS Policy BCS21, which requires development to contribute positively to an area's character and identity. For a similar reason, there is no conflict with LP Policy DM26. Furthermore, there is no conflict with criterion in LP Policy DM30, which requires development to respect the materials, details, overall design and character of the host building and the street scene. However, my conclusions on this matter do not outweigh those reached on the other main issue in this ground of appeal set out above.

Other matters

15. The deemed planning application arising from the ground (a) appeal is solely concerned with the structure. Other additions to the extension roof proposed, i.e., freestanding box planters etc, are not part of the development in the notice and so cannot be included in my deliberations. Although I fully appreciate the appellant's desire to safeguard their privacy, this matter carries limited weight when assessed against the harm identified above.

Conclusion

16. The unacceptable harm to the living conditions of existing and future neighbouring occupiers caused by the structure is in conflict with the above Development Plan policies and the Development Plan taken as a whole. There are no material considerations which outweigh the conflict with the Development Plan. Therefore, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177 (5) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR