

APPENDIX

Committee: PLANNING

Date Of Meeting: 12th January 2011

Title of Report: TOWN AND COUNTRY PLANNING ACT 1990 APPEALS

Report of: A Wallis Planning and Economic Regeneration Director
Case Officer: Telephone 0151 934 4616

This report contains	Yes	No
Confidential information		✓
Exempt information by virtue of paragraph(s) of Part 1 of Schedule 12A to the Local Government Act 1972		✓
Is the decision on this report DELEGATED?	✓	

Purpose of Report:

To advise Members of the current situation with regard to appeals. Attached is a list of new appeals, enforcement appeals, developments on existing appeals and copies of appeal decisions received from the Planning Inspectorate.

Recommendation(s):

That the contents of this report be noted.

Corporate Objective Monitoring

Corporate Objective	Impact		
	Positiv e	Neutra l	Negati ve
1 Creating A Learning Community		✓	
2 Creating Safe Communities		✓	
3 Jobs & Prosperity		✓	
4 Improving Health & Well Being		✓	
5 Environmental Sustainability		✓	
6 Creating Inclusive Communities		✓	
7 Improving The Quality Of Council Services & Strengthening Local Democracy		✓	

Financial Implications

None.

Departments consulted in the preparation of this Report

None.

List of Background Papers relied upon in the preparation of this report

Correspondence received from the Planning Inspectorate.

Appeals Received and Decisions Made

From 02 December 2010 to 30 December 2010

Planning Appeal Decisions

2 Johnson Street, Southport

S/2010/0357 - APP/M4320/C/10/ 2133513

Retrospective Application for the installation of a timber decking area and railings to a maximum height of 1 metre at first floor level to the rear of the premises (balcony)

Appeal Type: Written
Lodged Date: 20/08/2010
Decision: Allowed
Decision Date: 08/12/2010

29 Warren Road, Blundellsands

S/2010/0777 - 2135811

Erection of a 3 storey extension to the side and single storey extensions to side and rear, creation of a first floor roof terrace. Alterations to elevations and new vehicular access

Appeal Type: Written
Lodged Date: 25/10/2010
Decision: Dismissed
Decision Date: 07/12/2010

Enforcement Appeals Decisions

2 Johnson Street, Southport

2133513 - CLB/ENF0379

Domestic - balcony

Appeal Type: Written
Lodged Date: 20/08/2010
Decision: QUASHED
Decision Date: 08/12/2010

140A NORWOOD ROAD, SOUTHPORT

2136917 - CLB/ENF 0388

Domestic - fences/sheds/extensions etc

Appeal Type: Written
Lodged Date: 04/10/2010
Decision: UPHELD
Decision Date: 23/12/2010

New Enforcement Appeals

4 Langdale Street, Bootle

2141415 - coms/2010/00683 clb/enf0392

Fences/Walls/Outbuildings etc.

Appeal Type: Written
Lodged Date: 03/12/2010
Decision: PENDING
Decision Date: 03/12/2010



Appeal Decision

Site visit made on 9 November 2010

by B.S.Rogers BA(Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 December 2010

Appeal Ref: APP/M4320/C/10/2133513

2 Johnson Street, Southport, PR9 0BQ

- 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 Mr Arthur Foster against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The Council's reference is S/2010/0357.
- The notice was issued on 1 July 2010.
- The breach of planning control as alleged in the notice is installation of a timber decking area and railings to a maximum height of 1 metre (balcony) at first floor level to rear of the premises.
- The requirements of the notice are (a) cease using the decking area and balcony, (b) remove the timer (sic) decking area and (c) remove the railings marked A-B on the attached plan B.
- The period for compliance with the requirements is 2 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 the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Summary of Decision: The appeal is allowed

The enforcement notice

1. The reference in the requirements of the notice to "timer" decking is clearly a typographical error and I can correct this to "timber" with no injustice to the parties.

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

2. The appeal property is a semi-detached house located in a closely built up part of the Promenade Conservation Area. The Council accepts that the metal railings which have been erected round the edge of the flat roof of the rear extension have such a limited visual impact that they preserve the character and appearance of the area. Therefore, the main issue in this case is the impact of the development on the living conditions of neighbouring residents.
3. The breach of planning control alleged in the notice is simply the operational development of installing timber decking and railings. The removal of those structures is therefore sufficient to remedy the alleged breach of planning control and the requirement to cease using the balcony clearly goes beyond that purpose. In any event the type of use is not specified and I am informed that there is no planning condition on the 2006 permission for the single storey extension that would limit or restrict the use of the flat roof in any way. Therefore, it appears to me that the use of the roof for purposes incidental to

the enjoyment of the dwelling house would not constitute development, by virtue of Section 55(2)(d) of the 1990 Act.

4. It is of note in this case that there is an existing doorway providing convenient access from the rear, first floor bedroom to the flat roof in question. This doorway is unchallenged by the enforcement notice and therefore I must assume the Council considers it to be lawful. Accordingly, there appears to be little impediment to the use of the roof for outdoor amenity purposes. The railings clearly make the use of the roof safer and more suitable for children, although the potted plants presently placed around the edge of the roof, and which do not entail development, also give the roof a good degree of enclosure. The timber decking gives a durable surface to the roof but there is no reason why a suitably durable roof covering could not be used, even supposing the present roof covering is not, itself, sufficiently durable. Therefore, having regard to the ease with which the roof could lawfully be used for outdoor amenity purposes, it appears to me that the additional use attributable to the railings and timber decking is only modest.
5. I saw that it is possible to overlook the front elevation of no.4, Johnson Street, which is set back some distance to the rear of the appeal premises, and the side elevation of no.74 Bath Street North, which is similarly aligned. However, the front elevation of no.4 and its front garden are in full view of Johnson Street. The only window in no.74 on the side elevation is obscure glazed and its garden is in full view of the offshoot of Bath Street North on which it stands. The additional overlooking attributable to the railings and decking would not, in my view, result in an unacceptable loss of privacy to the neighbouring residents and the development would therefore not conflict with Policy MD1 of the Council's adopted Unitary Development Plan and the associated Supplementary Planning Guidance on House Extensions. The appeal succeeds on ground (a) and I shall grant planning permission on the application for planning permission deemed to have been made under section 177(5) of the Act as amended.
6. I have considered whether a condition requiring the provision of additional screening would be appropriate but agree with the Council that a solid screen would harm the appearance of the area and would appear obtrusive to the neighbouring residents.

Decision

7. I direct that the enforcement notice be corrected by amending "timer" in section 5 B) of the notice to "timber" and varied by deleting section 5 A) of the notice. Subject to this correction and variation, I allow the appeal and direct that the enforcement notice be quashed. I grant planning permission deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely installation of a timber decking area and railings to a maximum height of 1 metre (balcony) at first floor level to the rear of 2 Johnson Street, Southport, PR9 0BQ .

B.S. Rogers

Inspector



Appeal Decision

Site visit made on 25 November 2010

by **Philip J A Crookes BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
7 December 2010

Appeal Ref: APP/M4320/D/10/2135811 29 Warren Road, Crosby L23 6UA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs S Singh against the decision of Sefton Metropolitan Borough Council.
- The application Ref S/2010/0777, dated 24 April 2010, was refused by notice dated 22 July 2010.
- The development proposed is erection of a three storey extension to the side and single storey extensions to side and rear, creation of a first floor roof terrace. Alterations to elevation and new vehicle access.

Decision

1. The appeal is dismissed.

Clarification

2. I have amended the description of the appeal development from that referred to on the application form to that set out by the Council in the decision notice and by the appellant in the appeal documentation. In my view this more accurately describes the development.

Main issues

3. The main issues are:
 - 1) The effect of the proposed development on the character and appearance of the Blundellsands Conservation Area; and
 - 2) The effect on the living conditions of the occupiers of 27 Warren Road by reason of overlooking and loss of privacy.

Reasons

4. The appeal property is a substantial detached dwelling in a large plot typical of many that characterise the Blundellsands Conservation Area. Although there is a variety in house forms and design, a common feature is that the spacious plots allow for a significant separation between properties. Although some of the gaps have been reduced by small single storey additions to the side these features are not dominant in the street scene so that the overall character of a pleasant spacious and mature residential area remains. The quality of buildings and the impression of spaciousness is carried through to the St Josephs Church and the United Reform Church both of which are Grade II listed

buildings situated either side of Warren Road just to the north of the appeal property. These characteristics are particularly identified in the Conservation Area Appraisal.

5. The proposed side extension, whilst not exceeding the height of the main roof would disrupt the carefully composed balance of the front and rear elevations because of its width and overall bulk. In so doing, it would significantly extend the width of the main three storey element of the dwelling (including accommodation in the roof space) bringing the main bulk of the property closer to No. 27. The gap between the two properties would thus be reduced to the extent that the spacious surroundings of the dwelling would be compromised. This would be harmful to the character and appearance of the conservation area.
6. In addition, the scale and form of the windows to the front and rear elevations fail to respect the proportions of the existing openings and would therefore be at odds with an important characteristic of the dwelling. Similarly the introduction of a plethora of roof lights in both the existing and proposed front roof forms creates a cluttered roof slope that takes little design reference from the simpler roof forms more characteristic of this and other original design forms within the conservation area. However, I am satisfied that the original roof tiles should not prove difficult to match and accordingly the imposition of a suitable planning condition would secure this.
7. The submitted plans do not provide a full specification of the proposed uPVC windows although I note the appellant's comment that frames in this material can now be obtained in various profiles, including one that would match that of the original pitch pine windows installed in the original house. Whilst this may be so, uPVC windows are generally characterised by a shiny, untextured finish and mitred joints. Glazing bars are often sandwiched between the glass of the double glazing unit, producing an altogether different pattern of reflection off the glass, compared to a traditionally constructed wooded frame. These effects are often visible over some distance. It is also not clear from the plans where such windows would replace the attractive Art Nouveau style leaded glass windows present in the front elevation of the original house but even if this is not the case I consider that the use of uPVC frames in the proposed extension would detract from the character and appearance of the building. The loss of the arts and crafts style front porch and its replacement by a wider and more standard porch with railings above would also detract as would the removal of the attractive and prominent chimney stack which is a feature common to many properties in this part of the Conservation Area.
8. I stress that I must consider the proposal on the basis of the plan submitted. I have noted that the appellant has stated that he is prepared to delete the roof lights but that is not something I can take into account at this stage. His assertion that there is no proposal to remove the chimney does not correspond to the information provided by the plans I am considering.
9. My conclusion on this first issue is that the proposal would detract from the character and appearance of the building and would provide a size and bulk of building form that would not sit well in the conservation area and would neither preserve nor enhance its character or appearance. In this respect, the

proposals are contrary to Policies CS3, DQ1, DQ3, H10, HC1, HC4 and MD1 of the Unitary Development Plan (UDP).

10. Turning to the second issue, the proposed rear roof terrace would provide an extensive sitting and relaxing area at first floor level coming to within 0.45m of the common boundary. This would provide an outside vantage point with views towards and over the rear garden of No. 27 Warren Road. Notwithstanding that the neighbouring property has a large rear garden, I consider that use of the proposed outside terrace would lead to a substantial degree of privacy invasion. This would be unacceptable and in breach of Policies MD1 and H10 of the UDP which require the amenity of neighbours to be safeguarded from unacceptable harm.
11. I see no reason on highway grounds to oppose the creation of a new access and consider that this can be accomplished without prejudicing the health of the roadside tree. This is a relatively young specimen and, with cautious excavation within and near its root area, could be adequately safeguarded. The latter could be achieved through a planning condition should I have been minded to allow the appeal. However, having considered all other matters raised I intend to dismiss the appeal.

Philip Crookes

INSPECTOR



Appeal Decision

Site visit made on 14 December 2010

by **J Chance** BSc DipTP MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
23 December 2010

Appeal Ref: APP/M4320/C/10/2136917

Land and buildings at 140a Norwood Road, Southport PR8 6EH

- 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 Crown Rentals Limited against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The Council's reference is CLB/ENF0388.
- The notice was issued on 18 August 2010.
- The breach of planning control as alleged in the notice is without planning permission, within the last four years, erection of additional security fencing (razor wire) to the existing boundary walls and fences.
- The requirements of the notice are:
 - a. Remove the additional security fencing (razor wire) from Elevation A points a-b as marked on the attached plan 'B'.
 - b. Remove the additional security fencing (razor wire) from Elevation B points c-d as marked on the attached plan 'B'.
 - c. Remove the additional security fencing (razor wire) from Elevation C points d-e as marked on the attached plan 'B'.
 - d. Remove the additional security fencing (razor wire) from Elevation D points e-f as marked on the attached plan 'B'.
 - e. Remove the additional security fencing (razor wire) from Elevation E points g-h as marked on the attached plan 'B'.
 - f. Remove the additional security fencing (razor wire) from Elevation F points h-i as marked on the attached plan 'B'.
 - g. Remove the additional security fencing (razor wire) from Elevation G points i-j as marked on the attached plan 'B'.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Decision

1. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

2. I saw on my visit that a section of the security fencing on Elevation C appeared to be outside the site boundary shown on the plans accompanying the enforcement notice. Moreover, while neither of the 2 plans attached to the enforcement notice appear to include the fencing in the area concerned, the 2 plans differ from each other regarding that particular part of the site. I do not

have full information regarding the status, ownership and precise extent of the land involved. Furthermore, any extension of the site, the subject of the enforcement notice, to include the land concerned could cause injustice to certain parties and persons. I shall therefore determine this appeal on the basis of the site as identified on plan 'B' attached to the notice.

The appeal on ground (a)

3. The main issues are the effect on the character and appearance of the area and the effect on the living conditions of the occupiers of neighbouring dwellings, paying particular attention to visual impact.
4. Much of the site boundary has coiled razor wire along the top of various existing boundary treatments or roughly at or a little above eaves level of buildings which adjoin the site boundary. In certain sections, the razor wire is positioned on top of mesh fencing of different types, including steel mesh panels, or above close boarded wooden fence panels. In other parts the razor wire is above walls of different materials and different external treatments, some of which belong to adjacent buildings abutting the site boundary, or are part of different types of buildings or former buildings within the site. Along certain parts of the boundary there is tall vegetation of different types growing adjacent to and sometimes through the coiled razor wire.
5. As the different boundary treatments making up the appeal site boundary vary greatly in their height, the top of the coiled razor wire varies from about 2.5m to well over 4m in height. While the majority of the razor wire has been installed as a single coil, albeit that it is fairly loose in one or two places, there are sections of 2 and 3 coils. The site access is from Norwood Road, with entry via electronically controlled metal gates, with razor wire above. There is a further set of internal metal gates to the far part of the yard beyond the main reception building. I saw that there are CCTV cameras within both parts of the yard.
6. The appellant contends that more than half of the razor wire fencing borders other commercial properties and cannot be seen from neighbouring residential properties or a public highway. However, substantial lengths of the additional security fencing border the rear garden areas of a significant number of residential properties. Some of those gardens are only short and not only will the razor wire be seen clearly from the garden areas but it will also be visible from the windows on the rear elevations of those dwellings. From those vantage points, the additional security fencing will, because of its height, materials and form, have a utilitarian and industrial appearance that will look out of place in the context of the residential properties directly bordering the site and inappropriate to the general area with its high proportion of residential uses.
7. Moreover, even if about half of the length of the razor wire, the subject of the enforcement notice, has been installed along boundaries with adjacent commercial buildings, this is clearly not a solely commercial area and, even if it were, it would be unlikely that razor wire would be visually acceptable even in a location that was only visible in private views. Moreover, I am not convinced that some of the sections of security fencing along boundaries with adjacent commercial buildings will not be visible from neighbouring residential

properties, particularly in the winter. In addition, those particular sections of fencing are clearly evident to people visiting the site in connection with the business. In such views, the sheer height of the fencing, together with its stark, harsh form will be seen as detracting from the overall character and appearance of the commercial buildings concerned and will appear detrimental to the visual amenity of the overall area, with its particular mix of commercial businesses surrounded by residential uses. Consequently, I consider that even if the razor wire along elevations D, E, F and G were to be retained, as the appellant suggests, this would still harm the character and appearance of the area.

8. I find that the additional security fencing attacked by the notice causes significant harm to the character and appearance of the surrounding area, is not compatible with the residential character of the adjacent area and fails to respond positively or enhance the character of its surroundings. As such, it is contrary to the intentions of criterion (ii) of principle (b) of Policy CS3, part 1. of Policy DQ1 and part 3.(b) of Policy H10 of the Sefton MBC Unitary Development Plan 2006 (UDP).
9. Furthermore, the intrusive and threatening appearance of the razor wire will, in my view, be detrimental to the outlook of those residential occupiers whose rear gardens adjoin the site boundary, when seen from their gardens and, where applicable, from rear rooms in their dwellings. I consider that this will have an unacceptable impact on the living conditions of those neighbouring occupiers. As such, this is in conflict with the intentions of UDP Policy H10 part 3.(a).
10. I have taken account of the appellant's points that the site has been subject to systematic vandalism and theft in the past and remains a target for local youth, and that a high value of stock is now held on the premises. Clearly the site already has a number of security measures in the form of controlled gates, further gates and cameras. Nevertheless, the appellant does not say what particular problems have been experienced with the site in its current use, what other additional security measures have been considered, or why alternative solutions would not be effective. Consequently, I am not convinced that razor wire is the only solution, but even if it were, this does not outweigh the visual harm to the area and the harm caused to residential amenity, and the conflict with development plan policies.
11. While I have noted the appellant's comments about an appeal decision for a site at 38A Hall Street, I have determined this appeal on its own merits and find the development, the subject of this enforcement notice, to be unacceptable.
12. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal on ground (a) fails.

J Chance

INSEPECTOR