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## Appeal Decision

Site visit made on 1 July 2020

**by Graham Wraight BA(Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 July 2020**

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**Appeal Ref: APP/U2370/W/20/3246729**

**Flat Above 144 Lancaster Road, Cabus, Preston, Lancashire, PR3 1JE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mrs Ann-Marie Collinson (Cabus Post Office) against the decision of Wyre Borough Council.
  - The application Ref 19/01175/FUL, dated 8 November 2019, was refused by notice dated 15 January 2020.
  - The application sought planning permission for an external staircase to rear, to form access to first floor flat without complying with a condition attached to planning permission Ref 12/00309/FUL, dated 2 August 2012.
  - The condition in dispute is No 3 which states that: Prior to the first use of the development hereby approved, 1.8m high (from floor level), solid, obscure glazed screening shall be provided to the northern, southern and eastern sides of the proposal, as shown on the approved plans, of a type that shall be agreed in writing with the Local Planning Authority. The screening shall thereafter be retained as such for as long as the development is in use.
  - The reason given for the condition is: To safeguard the privacy of adjoining residents and ensure the suitable appearance of the development in accordance with Policy SP14 of the Adopted Wyre Borough Local Plan (July 1999).
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The appellant has suggested that the breach of planning control that has occurred may be immune from enforcement action and also that the flat roofed area had an established use in conjunction with the flat prior to approval being granted for the external staircase. However, these are not matters for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open to the appellant to apply to have the matters determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.

### Background and Main Issue

3. Planning permission was granted in 2012 for an external staircase which provides access to a first floor flat. Condition 3 required that screening be provided to the approved development in accordance with the approved plans and details to be agreed by the Council, to safeguard the privacy of adjoining residents. The main issue is whether the condition is necessary and reasonable

to protect the living conditions of the occupiers of the adjoining residential properties, with specific reference to overlooking.

### **Reasons**

4. The external staircase is positioned in close proximity to the rear boundary of the site, which is shared with 4 Graham Road. Although there is a high wall and fence present on this boundary, from both the upper part of the staircase and from the flat roof to which it leads, uninterrupted vision is possible into the rear and side garden areas of No 4 and towards the windows of the dwelling itself.
5. Given the close proximity to the common boundary, in its current unscreened form, the external staircase and access over the flat roof allow intrusive overlooking towards No 4. This causes harm to the living conditions of the occupiers of No 4 and means that the screening to which the condition refers is both necessary and reasonable.
6. The vision towards 142 Lancaster Road is from a more oblique angle and is partially screened by the presence of established trees. Nonetheless, vision is possible into the rear garden of this property and this too results in harm to living conditions from overlooking. This means that the screening is also both necessary and reasonable with respect to No 142.
7. The condition is relevant to planning and relevant to the development permitted. It clearly sets out what was required to be done and the timescale for doing it, meaning that it is both precise and enforceable. Therefore, the condition meets all six of the tests set out in Paragraph 55 of the National Planning Policy Framework.
8. An alternative suggestion of planter screens on the flat roofed area has been submitted by the appellant, but it is not clear from the details provided that these would be solid and prevent vision through, and therefore whether they would adequately prevent overlooking. Furthermore, such a proposal would fail to address the overlooking from the external staircase itself and would not meet with the requirements of the condition that obscure glazed screening shall be provided.
9. The screens would not be prominent from either Lancaster Road or Graham Road and they would not cause harm to the character and appearance of these roads. The benefits of preventing overlooking outweighs the visual impact that would occur when viewed from the adjoining properties. Whilst there are policies in the Wyre Local Plan 2019 that seek to promote economic development, no substantive evidence has been provided to demonstrate that the presence of the screens would jeopardise the viability of the ground floor post office and convenience store.
10. The rear area in which the external staircase is located is already accessed via a narrow alleyway and is enclosed by the existing high boundary wall and fencing and is partially restricted by the staircase itself. The possibility that people could hide behind the screening would not create such a security risk that it outweighs the benefit of the screening in preventing harm from overlooking.
11. Any hindrance that the screens may cause to the occupiers of the flat in terms of the moving of furniture or other items in and out of the flat does not justify permitting the harm that arises from overlooking onto the adjoining properties.

Photographs of other examples of external staircases have been provided but they also do not justify the harm that I have identified with respect to this specific relationship and, in any event, I must consider the appeal primarily on its own merits.

12. For these reasons, I conclude that the condition is required to prevent harm to the living conditions of the occupiers of the adjoining residential properties from overlooking and to ensure that there is no conflict with Policy CDMP3 of the Wyre Local Plan 2019 and The Extending Your Home Supplementary Planning Document 2007, both of which seek to safeguard living conditions, and the National Planning Policy Framework, where it seeks to achieve well-designed places.

### **Conclusion**

13. For the reasons given above, I conclude that the appeal should be dismissed.

*Graham Wraight*

INSPECTOR