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## Appeal Decision

Site visit made on 27 March 2018

**by Richard S Jones BA (Hons) BTP MRTPI**

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

**Decision date: 19 April 2018**

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**Appeal Ref: APP/R3325/D/17/3192207**

**Wayfarers, Long Road, Langport, Somerset TA10 9SX**

- 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 Mrs Norma Spencer against the decision of South Somerset District Council.
  - The application Ref 16/03728/FUL, dated 11 August 2016, was refused by notice dated 3 October 2017.
  - The development proposed is a replacement balcony and stairs (retrospective application).
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### Decision

1. The appeal is allowed and planning permission is granted for a replacement balcony and stairs (retrospective application) at Wayfarers, Long Road, Langport, Somerset TA10 9SX, in accordance with the terms of the application, Ref 16/03728/FUL, dated 11 August 2016, subject to the conditions set out in the Schedule attached to this decision.

### Application for costs

2. An application for costs has been made by Mrs Norma Spencer, against South Somerset District Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. The appellant has confirmed that the description of development should be that set out in the Council's decision notice.
4. At the time of my site visit, the external stairs and stainless steel balustrade with glazed panelling was already in place. It is also proposed to raise the height of the balustrade to 1.8m for approximately 6.6m of its length along the side of the roof terrace facing St Francis.

### Main Issue

5. The effect of the proposed development on the setting of St Francis, which is a Grade II listed building.

### Reasons

6. St Francis is a 17<sup>th</sup> Century detached cottage constructed with local lias stone, roughly cut and squared with ham stone dressing and Roman clay roof tiles. It

is located to the south of the appeal site, which is occupied by a substantial two storey detached dwelling with large, single storey rear swimming pool extension, granted planning permission in 2000<sup>1</sup>. The Council has confirmed that this permission also approved the use of the roof of the swimming pool extension as a terrace. This is borne out by Condition 4 which states that no part of the development shall be commenced until full details of the means of enclosure around the rooftop balcony have been approved by the Council.

7. Although the balustrade is at first floor level, it is situated at the rear of the main dwelling, which for the most part is situated behind the rear building line of St Francis. Consequently, public views are largely restricted to a narrow section of terrace which protrudes from the side of the dwelling. Although this part of the balustrading can be viewed together with St Francis, it is a relatively recessive feature given its size, visually lightweight design, set-back and the scale of the dwelling to which it is attached. This would remain the case even if its height is increased for part of its length, as is proposed. The external stair is not visible in this view. The primacy of St Francis alongside the road frontage is not therefore materially undermined.
8. The balustrade and stairs can be clearly seen from the rear garden of St Francis and is read as part of the setting of this listed building. However, due to its size and position, even without the balustrading, the host dwelling itself represents the most imposing feature within the rear setting of St Francis. Although the balustrade and stairs add to the extent of built structures, they are not the dominant features.
9. Moreover, the presence of a rooftop enclosure to the terrace and the relationship of the same with the listed building has been accepted as part of the planning permission for the swimming pool extension. It is therefore a question of type. In this regard, the combination of stainless steel with glazed panels is clearly a contemporary design approach. However, the existing dwelling is a relatively modern building and as such the balustrading does not appear out of place or inappropriate. Furthermore, the modern lightweight detailing does not compete with the traditional design of St Francis.
10. Therefore, as some form of rooftop enclosure has been accepted, I do not consider that the current proposal, including the enlarged section and external stairs, materially adds to the harm. In overall terms the proposal would have a neutral effect on the setting of the listed building. Indeed, if compared to the timber trellising shown in the photographs provided by the appellant, the current solution amounts to a significant improvement in views from the street. If the same type of trellising was applied along the side of the terrace, there would also be a significant improvement in the views from the rear garden of the St Francis, even if the current proposal is longer.
11. I therefore conclude that the proposal would preserve the setting of St Francis in accordance with the expectations of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. It follows that I do not find conflict with Policy EQ3 of the South Somerset Local Plan or with section 12 of the National Planning Policy Framework. These expect, amongst other matters, that all new development proposals relating to the historic environment to safeguard or where appropriate enhance the significance, character, setting and local distinctiveness of heritage assets.

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<sup>1</sup> Planning application ref: 00/02218/FUL

*Other matters*

12. The height and extent of the terrace along with its proximity to the southern boundary is such that its use would result in significant overlooking into the rear garden area of St Francis. I therefore fully sympathise with the very valid concerns expressed by the occupants of St Frances about the harm arising. However, as noted, the Council has confirmed that the use of the roof for such purposes was granted planning permission in 2000 as part of the approval for the swimming pool extension. That is therefore the approved position, irrespective of whether planning permission would now be granted if presented as a new application.
13. Increasing the height of the enclosure to 1.8m with opaque glass for approximately 6.6m from the house would at least reduce the level of overlooking from the part of the terrace which is most likely to be used, thereby offering some mitigation to the loss of privacy experienced by the occupiers of St Francis. The benefits of doing so would in my view outweigh concerns that increasing the height of the balustrade would result in a more overbearing appearance. I have noted the suggestion that the balcony should be set back from the edge of the building but such a scheme is not before me. Given the overall extent of the terrace, I do not consider the addition of the external stairs materially increases the degree of overlooking.
14. I share the concerns of interested parties over the quality of the plans but as the majority of the development is in place, it is not critical in this instance. Moreover, the plan showing how the existing balustrading is to be increased is sufficiently clear with annotated dimensions. Given its high level siting and positioning adjacent to the listed building, a condition would be necessary to control the details of how the additional sections are to be fixed.
15. I have noted the submissions, including that received from the previous occupiers, that the previous terrace area was smaller than that which currently exists. However, I have very limited evidence to this effect and neither party has provided details of exactly what was approved in 2001. In any case, the Council's Committee report confirms that no conditions were attached to the original planning permission which restricts the extent of the terrace area. Moreover, the report also states that the submitted plans for the pool extension showed low level railings around the perimeter of the roof. The control provided by this permission therefore relates only to the type of enclosure and does not limit the area of the roof to be used as a terrace.
16. I note the concerns regarding wind pressure, but despite initial concerns the appellant has confirmed that the glazier has found the increased length to be acceptable in health and safety terms and I have limited evidence to dispute this. Moreover, in general, the courts have taken the view that the protection of purely private interests, such as the impact of a development on the value of a neighbouring property, cannot be a material consideration.
17. I note the neighbours concern regarding the way in with the planning application was handled by the Council, however, this is not a matter for this appeal which I have determined afresh and on its planning merits.

### **Conditions**

18. I have had regard to the conditions that have been suggested by the Council. As the use has commenced, it is not appropriate to impose the standard condition that limits the lifespan of the planning permission. However, I have specified the approved plans for the avoidance of doubt and in the interests of proper planning.
19. Given the location of the development adjacent to a designated heritage asset and to protect the living conditions of neighbouring occupants, a condition is necessary to agree the precise details of the enlarged section of balustrading. The purpose of this condition is also to require the appellant to comply with a strict timetable for dealing with matters which need to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The purpose and effect of the conditions is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.

### **Conclusion**

20. For the reasons given above, and taking into account all other matters raised, I conclude the appeal should be allowed.

*Richard S Jones*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall be in accordance with the following approved plans: location plan; amended elevation stamp dated 21 March 2017 and amended side view stamp dated 21 March 2017.
2. Notwithstanding the approved plans, unless within three months of the date of this decision full details (including drawings to a scale of at least 1:5) of the enlarged balustrading at a specified location along the southern boundary to a length of 6.6m, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within six months of the local planning authority's written approval, the use of the terrace shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within nine months of the date of this decision, the use of the terrace shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved details specified in this condition, the enlarged balustrading shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.