



Appeal Decision

Site visit made on 5 June 2018

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 July 2018

Appeal Ref: APP /Z4718/C/17/3179845

37 Scholes Moor Road, Scholes, Holmfirth, West Yorkshire HD9 1SJ

- 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 Peter Wallace against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 12 June 2017.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a platform with balustrade.
- The requirements of the notice are demolish the platform and the balustrade.
- The period for compliance with the requirements is 4 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed.

The Notice

1. Section 176(1)(a) and (b) of the 1990 Act allows me to correct any defect, error or misdescription and vary the terms of the notice if I am satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
2. I saw on my site visit that screens had been fixed to each side of the decking. The appellant indicates that the side screens were erected in February 2017, substantially completing the development. This was prior to the notice being issued in June 2017. The side screens are physically attached to the decking and, in my view, clearly form part of the development as enforced against. That view is supported by section 1 of the Council's comments in the officer report dated 2 June 2017 which accompanied the request for authority to issue the notice. That report also considers the planning merits of the screen.
3. Nevertheless, the allegation does not refer to the side screens, only to the platform and the balustrade. Likewise, the notice does not require the removal of the side screens, only the demolition of the platform and balustrade. The side screens cannot be said to form part of the balustrade. The Oxford English Dictionary defines balustrade as 'a railing supported by balusters' with balusters being 'a short pillar forming part of a series supporting a railing'. The side screens comprise wooden trellis and artificial planting. They do not fall within the definition of balustrade as attacked by the notice.

4. The appellant's arguments on the ground (c) appeal essentially amount to whether the structure as enforced against amounts to operational development. The Council argue that it does, the appellant that it does not.
5. However, in order to properly consider the merits of ground (c), I would need to correct the allegation to reflect the entire breach, including not just the platform and the balustrade but the side screens which form part of the development as enforced against.
6. Moreover, the appellant's argument on the ground (f) appeal states that the requirements of the notice are excessive because the side screens mean the structure does not in itself result in any injury to amenity.
7. Such planning merit arguments amount essentially to an appeal on ground (a), which is not before me. Nevertheless, in such circumstances, were the side screens contained within the allegation, and subsequently the requirements of the notice, the appellant may have appealed on ground (a) so that a decision could be reached on whether or not the development in its completed form results in injury to amenity.
8. As a consequence, I consider the notice to be defective, but that it cannot be corrected without causing injustice to the appellant. I therefore have no option but to quash the notice and the appeal on grounds (c) and (f) do not fall to be considered.

Decision

9. The enforcement notice is quashed.

Jason Whitfield

INSPECTOR