



Appeal Decisions

Site visit made on 24 July 2019

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 9 August 2019

Appeal A Ref: APP/D4635/W/18/3214364

Chain Lodge, 49 Yew Tree Lane, Wolverhampton, WV6 8UG

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 ("the 1990 Act") against a refusal to grant planning permission.
- The appeal is made by Jaspal Khela ("the Appellant") against the decision of Wolverhampton City Council ("the Council").
- The application Ref 18/00897/FUL, dated 31 July 2018, was refused by notice dated 21 September 2018.
- The development proposed is the retention of the rear balcony including french doors and balustrading.

Summary of Decision: The appeal is allowed, and planning permission is granted.

Appeal B Ref: APP/D4635/C/18/3214363

Chain Lodge, 49 Yew Tree Lane, Wolverhampton, WV6 8UG

- The appeal is made under Section 174 of the 1990 Act.
- The appeal is made by the Appellant against an Enforcement Notice issued by the Council.
- The Enforcement Notice was issued on 21 September 2018.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission, the erection of a first floor balcony, including the installation of French doors and an enclosure consisting of a one metre high balustrade on top of an existing ground floor building.
- The requirements of the Enforcement Notice are to remove the unauthorised balcony, including the double doors and balustrading and return the building to its condition before development commenced including reinstating brickwork to match existing and a window of the same design and specification to those in the rest of the building.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in Section 174(2)(f) & (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed, and the Enforcement Notice upheld with corrections.

Procedural Matters

1. The Enforcement Notice alleges "the erection of a first floor balcony" ("the Balcony"). The Balcony has been erected. The area of space enclosed by the balustrading is simply part of the roof of the ground floor dining room. The use of the roof as a balcony does not require planning permission. I consider the Enforcement Notice should be corrected to reflect what has happened. This will also impact on the steps that are required to be taken in Part 5 of the Enforcement Notice. In my assessment these corrections do not cause injustice to either party.
2. In my Appeal Decision I will refer to:

- a) The land edged red on the plan attached to the Enforcement Notice as "the Appeal Site".
- b) The dwelling-house within the Appeal Site and known as Chain Lodge, 49 Yew Tree Lane, Wolverhampton as "Chain Lodge".

Policy

3. The Development Plan for the area includes:
 - a) Policies ENV3 & CSP4 of the Black Country Core Strategy, and
 - b) Saved Policies D6 & D8 of the Wolverhampton Unitary Development Plan.
4. I will refer collectively to the Core Strategy and the Unitary Development Plan as "the Development Plan".
5. I have also been referred to advice in the Council's Supplementary Planning Guidance No. 4 entitled "Extension to Houses" ("the SPG")

Main Issue – Appeal A

6. I consider the main issue in Appeal A is whether the use of the Balcony would result in material harm to the living conditions of adjoining occupiers having particular regard to loss of privacy.

Appeal A

Policy

7. The SPG explains that there will be a presumption against the creation of balconies on the roofs of extensions which may allow overlooking or perceived overlooking of properties or gardens.

Reasons

8. In my judgement the only properties that could be impacted by the use of the Balcony are 47 ("No. 47") and 51 ("No. 51") Yew Tree Lane and 45 Cranmere Avenue ("No. 45").
9. Access to the Balcony is through a first floor bedroom. There are French Doors within that bedroom that provide access onto the Balcony. Around the perimeter of the Balcony is balustrading which incorporates a screen.
10. It was clear from my site visit that the existing vegetation in the gardens of the Appeal Site and the gardens at No. 47 and No. 45 means that there is:
 - a) No overlooking of the garden at No. 47.
 - b) No significant overlooking of the private areas within the gardens at No. 45 or No. 51.
11. Further, when stood on the Balcony it was:
 - a) Not possible to see into any window at No. 47.
 - b) Possible to see the upper parts of the rear windows at No. 45. However, I am satisfied that those windows are a sufficient distance from the Balcony that there would be no unacceptable loss of privacy for the occupiers of No. 45.

- c) Possible to see the windows in the side elevation of the single-storey element at No. 51. Once again, I am satisfied that those windows are a sufficient distance from the Balcony that there would be no unacceptable loss of privacy for the occupiers of No. 51.
12. It has been suggested that the trees/vegetation in the gardens of the Appeal Site and No. 45 could be removed and that private areas within the garden at No. 45 would be overlooked from the Balcony causing significant loss of privacy.
13. The majority of the trees which screen the private areas at No. 45 are within the garden of that property and the owners of No. 45 retain control of those trees. Further, I have considered the situation when the screening trees are not in full leaf. Clearly this may make views into the private garden area at No. 45 possible, but I am satisfied that the distance between the Balcony and the garden or windows at No. 45 is sufficient to ensure that any overlooking was not so significant that it would result in unacceptable loss of privacy.
14. I therefore conclude that the use of the Balcony does not result in material harm to the living conditions of adjoining occupiers due to overlooking causing unacceptable loss of privacy. Accordingly, I do not consider that the use of the Balcony would be contrary to:
- a) any relevant policy of the Development Plan or the UDP that I have been referred to, or
 - b) the SPG.

Other Matters

15. It seems highly unlikely that a significant number of people would congregate on the Balcony given that access is through a bedroom. Further, if there were a significant number of guests attending a party at Chain Lodge or the Appeal Site it seems likely to me that the rear garden or formal dining room would be used as the venue for entertainment rather than on the Balcony.
16. I have also considered whether significant noise would occur when the Balcony is used. Again, I am satisfied that if significant numbers of people attended Chain Lodge for a social event the garden / or large downstairs dining room would be used. I do not consider that noise from people using the balcony would cause any significant harm to the living conditions of the surrounding occupiers.

Overall Conclusions – Appeal A

17. For the reasons given above I conclude that Appeal A should be allowed

Reasons - Appeal B – Ground (f) - that the steps required to comply with the requirements of the Enforcement Notice are excessive and lesser steps would overcome the objections.

18. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified seek to achieve the removal of the unauthorised operational development i.e. the French Doors, balustrading and screen which facilitate the use of the Balcony (“the Enforcement Notice’s Objectives”).

19. Section 174 of the 1990 Act sets out the statutory code for appeals against Enforcement Notices. An appeal on Ground (f), in a case such as this, is limited to an argument that the steps specified in the Enforcement Notice exceed, as a matter of fact, what is necessary to achieve the Enforcement Notice's Objectives.
20. The Appellant suggests:
- a) That the use of the Balcony should be prohibited by condition thus allowing the French Doors, balustrading and screen to remain.
 - b) That the French Doors should be allowed to remain but should be altered so that they remain permanently closed.
21. The alternative steps suggested by the Appellant would not achieve the Enforcement Notice's Objectives and, for the reasons explained above, this is the limited scope of a Ground (f) appeal in a case such as this. This ground of appeal must therefore fail.
22. I consider that the requirements of the Enforcement Notice are entirely appropriate to achieve the Enforcement Notice's Objectives and there are, in my assessment, no lesser steps that could be taken to achieve those objectives.

Reasons - Appeal B – Ground (g) - that the time given to comply with the Enforcement Notice is too short.

23. The Appellant sought to ensure that the Appeal A was determined at the same time as Appeal B. This was achieved when the Planning Inspectorate linked the two appeals. The Appellant has not argued that the two month compliance period is too short to carry out the steps specified in the Enforcement Notice. In my view the period for compliance is not too short. I therefore conclude that the appeal on Ground (g) should fail.

Overall Conclusions – Appeal B

24. For the reasons given above I consider that Appeal B should not succeed.

Section 180 of the 1990 Act

25. The Appellant did not appeal the Enforcement Notice on Ground (a). Had he done so I would have quashed the Enforcement Notice and granted planning permission for the reasons explained when dealing with Appeal A.
26. Therefore, the Enforcement Notice remains in place unless the Council formally withdraws it in the light of the success of Appeal A – that is a matter for the Council alone to consider.
27. Section 180 explains that where, after the service of an Enforcement Notice planning permission is granted for any development carried out prior to that planning permission, the Enforcement Notice shall cease to have effect so far as it is inconsistent with the planning permission.

Formal Decision – Appeal A

28. The appeal is allowed, and planning permission is granted for the French doors and balustrading at Chain Lodge, 49 Yew Tree Lane, Wolverhampton, WV6 8UG

in accordance with the terms of the application, Ref 18/00897/FUL, dated 31 July 2018, and the plans submitted with it.

Formal Decision – Appeal B

29. It is directed that the Enforcement Notice be corrected by:

- a) The deletion of the words “the erection of a first floor balcony, including” in Part 3.
- b) The deletion of the words “the unauthorised balcony, including” in Part 5.

Subject to these corrections the appeal is dismissed, and the Enforcement Notice upheld.

Tim Belcher

Inspector