



Appeal Decisions

Site visit made on 17 December 2019¹

by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2020

Appeal Ref: APP/C/19/3227087 and 88 29 California Road, Farndon, Newark-on-Trent NG24 3SB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- The appeals are made by Mrs Emma Grosse (Appeal A) and Mr Richard Grosse (Appeal B) against an enforcement notice issued by Newark and Sherwood District Council.
- The enforcement notice was issued on 20 March 2019.
- The breach of planning control as alleged in the notice is without planning permission, development consisting of the erection of a balcony and rail on an existing flat roof, as shown on photographs 1 and 2, and marked 'X' on plan A attached to the notice.
- The requirements of the notice are to remove the balcony, rail and platform as shown on photographs 1 and 2.
- The period for compliance with the requirements is 180 days.
- Appeal A and B are proceeding on the grounds set out in section 174(2) (b), (c) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid in Appeal A and B within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Decisions

1. Both Appeal A and B are dismissed, and the enforcement notice is upheld.

The appeals on ground (b)

2. In the legal grounds of appeal, the burden of proof is on the appellants with the standard of proof being the balance of probabilities. For an appeal to succeed on ground (b), the appellants need to show that the breach of planning control described on the face of the notice has not in fact occurred and the relevant date is 20 March 2019.
3. The appellants purchased the property in October 2015 and the dwelling-house includes a flat-roof single-storey utility room, which is accessed at first floor level from patio doors. The flat roof is used for drying washing and sitting out on. The appellants say that the roof was unsafe due to a potential falling risk. To address these concerns a wooden floor and safety banister were constructed over the surface of the flat roof. Horizontal and vertical timber bars with decorative infill panels were erected and the area can reasonably be regarded as a raised platform, because of its location and position. When the design and layout of the decking are taken together with the banister, I consider that the enclosure functions as a balcony.

¹ On 8 October 2019 The Planning Inspectorate notified the appeal parties of the site visit. The appellants failed to show. I was able to view the site from public viewpoints. In any event, the grounds of appeal do not raise planning merits. I can reach a judgement on the grounds of appeal pleaded. This is how I will proceed.

4. The quantum of the appellants evidence points in the probability that, during the period leading to 20 March 2019, building work comprised in the provision of the balcony had in fact taken place. The Council's investigation revealed the construction of a balcony or raised platform during this period. And by the time the notice was actually issued, the matters alleged had in fact occurred. The appeals on ground (b) must therefore fail.

The appeals on ground (c)

5. The use of the flat roof above the utility room can be incidental to the enjoyment of the dwelling-house as such as the roof is part of the residential unit of occupation. Such a use may not require express planning permission by virtue of section 55(2)(d) of the Act. The issued notice attacks operational development, namely, the erection of a balcony and rail on an existing flat roof as shown on photographs 1 and 2 and marked 'X' on plan A.
6. For planning purposes "development" includes the carrying out of building or other operations in, on, over or under land. This usually comprises activities which result in some physical alteration to the land with some degree of permanence. Building operations include structural alterations or additions, and other operations normally carried on by a person in business as a builder. The balcony is a permanent structure fixed to external walls of the host building, and its erection probably required an element of pre-planning due to its design and layout. The nature and scale of the work indicates a significant building operation had been carried out the scope of which falls within s55(1) of the Act.
7. It is for the appellants to show that express planning permission is not required for the alleged matters. The balcony and banister and infill panels appear as permanent features and are likely to be physically attached to the host building. They alter the external appearance of the rear elevation and project over the flat roof. When the structure is considered in its context, it changes the external appearance of the host building. It is noticeable from various public viewpoints due to the appeal plot's corner location and setting. And it is likely to be visible from neighbouring properties. I find that, as a matter of fact and degree, the design rearward projection of the balcony and rail materially alter the external appearance of the building as a whole.
8. Permitted development (PD) rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. Class B to Part 1 Schedule 2 sets out PD rights for the enlargement of a dwelling-house consisting of an addition or alteration to its roof. The problem is that paragraph B.1(e)(i) states development is not permitted if it would consist of or include the construction or provision of a balcony or raised platform. Even if the enclosure is considered to be a means of enclosure, given the overall height of the balustrade, the top of the structure probably exceeds 2 metres in overall height. Thus, the development does not satisfy the tolerance in Schedule 2, Part 2, Class A.
9. The appellants refer to a planning permission granted in 2004 for erection of an extension, but the Council states that the approved plans neither show a patio door nor do they include the balcony.² I do not consider that the development falls within the scope of this permission.
10. Pulling all of the above threads together, the evidence presented shows that express planning permission is required for the matters alleged on the notice and it has not

² Council ref: 04/00667/FUL.

been obtained. On the balance of probabilities, the matters alleged constitute a breach of planning control and therefore it follows that the appeals on ground (c) fail.

The appeals on ground (d)

11. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellants' version of events less than probable, there is no good reason to dismiss these appeals, provided the appellants' evidence alone is, on the balance of probability, sufficiently precise and unambiguous. Where there has been a breach of planning control consisting in the carrying out without planning permission of building or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.³ In this case the relevant date is 20 March 2015.
12. The claim is a simple one, namely, that it is too late to take enforcement action against the development due to the passage of time. The appellants maintain the balcony existed many years prior to the property's acquisition but they have not provided any specific details. It is contended that the balcony came into being back in 2004 following the grant of planning permission for the extension, but the balustrade had not been installed at that time. On the contrary, the appellants say they erected the balustrade and decking in early 2019 as they were concerned about safety of children. The lack of clear and precise evidence about the nature of the building work casts significant doubt over the claim that the development was substantially completed before the appellants acquired the property.
13. The information presented does not clearly show when building work actually started, the stages, or when it was completed. The sequence of the work is a mystery because the representations do not divulge what came first and what happened next, and who carried out the work. There is no documentary evidence showing how or when materials were purchased. The nature of this type of information might have assisted in appreciating, analysing and assessing when development started and how long it took. I attach little, if any, weight to the immunity claim because the evidence presented is inconclusive and limited in extent. It is difficult to conclude that the development was substantially completed on or before the relevant date.
14. On the ground (d) appeals, I conclude that, on the balance of probabilities, the onus has not been discharged because the unauthorised development has not been shown to be immune from enforcement action due to the passage of time. For all of the above reasons, the appeals on ground (d) must fail.

Conclusions

15. For the reasons given above I conclude that the appeals should not succeed. I have upheld the notice.

A U Ghafoor

Inspector

³ Section 171B (1) of the Act.