
Appeal Decisions

Site visit made on 30 October 2019

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 6 January 2020

Appeal A: APP/G5180/C/18/3216381

21 Briar Lane, West Wickham BR4 9RA

- 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 Mustafa Mustafa against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 16 October 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission: the provision of a roof terrace above an existing ground floor building, incorporating associated railings as a means of enclosure; and the insertion of a side entry door which leads to that enclosed space at the detached dwelling house on the above land.
 - The requirements of the notice are:
 - (i) Remove from the above land the unauthorised railings;
 - (ii) Permanently fix shut the door leading to the flat roof of the ground floor building;
 - (iii) Cease the use of the roof of the ground floor side garage as a roof terrace; and
 - (iv) Remove from the above land any resulting debris.
 - The period for compliance with the requirements is within 3 months after this Notice takes effect.
 - The appeal is proceeding on the ground set out in sections 174(2) (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Appeal B: APP/G5180/C/18/3216382

21 Briar Lane, West Wickham BR4 9RA

- 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 Ms Yelda Mustafa against an enforcement notice issued by the Council of the London Borough of Bromley.
- The enforcement notice was issued on 16 October 2018.
- The breach of planning control as alleged in the notice is: Without planning permission: the provision of a roof terrace above an existing ground floor building, incorporating associated railings as a means of enclosure; and the insertion of a side entry door which leads to that enclosed space at the detached dwelling house on the above land.
- The requirements of the notice are:
 - (i) Remove from the above land the unauthorised railings;
 - (ii) Permanently fix shut the door leading to the flat roof of the ground floor building;
 - (iii) Cease the use of the roof of the ground floor side garage as a roof terrace; and
 - (iv) Remove from the above land any resulting debris.
- The period for compliance with the requirements is within 3 months after this Notice takes effect.
- The appeal is proceeding on the ground set out in sections 174(2) (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid

within the specified period the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

The Notice

1. The enforcement notice, although referring to operational development carried out as the alleged breach of planning control, and occurring within the last four years requires, amongst other things, the cessation of the use of the garage roof as a roof terrace. This requirement is clearly inconsistent with the alleged breach specified and, in accordance with my reasoning regarding the planning status of the door installed within the flank wall of the dwelling and the use of the roof itself, I am correcting the notice by deleting Requirements (ii) and (iii).

Formal Decisions

Appeal A:

2. It is directed that the enforcement notice be corrected by deleting requirements (ii) and (iii). Subject to this correction the appeal fails and the enforcement notice is upheld.

Appeal B:

3. It is directed that the enforcement notice be corrected by deleting requirements (ii) and (iii). Subject to this correction the appeal fails and the enforcement notice is upheld.

Procedural Matters

4. The enforcement notice relates to the flat-roofed side garage attached to a two-storey dwellinghouse. The Council, in its representations, indicates that the enclosure of the flat roof and the installation of the associated glazed door creates a roof terrace for which planning permission is required, and has not been sought.
5. It is not clear when the railings, or rather what is wooden perimeter fencing to both ends and side of the garage, was erected. None of the main parties provide information to this end nor when the first floor door which accesses the flat roof was installed. The appellants do mention that the wooden railings replaced metal railings that were previously in place and, on this basis the Council comments that the wooden enclosure amounts to a wholly new structure for which planning permission is required.
6. Due to potential noise and disturbance and conflict with policy BE1 of the Council's Unitary Development Plan (since superseded with the adoption of the Bromley Local Plan) the Council considered it expedient to issue an enforcement notice against the development.
7. In determining these appeals, however, due to the deemed planning application having lapsed, I am unable to take into account any planning merits and/or impacts from the development.

The appeals on ground (c)

8. Appeals on this ground are that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof on matters of fact is on the appellant, and this is on the balance of probability.
9. The enforcement notice, in describing the reasons for its issue, says that the breach of planning control, namely the provision of a roof terrace, incorporating its enclosure by wooden railings and the insertion of a side door allowing access onto the flat roof, has occurred within the last four years. The provision of a roof terrace implies its formation and formalisation, facilitated by the purposes of the railings and door installed.
10. The use of the flat roof as a roof terrace for sitting out purposes is not development as long as that use is incidental or ancillary to the residential use of the building as a whole. A restriction on such might result in instances where a planning condition has been previously imposed precluding the roof's use but in this particular case the Council, despite a written request, has not provided any evidence that any such conditions are in place and apply to the appeal property. If there has been no material change of use then no planning permission is required, and the appellants indicate this. Planning permission may, however, be required for the associated physical works.
11. In order to qualify as development, works would have to meet the definition of s55 of the 1990 Act. S55(2) excludes certain works that "do not materially affect the external appearance of the building". In this particular instance, although the dwelling is set back from the street, the wooden railings are of sufficient height and prominence as to be visibly apparent along this section of Briar Lane. On this basis I therefore consider the erection of the railings as having amounted to development.
12. In contrast, the door to the garage roof, in being positioned within the adjoining flank wall of the main house, is much less visible and, due to its form and situation, this feature cannot be reasonably seen to have materially affected the building's external appearance. The Council says that the door would fail to comply with Condition A.3(b) of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), but this proviso relates instead to an upper floor window in a dwelling's side elevation. Although the door is clear glazed I am not convinced that the said condition is directly applicable to the installation of a standard sized door.
13. The Council considers that the enclosure of the garage roof together with the installation of the access door has enabled the roof's use as a raised platform. The Technical Guidance document to the GPDO, published in September 2019, defines a raised platform as being any platform with a height greater than 0.3m and will include roof terraces. Any such structure would exceed the permitted development limitations of Class A, paragraph A.1(K), but in this instance the garage roof has merely been overlain with a form of wooden decking, and any height increase appears considerably less than 0.3m. A balcony, defined in the Technical Guidance as a platform with a rail or balustrade, is also prohibited under A.1(K) but removal of the wooden railings would address any contravention in this regard. Besides, the terrace does not project outside the upper storey whereas a balcony would. Accordingly, I find

that the development carried out is limited to the formalisation of the roof terrace by reason of the wooden railings erected.

14. As a result of my findings I am not convinced that the operational development carried out has brought about a material change of use. I have concluded in this instance that the use of the flat roof for sitting out purposes is incidental to the enjoyment of the dwellinghouse and that the door installed does not here constitute development. However, I have also concluded that the wooden railings erected are visually significant and have materially affected the external appearance of the building. This element therefore requires the benefit of planning permission. Accordingly, as only ground (c) falls to be determined the appeals cannot succeed.

Conclusion

15. For the reasons given above I conclude that the enforcement notice be corrected by deleting requirements (ii) and (iii) and, subject to this correction, the appeals are dismissed and the enforcement notice is upheld.

Timothy C King

INSPECTOR