



Appeal Decision

Site visit made on 17 January 2020

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th January 2020

Appeal Ref: APP/P0119/C/19/3226881

30 North Street, Oldland Common, Bristol BS30 8TR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Robert Dolan against an enforcement notice issued by South Gloucestershire Council.
 - The enforcement notice was issued on 18 March 2019 under ref. COM/17/0587/OD/1.
 - The breach of planning control as alleged in the notice is: *"The erection of a second floor balcony without the benefit of planning permission; as shown in the attached photograph labelled figure 1."*
 - The requirements of the notice are to:
 - "1. Remove the second floor balcony including (but not limited to); the metal balustrades; the glass panes; the staircase; as shown in the attached photograph labelled figure 1.*
 - 2. Return the land to its former condition before the breach of planning control occurred."*
 - The period for compliance with these requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (f) 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 have lapsed.
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Decision

1. It is directed that the enforcement notice be corrected by omitting the Enforcement Site Plan attached to the notice and by deleting the text within paragraph 2 in its entirety and replacing it with the following text: *"Land at 30 North Street, Oldland Common, Bristol BS30 8TR."* Taking into account the limited success of the appeal on ground (f), it is directed that the enforcement notice be varied by deleting the text *"(but not limited to)"* in requirement 1 of paragraph 5 and by deleting requirement 2 in paragraph 5 in its entirety. Subject to the corrections and variations, the appeal is otherwise dismissed and the enforcement notice is upheld.

Background and matters of clarification

2. No. 30 North Street is a 2-storey detached dwelling house with further accommodation in the loft space. It is considerably deeper than it is wide.
3. The matter in dispute is a second floor rear balcony. A rear flat roof extends over roughly half the width of the property and also contains a roof light serving the first floor bathroom directly below. Fixed to the 2

outer edges of that flat roof are opaque glazed balustrades with supporting steel rails and posts. This arrangement, which is about one metre high, is continued over part of the end of the pitched roof to one side. The balcony can be accessed from a door off a second (loft) floor spare room. There are steps outside the door leading down on to the main part of the flat roof. Although there is currently a glazed Juliet balcony in place, this could easily be removed. Even if it was retained, it would not necessarily prevent people getting onto the second floor balcony if they were sufficiently determined to do so.

4. The notice is directed against a specific operational development, namely the erection of a second floor balcony. There is also a larger, full width balcony at first floor level. It also appears that a hipped or pitched roof was removed to reveal the flat roof beneath which was retained and repaired before the works which facilitated the creation of the second floor balcony were carried out. The breach of planning control alleged in the notice does not, however, relate to the first floor balcony or to any changes to the roof form, or indeed to the creation of a loft floor with an external door and a Juliet balcony.
5. I have read the 3 letters from the Council attached to the appellant's statement of 12 June 2019. Whilst the Council's planning enforcement team was initially satisfied that the second floor balcony would be unlikely to be pursued if a Juliet balcony were to be erected, the Council evidently received additional reports that the flat roof was being used for recreational activities. Whilst I can understand the frustrations of the appellant, the Council ultimately found it expedient to issue an enforcement notice. The notice is not made null and void by the advice set out in the Council's letter of 4 October 2017 following the investigation into the original complaint. It is a fundamental principle that a local planning authority does not fetter its discretion to issue an enforcement notice by any form of informal agreement. Moreover, the fitting of the Juliet balcony did not undo the breach of planning control subsequently alleged in the enforcement notice.

The enforcement notice

6. The Enforcement Site Plan attached to the notice is incorrect. The land edged red relates to the bungalow at no. 32 instead of the appeal property at no. 30. An inaccurate plan can be deleted altogether, where, as here, the site address can be clearly described in words alone and no confusion has arisen. I have therefore corrected the notice by omitting the attached plan and any reference to it, whilst adding the postcode to the site address. I found it easier to rewrite the text in paragraph 2 of the notice in full. Such corrections would not result in any injustice to the parties.

The appeal on ground (b)

7. This ground of appeal is that the breach of planning control alleged has not occurred as a matter of fact. The onus is on the appellant to make out the case on the balance of probability.

8. The issue for ground (b) is simply whether the second floor balcony has been erected at all. It is the Council's view that the second floor balcony has been constructed by the enclosing of the flat roof with glass balustrades and by the installation of access steps leading on to the roof. I saw these arrangements at my site visit and they are clearly depicted in the photograph attached to the notice. Any reasonable observer standing on the surface of the flat roof is likely to reach the view that he or she is standing on a second floor balcony. To the extent that a second floor balcony has been erected, the appeal on ground (b) fails.

The appeal on ground (c)

9. In appealing on ground (c), the onus is on the appellant to demonstrate on the balance of probability that the matter stated in the enforcement notice, when it occurred, did not amount to a breach of planning control.
10. The use of the flat roof in connection with the use of the property as a dwelling house does not amount to development requiring planning permission. The use of the planning unit is as a dwelling house and no material change of use would occur. The use of the roof has not been limited by a planning condition. However, the enforcement notice is not directed at a material change of use.
11. The second floor balcony that has been provided constitutes a single physical entity. It is the metal and glass balustrades, acting as guard rails, around the perimeter of the roof and the roof top staircase which could actually facilitate the active use of the flat roof as an outdoor amenity area or balcony including right up to its edges. Without those operational developments, the roof surface, like many flat roof surfaces above first floor wings, would be very unlikely to be put to such use.
12. Those operational developments comprise development for which planning permission is required. They do not fall within the terms of any express planning permission obtained through an application to the Council. They could not have been permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Since the development that has taken place has facilitated or included the provision of a raised platform or balcony, they would not have been permitted by the limitation at paragraph B.1 (e) (i) of Class B, Part 1, Schedule 2 of the GPDO. Referring back to paragraphs 3, 4 and 5 above, my view on this is not changed by the fitting of the Juliet balcony.
13. I find on the balance of probability that the matter alleged in the enforcement notice constitutes development for which there is no grant of planning permission through the GPDO or otherwise. The matter so alleged therefore constitutes a breach of planning control. I conclude that the appeal on ground (c) should not succeed.

The appeal on ground (f)

14. This ground allows arguments to be put that the steps required by the enforcement notice to be taken exceed what is necessary to remedy the

breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused by the breach. The manner in which the Council has prepared this enforcement notice, including the formulation of its requirements, indicates to me that its primary purpose is to remedy the breach of planning control.

15. The appellant submits that the requirement to remove the 2 small steps (the staircase) seems to be onerous. However, no proper explanation is given as to why that might be the case. Those steps go beyond what might be termed repairs to the surface of the flat roof, even though they have been given a similar finish. Rather, they appear to be an integral part of the works involved in the provision of the balcony area. They would potentially allow for comfortable daily access down on to the balcony. Requiring the staircase to be removed is not excessive.
16. The appellant also says that the second requirement of the notice is too vague, bearing in mind that a flat roof has been in situ for almost 40 years. Remedying the breach by restoring the land to its condition before the breach took place would not ordinarily be vague or raise any confusion. However, the appellant's fears are borne out by the content of the Council's statement. Interpreting this requirement, as the Council does, as requiring the reinstatement of the "*hipped roof element*" is problematical. Any remodelling of the rear roof which may have taken place can be looked at separately but it is not the subject of the breach described in this notice. The balcony is the breach and this could only have been practicably installed on top of the flat roof which was therefore the condition of the land immediately before the breach took place. What the Council is saying therefore goes well beyond remedying the breach and if I varied the notice to accurately depict the Council's intentions, Mr Dolan would arguably be left in a worse position than if he had not appealed.
17. To avoid any future confusion, I shall therefore delete the second requirement of the notice in its entirety. I am also troubled by the phrase "*(but not limited to)*" in the first requirement. It is not sufficiently clear what else the appellant might be expected to remove to comply with the notice. It seems to me that if the metal balustrades, the glass panes and the staircase are removed, then the breach of planning control has been remedied. The Council has not specifically pointed to the need to remove anything else. I shall vary the notice to remove this phrase. Insofar as the Juliet balcony is concerned, it is not part of the breach of planning control or the requirements and I consider that, in terms of planning legislation only, it may be removed or retained as desired by the appellant.
18. The appeal on ground (f) succeeds to the extent I describe in paragraphs 16 and 17 above. I have varied the requirements of the notice accordingly.

Andrew Dale

INSPECTOR