



Appeal Decision

Site visit made on 21 January 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2020

Appeal A Ref: APP/U4230/C/19/3232910 and

Appeal B Ref: APP/U4230/C/19/3232911

Land at 3 Norwood Avenue, Salford M7 3PW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Aaron Berkovitz and Appeal B by Mrs Tehilla Berkovitz against an enforcement notice issued by Salford City Council.
- The enforcement notice was issued on 28 June 2019.
- The breach of planning control as alleged in the notice is: without planning permission the erection of a rear balcony, hatched red on Plan A1.
- The requirements of the notice are:
 - (i) Remove the balcony in its entirety from the land.
 - (ii) Remove from the site all demolition materials arising from compliance with (i) above and restore the land to its condition before the breach took place.
- The period for compliance with the requirements is 56 days.
- **Appeal A** is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
- **Appeal B** is an identical appeal, except there is no ground (a).

Summary decision Appeal A: The appeal is dismissed and the enforcement notice is upheld with variations.

Summary decision Appeal B: The appeal is dismissed and the enforcement notice is upheld with variations.

Procedural Matters

Grounds of appeal

1. The appeals were initially made by both Mr Aaron Berkovitz and Mrs Tehilla Berkovitz against the enforcement notice on ground (f).
2. Correspondence subsequently confirms that an appeal by Mr Aaron Berkovitz on ground (a) has been accepted and the prescribed fees paid by Mr Berkovitz only. As confirmed by the Planning Inspectorate in a letter dated 1 October 2019, the appeal by Mrs Berkovitz on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act, as amended, had lapsed. Consequently, Mrs Berkovitz's appeal will proceed on ground (f) only.

Amended plans

3. A planning application (ref: 18/72693/HH) was submitted retrospectively for the retention of the balcony which had already been erected. The submitted plans

also showed a proposed 1.8m high opaque glazed privacy screen on a timber stud frame that could be erected to the side of the balcony along the common boundary with No.5 Norwood Avenue. The application was refused on 18 June 2019. The appellant did not appeal against the refusal of planning permission.

4. To address the Council's concerns, the appellant later submitted additional plans PLNG 001A, PLNG 002A and PLNG 003 showing an additional 1.8m high privacy screen with an in-built planter on the other side of the balcony and privacy 'fins' added to the front of the balcony. However, a revised planning application for these proposed changes was not submitted.
5. The appellant has submitted these same plans as part of the enforcement appeals for consideration as part of the appeal on either ground (a) for the grant of planning permission or the appeals on ground (f) as lesser steps to be taken. This will be discussed later.

Appeal A

Appeal on Ground (a) and the Deemed Application

6. The appellant has made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the notice.
7. I consider the main issue is the effect of the development on the living conditions of occupiers of Nos.1 and 5 Norwood Avenue (No.1 and No.5) with particular regard to privacy.
8. The property is a semi-detached dwelling in a residential road that is two storey at road level at the front. Due to ground levels in the area the appeal property, and other dwellings in the road, are three storey at the rear and the rear gardens slope down. The orientation of the dwellings to each other and ground level differences mean that most of the principal habitable rooms on the rear elevations of the appeal and neighbouring properties look across at each other and also overlook other rear gardens. This is an existing situation.
9. The development, the subject of this appeal, is a black metal railing balcony that has been erected on the rear elevation to allow access from the main sitting room via a patio door onto the balcony. Due to the ground level differences, the balcony is at first floor level approximately 1.9m above the ground and almost level with the top of the fence that runs down the common boundary with the adjoining semi-detached property No.5. The balcony has a decking floor and metal railing sides approximately 1m high and projects approximately 2.4m out from the rear elevation. The balcony is sited in very close proximity to the common boundary with No.5. The structure is supported on black metal posts.
10. On my visit I was able to step out of the living room patio door onto the balcony. I had an almost panoramic view over the gardens of a number of other properties and could easily look at the rear of properties, including those that front Neville Road. From this elevated position I was able to look into the nearby habitable room of No.5 and down into its entire rear garden. In my view the privacy of occupiers of No.5 was significantly and unacceptably compromised.

11. Whilst I could look across towards the garden of No.1, my view was more restricted due the orientation of the properties to each other and that the balcony is set approximately 4.7m away from the shared boundary. I note that the occupiers of No.1 have written to confirm that the balcony does not infringe their privacy. From my observations on site, the degree of overlooking of No.1 is substantially less than for No.5.
12. Due to the size of the decking area I find it likely that the balcony would also be used for chairs and a table and this would result in users having more prolonged views of other properties and gardens, bringing with it a stronger perception of being overlooked. People using the balcony would also be heard and at least partially seen from the balcony due to its elevated position and its close proximity to No.5. I noticed that there was a retractable roller awning above the balcony. This could be pulled over the balcony and allow users to use the balcony in more inclement weather, further prolonging the harm to living conditions.
13. Whilst there is already a degree of overlooking from existing windows over gardens and towards other properties, the balcony significantly increases this as it projects out a considerable distance from the rear elevation and existing sitting room. Furthermore, users of the balcony are able to walk about on the decking and lean over the balustrade and have a wider visibility into gardens and dwellings, than the more oblique views afforded from the existing sitting room window. I did not see any other first floor balconies, although I noted one property had created patio doors at ground level to gain easier access to their rear garden.
14. I have been made aware that Mrs Berkovitch has mobility issues following an accident that makes accessing the garden difficult via steps inside the house. However, I noted that there is a more level access route to the garden around the side of the house, as this route was used when leaving the garden on the site visit. Whilst I am sympathetic, I have not been provided with any further information about this and am not persuaded that her needs, in this instance, outweigh harm caused to the living conditions of occupiers of neighbouring properties.
15. The appellant has asked me to consider whether privacy screens could be erected and granted planning permission. The *Wheatcroft* principle does not apply to amended plans in enforcement appeals. Section 177(1)(a) of the Act effectively requires me to analyse the 'as built' balcony scheme with the scheme for balcony with one or two privacy screens. In doing so, I must have regard as to whether I could grant planning permission "*in relation to the whole or any part of those matters*" i.e. being the "*matters stated in the enforcement notice as constituting a breach of planning control*".
16. The Notice has been served on the balcony that has been erected with railings extending approximately 1m in height from the decking floor of the balcony. The alternative schemes show privacy screen(s) approximately 1.8m in height erected on the boundary with No. 5 or at both sides of the balcony. These would therefore extend up beyond the height of the existing 1m high railings. Any screens erected on the outside of the railings would also extend beyond the balcony as built. Hence any of the privacy screen options would not be within the 'whole or any part of' the balcony against which the enforcement notice was issued. Therefore, I am unable to take them into account. Installing

privacy 'fins' just to the front of the balcony would have no effect on their own in preventing the significant degree of overlooking of the adjacent properties.

17. The Council has suggested a condition requiring the erection of obscure glazed privacy screens on 3 sides, which would include a screen across the front of the balcony. The effect of such a condition would be to totally enclose the sides of the balcony and effectively create an obscure glazed box. As such, this would modify the development in such a way as to make it substantially different from that set out in the application and would amount to more than a minor modification.
18. The appellant is not fully in agreement with the condition, requesting the installation of some areas of non-obscure glazing to avoid an oppressive environment for users of the balcony. I concur that three sides of obscure glazing would be oppressive to users of the balcony but having non-obscure glazed areas would not prevent overlooking. Therefore, I conclude that there are no suggested conditions that would overcome the harm I have identified.
19. In conclusion, I find the balcony and its use would have an unneighbourly and intrusive effect on occupiers of neighbouring properties and would have an unacceptable degree of overlooking of the neighbouring gardens that would have a harmful effect on the privacy of existing occupants and their living conditions. Accordingly, the development is contrary to Policy DES7 of the City of Salford Unitary Development Plan (UDP), which seeks to ensure that development does not have unacceptable impact on the amenity of occupiers of other development.
20. It would also be contrary to the general advice in the Council's House Extensions Supplementary Planning Document. Whilst it does not contain a specific section on balconies, it requires development to have an acceptable impact on neighbouring residents. However, there is reference to the 'open aspect from structures such as balconies which would result in direct overlooking of a neighbour's garden [which] may be considered unacceptable'.
21. In the Notice the Council also refers to UDP Policies DES1 and DES8. However, these were not mentioned in the conclusion of the officer delegated planning report or in the reason for refusal. These policies deal with the design of extensions and how development relates to the general character of the surrounding area. The Council found the balcony did not harm the character and appearance of the area with the proposed 1.8m high screen. Hence these policies are not directly relevant to the main issue.

Other matters

22. I note the comments made by third parties reported in the Council's delegated officer report relating to loss of light and the design not matching the house or neighbourhood. The balcony, as it has been built, has no impact on light as it is principally a lightweight see-through structure with only railings to a height of 1m. The proposed 1.8m high privacy screen, although opaque, could reduce light levels if erected. However, the Council did not raise any 'loss of light' concerns or issues regarding the appearance of the balcony. Therefore, in view of the Council's refusal reason relating to only overlooking and privacy, and my conclusion on the main issue, there is no need for me to address these matters in the current decision.

23. I also note the appellants' explanation of how he sought to discuss the balcony scheme with neighbours and how they went ahead and erected it before submitting a planning application. Undertaking development without planning permission is a breach of planning control. It is not uncommon for people to then later seek to rectify the breach by the submission of a planning application, which may be granted so that there is no longer a breach. However, this is not the case here as planning permission was refused. Regardless, I must determine the application on its own merits.

Conclusion on ground (a) and the deemed planning application

24. The proposed development would not accord with the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given above, the appeal on ground (a) fails.

Appeals A and B

Appeal on ground (f)

25. An enforcement notice is required to set out the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in Section 173(4) of the 1990 Act. The appeals on ground (f) is that the requirements of the notice exceed what is necessary.
26. The notice alleges the unauthorised erection of a balcony. The steps required to be taken are to remove the balcony in its entirety and all associated materials from the land. The purpose of the notice is therefore to remedy the breach of planning control by restoring the land to its condition before the breach took place. The requirements do no more and no less. Consequently, they are not excessive.
27. The appellants' request for privacy screens either side of the balcony as a lesser step, would not result in the removal of the balcony, and hence would not remedy the breach of planning control. Similarly, the appellants' suggested pergola, for example, would only see the removal of the decking floor but would retain the balcony supporting structure and railings. This in effect retains the balcony and does not remedy the breach. And for the reasons already described above, the privacy screens exceed the 'whole or any part of' the alleged breach and go beyond the scope of the Notice. The same would apply to the pergola as this would extend down below the confines of the balcony. Therefore, these suggested steps cannot be entertained.
28. The appellants have also suggested that removing the material from the site prohibits re-use of the parts, which would be more eco-friendly. The balcony structure is a simple metal frame that can be dismantled relatively easily, such that its parts can be retained on site and re-used in some way. I regard this to be a reasonable request and I will vary the Notice accordingly.
29. For the reasons given above, the appeals on ground (f) fail in part, as the requirements to remove the balcony are not excessive. But I will amend the requirements of the Notice to allow the dismantled materials to be stored at the appeal site and reused if the appellant chooses.
30. I note that section 4 of the Notice starts "Either". But the requirements (i) and (ii) follow on from each other and have not been worded as either/or. However,

I will allow the appellants to remove all the materials from the land *or* retain them on site, so I will vary the Notice accordingly.

Conclusion

31. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Formal Decision

For Appeal A:

32. It is directed that the enforcement notice be varied by:-

- Deleting the word '*Either*' from the start of section 4.
- Inserting the word '*either*' at the end of requirement (i).
- Inserting the word '*or*' at the end of requirement (ii)'.
'
- Inserting new requirement (iii) '*Store the materials arising from compliance with no.(i) above within the property and to restore the Land to its condition before the breach took place.*'

33. Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

For Appeal B:

34. It is directed that the enforcement notice be varied by:-

- Deleting the word '*Either*' from the start of section 4.
- Inserting the word '*either*' at the end of requirement (i).
- Inserting the word '*or*' at the end of requirement (ii)'.
'
- Inserting new requirement (iii) '*Store the materials arising from compliance with no.(i) above within the property and to restore the Land to its condition before the breach took place.*'

35. Subject to these variations the appeals are dismissed and the enforcement notice is upheld.

K Stephens
INSPECTOR