



Appeal Decision

Site visit made on 2 June 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2020

Appeal Ref: APP/Z4718/C/18/3210102

37 Scholes Moor Road, Scholes, Holmfirth HD9 1SJ

- 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 Peter Wallace against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 20 July 2018.
- The breach of planning control as alleged in the notice is the erection of a raised platform; consisting of platform, balustrade and screens.
- The requirements of the notice are to demolish the raised platform, including screens and balustrade.
- The period for compliance with the requirements is 4 weeks.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matters

1. At the site visit the appellant stated that he had not received notification of the event. However, records also show that letters dated 15 May 2020 were sent to the appellant and the Council, who also attended the visit. Although the appellant reluctantly agreed to give access to the rear of his property, he claimed that a visit would be unfair since his key witness was not in attendance. However, given the purpose of the visit to see the appeal it would not be appropriate at such an event to discuss the merits of the case.
2. In support of his appeal the appellant has advanced arguments with respect to the effect on the living conditions of the occupants of nearby residential properties. However, there is no appeal on ground (a) that planning permission should be granted for what is alleged in the notice and consequently the planning merits do not fall to be considered.
3. At my site visit I observed that the screens have been removed. The evidence submitted confirms that the screens were in place at the time the enforcement notice was served on 20 July 2018. Therefore, there is no consequence to the enforcement notice which relates to the alleged breach of planning control at the time it was issued.
4. I have noted that the appellant has drawn attention to his costs relating to the previous and current appeal. However, there has been no application for an award of costs.

The appeal on ground (c)

5. The ground of appeal is that the matter alleged does not constitute a breach of planning control. Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 relates to the enlargement, improvement or alteration of a dwellinghouse. Such development is not permitted if, according to Paragraph A.1(k) it would consist of or include the construction or provision of a verandah, balcony or raised platform. In addition, the development is not permitted under Class B, Part 1 of Schedule 2 of the GPDO which relates to additions etc to the roof of a dwellinghouse since B.1 (e) does not allow development which consists of or includes the construction of a verandah, balcony or raised platform.
6. The appellant refers to the development as a balcony but contends it does not require planning permission as it involves the refurbishment of an old structure which had been in place for many years. However, rather than being a refurbishment it appears that the whole structure is new. Therefore, although a platform or decking may have been in place for many years, the works that have taken place have formed a new structure which constitutes a building operation under the Section 55(1) [1A(b)] of the 1990 Act.
7. In the case of *Skerritts of Nottingham Ltd*¹ the character of a development indicated that it remained in place for sufficient time to be significant and annual removal did not deprive it of the quality of permanence. In addition, the courts have held² that the main characteristics of a building are that it is of a size that would normally be constructed, as opposed to being brought ready-made onto the site, physical change or permanence and there would be physical attachment to the ground.
8. Additional case law identified by the appellant³ confirms that development must convey some idea of permanency. In those cases a small shed capable of being moved about the site on wheels and swing boats that were capable of being removed and dismantled in an hour did not amount to development. Those cases are materially different to the appeal before me in terms of defining the main characteristics of a building as being size, permanence and physical attachment.
9. At my site visit I noted that the structure is substantial, comprising joists, timber decking boards, balustrade and hand rails which are fixed together. It is of a size that would need to be constructed on site, rather than being imported onto the site ready-made. In addition, it is clear to me that the appellant intends to keep the development in place and there is no indication that it is intended to move.
10. Although it does not appear to be physically attached to the building, as a consequence of its overall weight it does not need to be fixed for it to stay securely in place. Whilst it may be capable of being moved from the building without removing fasteners that does not mean it is a mobile structure. Therefore, the absence of actual means of fastening the structure to the roof does not, in this particular case, mean that a building operation has not taken place.

¹ *Skerritts of Nottingham Ltd v SSETR & Harrow LBC* (No. 2) [2002] JPL 1025

² *Barvis v SSE* [1971] 22 P&CR 710 and *Cardiff Rating Authority v Guest Keens* [1949] 1 KB 385

³ *Tewkesbury BC v Keeley & Ors* [2004] EWHC 2954 and *James v MHLG & Brecon cc* [1963] 16 P&CR 20

11. Therefore, due to the overall characteristics of the development a building operation has occurred within the meaning of development under Section 55 of the Act for which planning permission is required. The development does not comprise permitted development for which planning permission was granted by way of the provisions of the GPDO because it is clearly a new balcony. The appeal on ground (c) fails.

The appeal on ground (f)

12. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve its purpose. The appellant has not explained what lesser steps could be taken.
13. The purpose of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity. Since the notice required the entire development to be removed, the purpose is clearly to remedy the breach. Leaving any part of the development in place would not achieve that purpose. In this respect the appeal on ground (f) fails.

Other matters

14. The appellant appears to indicate that the enforcement notice will interfere with the rights under the United Nations Convention on Human Rights which are enshrined in Articles 8 and 10 of the Human Rights Act 1998, which states that everyone has a right to respect and family life, and their home, among others. These are qualified rights, whereby interference may be justified if in the public interest, but the concept of proportionality is crucial. In this particular case it is in the public interest and proportional to control the development in order to protect the living conditions of the occupants of an adjacent residential property.

Conclusion

15. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

16. The appeal is dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR