



Appeal Decision

Site visit made on 28 July 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 August 2020

Appeal Ref: APP/P0119/C/19/3241835

Land at 46 Capel Close, Warmley, Bristol BS15 4LS

- 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 Karen Williams against an enforcement notice issued by South Gloucestershire Council.
- The enforcement notice was issued on 22 October 2019.
- The breach of planning control as alleged in the notice is without planning permission the erection of balustrading/means of enclosure and decking/raised platforms at first floor/single storey roof level.
- The requirements of the notice are: (i) Demolish and remove the balustrade/vertical screen (sheathed with material resembling grass/leaves from the roofs of the single storey buildings ("the buildings") within the curtilage of the dwelling. (ii) Demolish and remove the decking/raised platforms from the roofs of buildings. (iii) Remove from the land all debris, together with all plant, equipment and machinery associated with the steps (i) (*sic*) above.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (d), (f) and (g) 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.

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

Preliminary Matter

1. There is a typographical error in the enforcement notice requirements at paragraph 5 step (iii). This step should clearly be read together with steps (i) and (ii). The appellant can be in no doubt about what step (iii) requires them to do. Therefore, I shall vary the notice to delete reference to the roman numeral (i) in step (iii). In doing so, there would be no injustice.

Ground (d) appeal

2. The ground of appeal is that it was too late to take enforcement action against the breach of planning control alleged in the notice. Having regard to s171B (1) of the 1990 Act, in order to succeed on this ground the appellant would have to show that the alleged building operations had been substantially completed more than four years before the date the notice was issued, the relevant test of the evidence being on the balance of probability.
3. The appeal property contains a modern end of terrace dwelling. There are a pair of garages to the rear of the dwelling, accessed from a service lane at the

side. A metal raised deck has been provided over the roof of the garages and a metal balustrade has been erected, enclosing the deck as well as the rear garden boundary. The balustrade consists of vertical poles fixed to the deck, with mesh between the poles and a horizontal strip along the top. When I visited, the balustrade was mostly covered by artificial conifer hedging, but part adjacent to the lane was covered by an olive coloured fabric. A raised deck at the side of the dwelling, also enclosed by a structure covered with artificial conifer hedging, was granted planning permission in March 2014¹.

4. The appellant's evidence indicated that by August 2014, there was a raised deck on the roof of the garages, enclosed by timber fencing, with similar fencing on the rear garden boundary wall. Nevertheless, the appellant conceded that the pre-existing deck and fencing had been removed and replaced in early 2019. As a matter of fact and degree, removing the pre-existing structures and the provision of the deck and balustrade has amounted to building operations within the meaning of 'development' at s55 of the 1990 Act. Replacement of the pre-existing structures goes beyond what could reasonably be regarded as maintenance, improvement or alteration and in any event, the external appearance of the building has been materially affected. As a result, the deck and balustrade could not have been substantially completed more than four years prior to the notice being issued.
5. The appellant's subsequent suggestion that the structures present in 2014 remained in situ is not supported by any firm evidence. In relation to the balustrade, it is also inconsistent with the available evidence. This is due to the balustrade being of a similar overall height to the permitted raised deck enclosure alongside, whereas the pre-existing fencing was lower than the balustrade. As a result, it is likely that some of the balustrade would have been visible in the appellant's photographs, had it been in existence in 2014.
6. Accordingly, on the balance of probability the appellant has failed to show that it was too late to take enforcement action and the ground (d) appeal does not succeed.

Ground (f) appeal

7. The ground of appeal is that the requirements of the notice are excessive, having regard to its purpose.
8. At s173 (4), the Act provides that an enforcement notice can remedy a breach of planning control, including by (a) restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach. The notice requires removal of the deck and balustrade rather than modifying those structures in some specified fashion. Therefore, although the notice does not state as such explicitly, its purpose must be to remedy the breach by restoring the site to its condition before the breach took place, i.e. immediately prior to provision of the deck and balustrade, within paragraph (a) above.
9. The appellant's case under this ground is largely relevant to the planning merits of the deck and balustrade. However, as there is no deemed planning application following a ground (a) appeal, such matters cannot be considered.

¹ Council Ref: PK13/4678/F.

10. Given the above context, the breach could only be remedied without attacking the substance of the notice by removal of the deck and balustrade. The appellant did not suggest any steps which stopped short of removing the deck and balustrade whilst still remedying the breach and in my view, there are none. As a result, there is no obvious alternative to the notice requirements.
11. Therefore, the requirements are not excessive having regard to the purpose of the notice and the ground (f) appeal fails.

Ground (g) appeal

12. The ground of appeal is that the time for complying with the requirements of the notice is unreasonably short.
13. Removing the deck and balustrade is likely to be a relatively small-scale and straightforward task, in which dismantling by hand would be the main activity. Limited manual labour would be involved and no specialist or heavy equipment is likely to be required. Given these factors, inclement weather conditions are unlikely to unduly delay completion of the remedial works. Whilst I acknowledge that the appellant is in full-time employment, it is unclear why assistance could not be sought or a contractor engaged to undertake the remedial works, if necessary. Events leading up to the issuing of the notice are not germane to this appeal.
14. Therefore, one month is in my view a sufficient timescale to allow for undertaking the remedial works. It strikes an appropriate balance between remedying the planning harm identified in the notice as soon as practicable, whilst still affording the appellant reasonable time in which to undertake or have undertaken the remedial works. It follows that extending the compliance period to four months would simply perpetuate the breach of planning control.
15. Consequently, the ground (g) appeal also fails.

Conclusion

16. For the reasons given above I consider that the appeal should not succeed.

Formal Decision

17. It is directed that the enforcement notice be varied by in paragraph 5 step (iii) the deletion of "(i)" between "steps" and "above". Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR