
Appeal Decisions

Site visit made on 27 October 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2020

Appeal A: APP/E2001/C/20/3255433

Appeal B: APP/E2001/C/20/3255434

Flat 4, Mentone House, 9 West Hill, Hessle, East Riding of Yorkshire HU13 0ER

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Michael Slade (appeal A) and Mrs Tracy Slade (Appeal B) against an enforcement notice issued by East Riding of Yorkshire Council.
 - The enforcement notice was issued on 12 June 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the development of a balcony measuring 2m x 4m constructed on the western elevation of the building to serve Flat 4's main bedroom and enlargement of a window to floor level and installation of a door.
 - The requirements of the notice are (1) Cease the use of the balcony; (2) Remove the external door and replace with a window to match the previous; and (3) Permanently remove the balcony from the site, including the cantilevered steel structure, railings and floor boards.
 - The periods for compliance with the requirements are (1) Within 7 days of the date the notice takes effect; and (2) and (3) Within 5 months of the date the notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - Appeal B is proceeding on the grounds set out in section 174(2)(b), (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 1990 Act as amended have lapsed in this appeal.
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Appeals A and B - Decision

1. The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended in respect of Appeal A.

Preliminary matter

2. Two letters of representation from the occupier of Flat 2, dated 6 December 2019 and 17 July 2020, are before me. The second letter is clearly intended to supersede the first and I have therefore only had regard to the first letter insofar as it is consistent with the writer's revised position.

The appeals on ground (b)

3. The balcony is erected above 2 ground floor windows of Flat 2 and the Council's reasons for issuing the notice refer to one of these as a living room window.

However, the neighbour occupying Flat 2 has confirmed that both rooms are used as bedrooms and the Council accepts that the reference to a living room window was an error.

4. Appeals on this ground must relate to matters of fact and may succeed if the breach of planning control alleged in the notice has not occurred or has been incorrectly described. However, the error in the notice does not lie in section 3, the description of the alleged breach, but in section 4, the Council's reasons for issuing the notice. The description of the breach is restricted to the balcony and the new doorway that gives access onto it and accurately summarises the development that has been carried out. Accordingly, the alleged breach of planning control has occurred as a matter of fact.
5. Whether the balcony results in an undue sense of enclosure or causes loss of privacy are matters of judgement that fall to be considered under ground (a) rather than ground (b).
6. For these reasons the appeals on ground (b) should not succeed.

The appeal on ground (a)

7. The main issue in this appeal is the effect of the balcony on the living conditions of neighbours in terms of outlook, daylight and privacy.

Reasons

8. The 2 bedrooms with windows beneath the balcony are habitable rooms and the likely effect of development on people occupying them must be taken into consideration as a matter of public interest. In this case, the neighbour has stated that the balcony does not affect her in terms of outlook or loss of light, which is consistent with the fact that she mostly uses both rooms at night.
9. However, a room used as a bedroom may be put to other purposes involving greater day time use, such as a living room or home office. Accordingly, while the effect of the balcony on the current use as a bedroom may be limited, the potential effect on the range of domestic activities which could be undertaken over time should also be considered as a matter of public interest. I could see that the balcony has reduced the proportion of sky visible from the direction of the windows underneath and, notwithstanding the current neighbour's comments in this respect, this results in an undue sense of enclosure that is harmful to the outlook from Flat 2.
10. The reasons for issuing the notice do not allege any loss of privacy to occupiers of The Coach House but are confined to the effect of the balcony on occupiers of Flat 2. My attention has been drawn to the decision of another Inspector¹, who noted that the balcony afforded clear views down into a bedroom window of Flat 2, despite the obscure glazing film applied to the lower half of that window. This and nearby windows in Flat 2 face onto communal grounds that also provide a right of access for The Coach House and I understand the film was applied in response to these factors prior to the construction of the balcony. Although I could not see through the upper half of the window into the room from the balcony, that was because a blind had been drawn.

¹ APP/E2001/W/19/3231244, dismissed 4 December 2019

11. The occupier of Flat 2 has documented incidents where it was possible for people using the balcony to see into her bedroom and the doorway to her en-suite through the clear glazed upper portion of a bedroom window. While opportunities for overlooking existed before, people may sit or stand on the balcony for extended periods, increasing those opportunities. Furthermore, the sight or sound of people using the balcony will heighten the sense of being overlooked, whether actual or perceived. In this way, the balcony has a significant effect on the neighbour's living conditions, including unacceptable loss of privacy.

Other matters

12. The balcony has enhanced the appellant's enjoyment of their home, but this cannot alter or outweigh the harm to the living conditions of neighbours identified in the main issue above. While there is access to a fire escape, it is some way from the bedroom and on the other side of the kitchen. The balcony has therefore increased the options available to occupiers of Flat 4 in the unfortunate event of fire. However, no evidence that the flat was unsafe before the balcony was added, or that it would become unsafe if it were removed, has been presented. Consequently, this benefit to the occupiers does not outweigh the harm the balcony causes to the living conditions of neighbours.

Conclusion on ground (a)

13. For the reasons given, the balcony has an unacceptable effect in terms of outlook and privacy. It is therefore contrary to policy ENV1 of the East Riding Local Plan 2012 – 2029, which aims to achieve a high quality of design that has regard to the amenity of existing or proposed properties, and Part 12 of the National Planning Policy Framework.
14. Accordingly, the appeal on ground (a) should not succeed.

The appeals on ground (f)

15. While the notice requires the balcony to be removed, the loss of privacy could be mitigated by attaching screening to it, although no details of this have been provided. However, this lesser step would not address the balcony's effect on the neighbour's outlook and the breach of planning control alleged in the notice, namely the development of the balcony, the enlargement of a window to floor level and installation of a door, would not be remedied.
16. The steps set out in the notice are the only identified means of overcoming the breach of planning control and addressing all its adverse effects and are therefore not excessive.
17. For these reasons the appeals on ground (f) should not succeed.

The appeals on ground (g)

18. The appellants wish to attend to property matters abroad when Government travel guidelines permit, and this could affect their ability to comply with some requirements of the notice. Removing the external door and replacing it with a window will require contractors to enter the property and that may not be possible if both appellants are out of the country. However, the balcony is bolted to the building and it could therefore be removed at any time, provided the contractor had access to the communal grounds.

19. Due to the uncertainty regarding Covid-19 the appellants have not been able to suggest an alternative time scale for compliance. However, no detail of their property matters abroad, including any urgency, has been given. Accordingly, it has not been demonstrated that the periods for compliance with the requirements of the notice fall short of what should reasonably be allowed, even taking the present uncertainty into account. Nevertheless, section 173A(1)(b) of the 1990 Act as amended affords a local planning authority discretion to waive or relax any requirement of an enforcement notice, including extending the compliance period; however, that would be entirely a matter for the Council.
20. For these reasons the appeals on ground (g) should not succeed.

Conclusions

21. For the reasons given above, I conclude that the appeals should not succeed. I have upheld the enforcement notice and refused to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended in respect of Appeal A.

Mark Harbottle

INSPECTOR