



Appeal Decision

Site visit made on 13 October 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 2 December 2020

Appeal Ref: APP/M1710/C/19/3234078

Land at Cunningham, Willis Lane, Four Marks, Alton GU34 5AP

- 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 Timms Turkeys Bryan Timms against an enforcement notice issued by East Hampshire District Council.
 - The enforcement notice was issued on 8 July 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, and within the last four years the erection of an external staircase located on the side extension to the property on the Land and shown in the approximate location marked with a white cross on Plan 2 attached to this Notice.
 - The requirement of the notice is to:
Remove the staircase from the Land.
 - The period for compliance with the requirement is 2 months from the date this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is allowed and the enforcement notice is quashed.

Background and Preliminary Matters

2. From the Council's case report it is understood that the external staircase, the subject of the enforcement notice, was erected and substantially complete by March 2016. On 28 July 2016 planning permission (ref 27410/008) was subsequently granted for a two-storey side extension and side/rear conservatory. The approved plans show that the side extension would encase the staircase. The standard time limitation condition, requiring that the approved development should be begun before the expiration of three years (ie no later than 28 July 2019), was imposed on the permission.
3. By the beginning of July 2019 it would appear that works had yet to commence and, in an attempt to prevent the staircase eventually acquiring immunity from formal enforcement action, the Council saw it expedient to issue an enforcement notice requiring for the staircase's removal. Issued on 8 July 2019, the notice indicated that the reason for its issue was that it caused overlooking to the neighbouring garden, and represented a harmful intrusion and a loss of privacy.
4. The current appeal ensued on this basis. However, at the time of my site visit I observed that a side extension has since been erected, with the works completed.

5. On the face of it, and having referred to the approved plans - particularly as profiled in the elevational drawing no 2045/16 - it appeared to me that the development carried out is that for which planning permission was granted. As the appellant says that works commenced in February 2019 it is claimed that the development has been implemented in accordance with the terms of the permission granted.

The appeal on Ground (b)

6. The appeal on ground (b) is whether the matters alleged to be a breach of planning control has occurred as a matter of fact. The appellant must show on the balance of probability that those matters have not occurred. The relevant date is that of the issue of the notice.
7. On this ground the appellant is claiming that the staircase as erected is permitted development by reason of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).
8. Schedule 2, Part 1, Class A of the GPDO allows for the enlargement, improvement or other alterations to a dwellinghouse, subject to number of provisos and limitations. In particular, paragraph A.1(k)(i) says that the enlargement should not involve the construction or provision of a verandah, balcony or raised platform. Having seen a photograph provided by the Council, apparently taken in 2016, I note that, as constructed, the metal external staircase has solid rising treads, before turning at 90 degrees to access a first floor level door in the building's flank wall.
9. I note the appellant's figures cited in an attempt to support this ground, but these are irrelevant in the context under which this particular development must be assessed for compliance with Class A. Instead, the development at issue, in having created a number of steps progressively rising from ground level, involved the creation of a series of raised platforms. Further, the top step, or rather the area immediately outside the doorway, represents an integral balcony feature.
10. On the above basis, irrespective of other legal points which I shall discuss under the Ground (c) appeal below, I am satisfied that the matters alleged by the Council as constituting the breach had occurred as a matter of fact at the date of the notice's issue.
11. Accordingly, the appeal under Ground (b) fails.

The appeal on Ground (c)

12. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof on this is on the appellant, and is on the balance of probabilities.
13. Ground (c) assumes the fact of the original development as it occurred at the time of the enforcement notice's issue, so it can only succeed on this basis if that original development does not now amount to a breach of planning control due to a change in the planning control situation.
14. In responding to this appeal the Council indicates that the staircase, although being clearly shown on the plans submitted with the application for which planning permission was granted, formed no part of the development. I

disagree. The external staircase, for which I have shown that planning permission was required, was, in effect, unauthorised development at the time the application was submitted in June 2016. It formed part of the existing plan, and a staircase positioned identically was also shown on the proposed plan, whereby it was seen to be enclosed within the space between the building's main flank and the new flank wall created.

15. The Council is of the view that the approved development, in its implementation, would involve the removal of the external staircase and its replacement with a new internal staircase. However, from my observations, and with reference to the Council's 2016 photograph I have referred to, it would appear that the original external staircase remains in situ and, as was proposed, has been enclosed by the approved extension.
16. I must, therefore, conclude that the staircase, in constituting an element of the development granted planning permission, has been authorised, accordingly. As a consequence, the matters alleged in the enforcement notice do not constitute a breach of planning control.
17. The Ground (c) appeal thereby succeeds.

Other Matters

18. I note that the planning permission ref 27410/008 is subject to a condition requiring that the development is implemented in accordance with the approved plans. These are set out and numbered as part of condition 4. Although the approved plan (drawing no 2045/13A) shows the side extension's flank wall set in from the boundary it appears that neighbouring occupiers are concerned that the development has not been correctly implemented. They consider it too close to the common boundary with 'Harvest Way'.
19. It remains the Council's responsibility to ensure that the development built does accord with the terms and conditions of the relevant planning permission.

Overall Conclusion

20. For the reasons given above I conclude that the appeal should succeed on Ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various other grounds set out in section 174(2) to the 1990 Act as amended do not need to be considered.

Formal Decision

21. The appeal is allowed, and the enforcement notice is quashed.

Timothy C King

INSPECTOR