



Appeal Decision

Site visit made on 12 October 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 January 2021

Appeal Ref: APP/U2235/C/19/3237423

Land at Riverside House, West Street, Hunton, Kent, ME15 0RQ

- 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 Simon Miller against an enforcement notice issued by Maidstone Borough Council.
 - The enforcement notice, numbered 18/500234, was issued on 28 August 2019.
 - The breach of planning control as alleged in the notice is the erection of a structure comprising a moveable raised platform/balcony with balustrading to the western side of the first floor holiday let within the approximate area hatched green on the attached plan.
 - The requirements of the notice are:
 - i) Dismantle the structure comprising a movable raised platform/balcony with balustrade shown within the approximate area hatched green on the attached plan;
 - ii) Remove from the land all resultant materials, debris and rubbish arising from compliance with step (i) above.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of 'one (1) month' and the substitution of 'six months' as the period for compliance.
2. Subject to the variation the appeal is dismissed, 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.

Procedural matter

3. The appellant had requested that the appeal be determined by way of a Hearing. However, following a review of the evidence, it was clear that a balanced decision, without injustice to the parties, could be reached without the need for a Hearing. The appeal was therefore considered on this basis.

Reasons

Ground (a) and the deemed application

4. I have had regard to the reasons why the Council issued the notice and consider that the main issue is, the effect of the development on the character and appearance of the building and the area. In addition to policies SP17 and

DM31 of the Maidstone Borough Local Plan (2017) (The LP), cited in the notice, I consider that Policy DM30 is also relevant to this appeal. The Council have referred to this policy in their evidence and the appellant has been given the opportunity to comment. Accordingly, I shall consider the appeal in the context of these relevant policies.

5. The property known as Riverside House is a large detached residential property, located to the north of West Street. To the west of the dwelling and the main access drive, lies a detached garage with holiday accommodation within the roof space. The structure subject of this appeal comprises a substantial platform sited on the upper east elevation of the garage. On rising ground between the garage and West Street, there is a small plot of grassed land partly bounded by a substantial brick wall. The immediate boundary with West Street, is marked with a hedge of varying heights and maturity.
6. At the time of my site visit, the only access to the platform was through a door from the bedroom of the holiday let. There was a small patio style table and chairs, making it clear that it is used recreationally. The main timber structure for the platform was sited behind the adjacent boundary wall, and at ground level it was fitted with small wheels located on metal runners. The elevation immediately adjacent to the wall, was also fitted with small wheels on horizontal metal runners, potentially allowing it to be rolled away from the building. The upper floor had a metal hand-rail and cables, surrounding the useable area, providing the balustrade. The handrail was attached to the building with a number of screws, with the cables attached to metal eyelets fixed to the building's outer wall.
7. Although the lower part of the platform is screened by the wall from views from West Street, it is visible from the public footpath that runs east to west to the rear of the building. In contrast, the balustrade can clearly be seen from the surrounding public footpaths and when travelling in either direction along West Street.
8. The materials used for the balustrade are utilitarian in style, with the stark appearance of a scaffolding frame. They draw attention to the platform and appear as an incongruous feature, when compared with the design of the host building and the wider area. Consequently, I consider that they appear overly harsh and uncompromising in this attractive rural location.
9. At the site visit I was able to view the position of the more recently permitted terrace (19/504820/FULL) at Riverside House, from various vantage points along West Street and the public footpaths. It is however clear from the evidence, that this proposed terrace differs in design from the appeal development. The balustrade panels would be of glass, giving them a more subtle appearance, allowing the balcony to integrate with the design and appearance of the host dwelling.
10. I have had regard to the appellant's suggestion that the development could be screened from West Street by the boundary hedge. It is submitted that the minimum height of the hedge could be controlled through the use of a suitably worded condition. Although I recognise that the existing hedge, could in time, provide some screening to the development, it would not assist in providing screening from the remaining public vantage points. Moreover, the level of this vegetation may not be permanent and is likely to be subject to change month to month and year to year. In my judgement it would not adequately mitigate

the unacceptable harm I have identified to the character and appearance of the host building and the area. Moreover, I am not satisfied therefore that a minimum height could be adequately controlled through the use of a planning condition as suggested.

11. Overall, I find that the raised platform results in an unacceptable and incongruous form of development that is in stark contrast to the host building and the rural character and appearance of the area.
12. The appellant asserts that works could be carried out to the platform to provide bracing struts, additional oak legs, pneumatic tyres and a towing hitch. This would enable it to be towed from place to place where it could be used to assist with maintenance of the main dwelling, hedges and various outbuildings. A quote for these proposed alterations and a plan has been provided. It is the appellant's case that these alterations, would mean the platform would no longer constitute development requiring planning permission. It is further asserted that this would represent a worse position than the appeal platform.
13. Section 55(1) of the Town and Country Planning Act 1990 defines two limbs of development, namely operational development, which means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change of use. The first comprises activities which result in some physical alteration to the land with some degree of permanence, whilst the second comprises activities which are carried out in, alongside or on the land, but do not interfere with the actual physical characteristics of it.
14. It is well established in case law that whether the platform would constitute development, would be dependent on a number of factors that have been identified as decisive of what is a building for the purposes of planning legislation; (a) that it was of a size to be constructed on site, as opposed to being brought on to the site, (b) permanence, (c) physical attachment.
15. However, such a legal determination is not a matter before me. In the absence of evidence, or a Certificate of Lawfulness, I cannot be certain whether these proposed alterations would mean that the platform would no longer be development as defined above. It is nonetheless, necessary to assess the weight that should be ascribed to this potential fall-back position.
16. I have no reason to doubt that these alterations could be carried out. However, to my mind, whilst not determinative, there would be a number of practical disadvantages of using the platform in the manner proposed. The scale of the platform means that it would be less manoeuvrable, and its fixed height makes it less versatile, than a more traditional working platform.
17. I recognise that if development was not involved, there would be little control over its appearance. Being mobile, it could also be sited in locations where it may be more noticeable. However, this mobility and the alternative use proposed, likewise means that it would not be permanently sited in its current position, where I have found that it is significantly harmful. In my judgement, the proposed fall-back would be no more harmful than the current position and would also result in an unacceptable effect on the character and appearance of the area. Accordingly, as both proposals are undesirable, I give the fallback position only limited weight and do not consider that it provides sufficient justification to allow development, that I have already found to be unacceptable.

18. I have considered whether it would be possible to grant permission for the platform, whilst refusing permission for the balustrade. However, given the design and purpose of the platform, I do not consider that I can reasonably separate these elements of the development. Nonetheless, bearing in mind the Council's suggested condition, it may be possible to find an acceptable alternative design. For this reason, I shall extend the period of compliance with the notice to six months to allow options to be explored, any formal planning application to be submitted and then determined.
19. Drawing all of the above points together, for the above reasons, I find that the proposed fall-back does not outweigh the harm I have identified to the host building and the rural character and appearance of the area. Consequently, I find that the development is contrary to Policies SP17 and DM30 and DM31 of the LP. In summary, these policies seek to promote high quality design, that is sympathetic to existing buildings and the rural area, protecting the character and appearance of the area.
20. My attention has been drawn to the positive comments that the letting business has attracted. I recognise that these may, in part, be as a result of the views afforded by the platform. However, in my judgement this does not outweigh the harm that I have identified above.

Ground (f)

21. The appeal is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purpose of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or as the case may be, to remedy injury to amenity (s173(4)(b)). In this case the purpose of the notice is to remedy the breach of planning control as it requires that the platform/balcony is removed with specific steps taken to restore the land.
22. It is the appellant's case that in addition to the fallback position considered above, the balustrade could be made collapsible or demountable so that it would 'be down' when not in use. It is suggested that this could be controlled by a condition if necessary. Alternatively, it would be possible to remove the balustrade altogether, thus reducing the visibility of the platform.
23. An appeal under ground (f) provides some scope for a solution short of a complete remedy and as set out above, it may be possible to find a more acceptable design for the balustrade. However, any substituted scheme must be precisely defined. With regard to the first proposal it is not clear how this would be achieved and whether the resultant remedial work would overcome the harm identified. Accordingly, there is no 'worked out alternative', whereby the notice could be varied under ground (f) with the necessary degree of precision.
24. With regard to the second suggestion, as outlined above, I recognise that the platform, without the balustrade, would be less visible. However, as the building is used as a holiday let, it seems to me, that guests would be unlikely to use it without any safety rail. Moreover, the only access to the platform is through the holiday let. These factors significantly reduce the opportunities for it to be used for its intended, or any other useful purpose. Accordingly, whilst a theoretical prospect, I do not consider that, on the balance of probability, it is

likely that the platform would be retained in its current position with no balustrade.

25. From the evidence I have, the platform has been constructed to facilitate the holiday let business. For the above reasons I find that the steps required by the notice do no more than is required, to remedy the breach of planning control, and lesser steps would not achieve that purpose. Consequently, the appeal on ground (f) is dismissed.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR