



Appeal Decisions

Site visit made on 25 May 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 June 2021

Appeal A Ref: APP/D1780/C/20/3256282

Appeal B Ref: APP/D1780/C/20/3256283

Land at 166 Dale Valley Road, Southampton SO16 6QW

- 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 Mrs Susan Leaver (Appeal A) and Mr John Leaver (Appeal B) against an enforcement notice issued by Southampton City Council.
- The enforcement notice was issued on 24 June 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a storage structure, a bin store structure and a front brick and rail boundary wall with piers on the front forecourt of the land.
- The requirements of the notice are: (i) Remove the storage structure from the land; (ii) Reduce the height of the front brick and rail boundary wall and piers to a maximum height of one metre; (iii) Remove the bin store structure from the land; (iv) Remove all resultant materials from the land.
- The period for compliance with the requirements is 28 days.
- The appeals are proceeding on the grounds set out in section 174(2)(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 appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals succeed in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Appeal C Ref: APP/D1780/C/20/3258493

Appeal D Ref: APP/D1780/C/20/3258494

Land at 166 Dale Valley Road, Southampton SO16 6QW

- 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 Mrs Susan Leaver (Appeal C) and Mr John Leaver (Appeal D) against an enforcement notice issued by Southampton City Council.
- The enforcement notice was issued on 29 July 2020.
- The breach of planning control as alleged in the notice is without planning permission, the installation of a clear glazed window in the gable.
- The requirements of the notice are: (i) Replace the clear glass in the window in the gable with a minimum level 3 obscure glass; and (ii) Remove all resultant materials from the land.
- The period for compliance with the requirements is 56 days.
- The appeals are proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice upheld.

Appeal E Ref: APP/D1780/C/20/3258495

Appeal F Ref: APP/D1780/C/20/3258496

Land at 166 Dale Valley Road, Southampton SO16 6QW

- 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 Mrs Susan Leaver (Appeal E) and Mr John Leaver (Appeal F) against an enforcement notice issued by Southampton City Council.
- The enforcement notice was issued on 29 July 2020.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a rear dormer window which includes the provision of a raised platform.
- The requirements of the notice are: (i) Remove the access hatch in the roof of the dormer window and replace it with materials to match the existing roof of the dormer window; and (ii) Remove all resultant materials from the land.
- The period for compliance with the requirements is 56 days.
- The appeals are proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals succeed in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. There are no deemed planning applications for the works attacked by the three enforcement notices, as no appeals have been made on ground (a) and the relevant fees have not been paid. As a result, in determining these appeals planning merits considerations are not before me.
2. The appellants' submissions in respect of Appeals C and D are also relevant to an appeal made on ground (c). Therefore, I have also considered ground (c) in respect of those appeals. It was not necessary to invite further comments as the Council had already addressed the matters raised relevant to that ground.

Appeals A and B

Ground (f) appeals

3. The ground of appeal is that the requirements of the notice are excessive, having regard to its purpose.
4. An enforcement notice can have one of two purposes. Firstly, it can remedy the breach of planning control. This includes by making the development comply with the terms of any planning permission granted in respect of the land or restoring the land to its condition before the breach took place. Secondly, the notice can remedy any injury to amenity caused by the breach.
5. The Council did not specify which of the above purposes apply to this notice, which attacks works including two storage structures and a brick wall, piers and railings erected at the front of a residential property. However, total removal of the storage structures is required, thereby restoring the appeal property to its condition before the breach took place, whilst reducing the wall

- to 1 m high would make it comply with the terms of permitted development¹. Therefore, the purpose of the notice must be to remedy the breach.
6. The appellants submitted no definitive case in relation to ground (f); the visual impact of the works, comparisons with local front boundary treatments and railings and the visibility for vehicles accessing and egressing the property and adjoining properties being relevant only to the planning merits. The pre-existing front boundary treatment is also not relevant to these appeals.
 7. By and large, lesser requirements than those set out in the notice would not achieve its purpose. Requirements which for example entailed screen planting, or which involved less than total removal of the storage structures (one of which has already been removed) and removal of the wall piers and railings in excess of 1 m high would mean that parts of the works in breach of planning control would remain at the property and so would not remedy the breach.
 8. However, by removing the bin store roof and reducing its height to 1 m, that structure would then comply with the terms of permitted development, thereby also remedying the breach. There appears to be no practical reason why the bin store could not be modified in this fashion as an alternative to its removal. Requiring reduction in height of the bin store as an alternative would be sufficiently clear for there to be no uncertainty as to what must be done to comply with the notice.
 9. Therefore, whilst I find that the requirements are not excessive, I shall vary the notice as set out above as an alternative remedy to the breach and the ground (f) appeals succeed to that extent.

Ground (g) appeals

10. The ground of appeal is that the time for complying with the notice requirements falls short of what should reasonably be allowed.
11. The remedial works involved in removing the bin store or reducing it to 1 m high and reducing the wall to 1 m high together with any works of making good are small-scale, straightforward and it would take no more than a few days at most for someone to carry them out. The works could be undertaken either by the appellants or alternatively by a small building contractor at relatively little expense. It is unlikely that there would be difficulty in sourcing a suitable and readily available contractor. Therefore, twenty-eight days affords ample time for the works to be completed.
12. Accordingly, I find that the compliance period specified in the notice strikes an appropriate balance between remedying the planning harm identified in the notice as soon as practicable, whilst also allowing a reasonable timescale for the works to be carried out. It follows that extending the time for compliance would perpetuate the breach and the associated planning harm unnecessarily.
13. I am also mindful of current uncertainty surrounding the duration of the COVID-19 pandemic and any hitherto unforeseen consequences in terms of carrying out the works that this may have. It is open to the Council to use

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) at Article 3, Schedule 2, Part 2, Class A permits erection of a wall up to 1 m high adjacent to a highway used by vehicular traffic.

their power under s173A(1)(b) of the Act to extend the compliance period, if at any time they consider that the circumstances are appropriate to do so.

14. Therefore, the ground (g) appeals fail.

Appeals C and D

Ground (c) appeals

15. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. It is for the appellants to show that their appeals on this ground should succeed, the relevant test of the evidence being on the balance of probability.
16. This notice attacks a large window. Installing the window is a building operation materially affecting the external appearance of the dwelling, falling within the statutory definition of development². Whilst such an operation can be permitted development, that is conditional on the use of obscure glazing where, as in this case, the window is in an upper-floor of a wall or roof slope forming a side elevation of the dwelling³.
17. An opaque film has been applied over clear glass on the inner side of the lower part of the window. However, that is patently not the same as the window being obscure-glazed as the glass itself remains transparent. There was no firm evidence to show that the film was permanently affixed to the glass. Whilst the film currently restricts inter-visibility, it is not an integral part of the glazing, being an addition to the window not entirely unlike curtains or blinds in terms of its effect and similarly therefore being capable of removal. The Government's Technical Guidance (TG)⁴, which assists in interpreting the permitted development rules, advises that to satisfy the condition of permitted development such windows should be obscure glazed to a minimum of level 3. The absence of any reference in the TG to using opaque film reinforces my view that it is the transparency or otherwise of the glazing itself which is the relevant factor for determining whether the condition is satisfied, not whether it is possible to see through the window.
18. Furthermore, the reference to 1.7 m height above the floor level in the condition is in the context of the parts of a side window which can be opened. This is separate and in addition to the requirement for obscure glazing. As a result, the condition cannot be read as permitting clear glazing at a height greater than 1.7 m above the floor level. In the TG, the height above floor level is only referred to in the context of the opening part of the window and there is no reference to using clear glazing where that height is exceeded. This reinforces my view that in order to satisfy the condition, no part of the window can be clear glazed.
19. Due to the above factors, I conclude that the window does not satisfy the condition of permitted development. No grant of express planning permission for installing the window was drawn to my attention. It follows that the window is in breach of planning control.

² In s55 (1) of the Town and Country Planning Act 1990 (as amended).

³ The GPDO Article 3, Schedule 2, Part 1, Class A, condition A.3 (b).

⁴ Permitted development rights for householders: Technical Guidance MHCLG September 2019.

20. Therefore, on the balance of probability the appellants have been unable to show that the window is not in breach of planning control and the ground (c) appeals fail.

Ground (f) appeals

21. The requirement to fit obscure glazing would mean that the relevant condition is satisfied; the window would comply with the terms of permitted development. Therefore, the purpose of this notice also must be to remedy the breach.
22. Retaining clear glass covered with opaque film would not satisfy the condition, it would not bring the window within the terms of permitted development and as a result, the breach of planning control would remain. Similar conclusions apply in respect of clear glass on the upper part of the window. No other lesser steps were drawn to my attention which might have remedied the breach and in my view, there are none.
23. Reference was made to the window not resulting in overlooking and loss of privacy to neighbouring residential property. However, this is a matter relevant only to the planning merits.
24. Therefore, the steps in the notice are reasonable and not excessive. The ground (f) appeals also fail.

Appeals E and F

Ground (c) appeals

25. This notice attacks a rear dormer which includes a raised platform. Undertaking these works has involved building operations within the definition of development. Although enlarging the roof of a dwelling can be permitted development⁵, provision of a verandah, balcony or raised platform is specifically excluded. There is currently no permanent stairway or ladder and the roof hatch is of limited size. Nevertheless, provision of the roof hatch is to enable access to the flat roof of the rear dormer, facilitating its use as a raised platform. Therefore, as a matter of fact and degree, the roof hatch is integral to and part and parcel of the works to create the raised platform. Alternatively, if I were to consider the roof hatch alone, it protrudes more than 0.15 m beyond the dwelling's original roof plane, thereby exceeding the permitted development limit in respect of alterations to the roof of a dwelling⁶.
26. Where permitted development limits are exceeded, the whole of the development is unauthorised, not just the part in excess of those limits. No grant of express planning permission for all or any part of the works was drawn to my attention. Accordingly, the works are not permitted development and they have been undertaken in breach of planning control.
27. Therefore, on the balance of probability the appellants have been unable to show that the works are not in breach of planning control and the ground (c) appeals also fail.

⁵ The GPDO Article 3, Schedule 2, Part 1, Class B.

⁶ The GPDO Article 3, Schedule 2, Part 1, Class C.

Ground (f) appeals

28. The notice requires removal and replacement of the roof hatch. This would physically prevent the use as a raised platform, bringing the rear dormer within the terms of permitted development. Therefore, the purpose of this notice also must be to remedy the breach. In doing so it is legitimate to require the removal of works which are integral to and part and parcel of the development attacked by the notice.
29. The appellants sought to retain the roof hatch to provide access to the dwelling's roof for purposes including maintenance and repair. However, restricting access to the rear dormer roof is the only certain way of physically preventing its use as a raised platform. Although I am given to understand that the raised platform has been used on limited occasions and a safety railing has been removed, retaining the access to the roof would mean that works which facilitated the use of the rear dormer roof as a raised platform remained in situ and therefore would not remedy the breach.
30. Whilst reference was made to safety considerations as well as a lack of additional overlooking and loss of privacy to neighbouring residential property, such matters are relevant only to the planning merits. In any event, there is no good reason why accessing the rear dormer roof from the interior of the dwelling would be inherently safer compared to suitably experienced and equipped persons accessing the roof externally.
31. My findings above notwithstanding, blocking up of the roof hatch would achieve exactly the same result in terms of remedying the breach as its removal and replacement. During my visit, I saw that whilst the hatch door remained internally, access to the rear dormer roof was no longer possible as the hatch had been blocked up. Requiring the permanent blocking up of the roof hatch as an alternative would be sufficiently clear for there to be no uncertainty as to what must be done to achieve compliance. Therefore, whilst I find that the requirements are not excessive, I shall vary the notice as set out above as an alternative remedy to the breach and the ground (f) appeals succeed to that extent.

Conclusions

32. For the reasons given above I consider that whilst appeals C and D should not succeed, appeals A, B, E and F succeed to the extent described.

Formal Decisions

33. Appeals A and B-it is directed that the enforcement notice be varied by substituting the requirement at step (iii) in paragraph 5 with the following requirement:

"Remove the bin store structure from the land or reduce its height to a maximum of one metre."

Subject to this variation the enforcement notice is upheld.

34. Appeals C and D-the appeals are dismissed and the enforcement notice upheld.

35. Appeals E and F-it is directed that the enforcement notice be varied by substituting the requirement at step (i) in paragraph 5 with the following requirement:

"Permanently block up the access hatch in the roof of the dormer or remove and replace it, in either instance using external materials which match those of the dormer roof."

Subject to this variation the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR