



Appeal Decision

Site visit made on 27 April 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2021

Appeal Ref: APP/A2335/C/20/3263663

Land at 23 Rylstone Drive, Heysham, Morecambe, Lancashire LA3 2AS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mike Williams against an enforcement notice issued by Lancaster City Council.
 - The enforcement notice was issued on 20 October 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a balcony/veranda structure with a timber enclosure over an existing flat roof ground floor side extension.
 - The requirements of the notice are:
 - (i) Remove the balcony/veranda structure and associated wooden balustrades in its entirety.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out in the Formal Decision below

Procedural matters

1. The appeal was initially made only on ground (b) as out in section 174(2) of the 1990 Act: namely that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. However, from reading the appellant's grounds of appeal, it was apparent that the appeal was more properly described as being made under grounds (c) and (f) as out in section 174(2) of the 1990 Act. The appeal was formally started under those grounds of appeal by letter dated 2 February 2021. The appellant did not dispute that the appeal should proceed on these grounds, and only these grounds.
2. Nevertheless, I note that the appellant did not expressly withdraw his appeal on ground (b). That ground of appeal of appeal therefore remains before me. I also note that the Council has responded to the appeal on ground (b), but not to the appeals made on grounds (c) or (f).
3. I am therefore satisfied that I can consider the appellant's appeal on ground (b) without prejudice to either party.
4. The steps required to comply with the notice at paragraph 5(i) of the notice are to remove the balcony/veranda structure and associated wooden balustrades in its entirety (my emphasis). There is, however, no reference to the associated wooden balustrades in the breach of planning control alleged at paragraph 3 of

the notice. The wording of the requirement at paragraph 5(i), specifically the inclusion of the word 'and', suggests that the wooden balustrades are something separate from the balcony/veranda whereas, in practice, they are an integral part of the whole structure. In the interest of clarity, I will therefore vary the notice to delete reference to the associated balustrades. The requirement to comply with the notice will then be simply to remove the balcony/veranda in its entirety. I am satisfied that no injustice would be caused by varying the notice to that effect.

5. The breach of planning control as alleged in the notice also refers to a timber enclosure, although the removal of that timber enclosure does not form any part of the requirements at paragraph 5(i) of the notice. Whilst that structure is clearly visible in the photographs embedded in the notice in various stages of completion, it had been removed in its entirety at the time of my site visit. I am therefore satisfied that there is no need to correct and/or vary the notice to refer to that timber enclosure.
6. In his grounds of appeal, the appellant has responded to the reasons for issuing the notice set out in paragraph 4 of the notice. The appellant contends, in summary, that the balcony/veranda does not result in the overlooking of adjoining properties and that other examples of balconies/verandas are present in the local area. In relation to the latter, the appellant has provided photographs of some of those examples. These are points that would normally fall to be considered under ground (a) as set out in section 174(2) of the 1990 Act¹. The appellant has not made an appeal on that ground, and neither has he paid the required fee. Consequently, I am not able to have regard to the above points.
7. The appellant has also questioned the motives and conduct of the Council planning officer, and has criticised the lack of engagement from the Council following the issue of the Enforcement Notice. However, those matters are not before me and I make no comment on them.
8. Finally, as I understand it, the appellant maintains that he was verbally advised by a planning officer from the Council that planning permission was not required for the balcony/veranda structure. I have not been provided with a documented record of the conversation during which that advice was given. It is therefore not possible to seek verification from the Council as to the advice, if any, given by the Council planning officer on that occasion. In any event, informal advice given by a planning officer is not binding on the Council.

The appeal on ground (b)

9. An appeal is this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant with the relevant test being the balance of probability.
10. Although pleaded on the Appeal Form, the appellant has not provided any evidence in support of this ground appeal beyond saying that the description of the development in the Enforcement Notice is incorrect. The appellant does not, however, then go on say why it is incorrect, albeit I note that elsewhere he describes it as being a 'safety rail'.

¹ The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

11. I do not agree. On my reading, and notwithstanding the correction that I minded to make, the description of the matters alleged in Paragraph 3 of the notice as a 'balcony/veranda structure' is an accurate description of the development that has taken place. It was apparent from my unaccompanied site visit, carried out entirely from the public highway, that the breach of planning control alleged in the notice has occurred.
12. Accordingly, the appeal on ground (b) fails.

The appeal on ground (c)

13. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is also one of the 'legal' grounds of appeal.

14. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land

Section 57 of the 1990 Act states that planning permission is required for the carrying out of any development of land.

15. The appellant's case on this ground of appeal is that the balcony/veranda is a temporary safety structure (i.e a safety rail). The appellant explains that planning permission been granted for the erection of a two-storey extension, of which the existing ground floor is the first phase. The second stage would include the area on which the balcony/veranda has been constructed. Although not expressly stated by the appellant, the implication is that the balcony/veranda was not intended to be a permanent structure.
16. The appellant does not provide any indication as to when the second phase of the two-storey extension will be implemented. In any event, it was evident from my site visit that the balcony/veranda is a sizeable and solid structure that is firmly affixed to the roof by the supporting posts. The balcony/veranda is therefore physically attached to the host building and has a degree of permanence to it. For those reasons, I am satisfied that the balcony/veranda amounts to a building operation and does constitute development for the purposes of section 55 of the 1990 Act.
17. The enlargement, improvement or other alteration of a dwellinghouse is permitted by Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). However, Class A.1. specifically excludes the enlargement, improvement or other alteration of a dwellinghouse where it would consist of or include the construction or provision of a veranda, balcony or raised platform. It follows that the balcony/veranda constructed at the appeal property is not permitted by the GPDO.
18. I conclude that the balcony/veranda constructed at the appeal property does constitute development that requires express planning permission, which it does not have. It follows that the balcony/veranda does constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

The appeal on ground (f)

19. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by 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. In this case, the requirement of notice is, as I shall vary it, to remove the balcony/veranda in its entirety. The purpose of the notice must therefore be to remedy the breach of planning control that has taken place.
20. Under this ground of appeal, the appellant proposes raising the safety rail at the rear of the property. This would, in his view, prevent any possible overlooking of adjoining properties and would not affect the appearance of the property when viewed from the front. However, raising the safety rail at the rear of the property would not achieve the purpose of the notice, which is to remedy the breach of planning control that has taken place.
21. Accordingly, the appeal on ground (f) must fail.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Formal Decision

23. It is directed that the enforcement notice is varied by:
 - in paragraph 5 of the notice, delete the words "and associated wooden balustrades".
24. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR