



Appeal Decision

Site visit made on 22 June 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th July 2021

Appeal Ref: APP/D1780/C/21/3271165

**Land at 2 Hamdown Cottages, Newbury Road, Shirley, Southampton
SO15 5QY**

- 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 Ms Jatinder Anand against an enforcement notice issued by Southampton City Council.
- The enforcement notice was issued on 11 February 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a breeze block and timber raised platform structure on the roof of the existing single storey rear extension.
- The requirements of the notice are: (i) Remove the breeze block and timber raised platform structure from the roof of the existing single storey rear extension; and (ii) Remove all resulting materials from the land.
- The period for compliance with the requirements is three months.
- The appeal is 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 appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matter

1. There is no ground (a) appeal and no deemed planning application in respect of the works attacked by the enforcement notice. Therefore, planning merits considerations, including the reasons for undertaking the works, whether the works preserve the St James Road Conservation Area, the effect on the privacy of occupiers of adjoining residential property and recent development in the locality are all matters which have no bearing on my decision.

Application for Costs

2. An application for costs was made by Southampton City Council against Ms Jatinder Anand. This application is the subject of a separate Decision.

Ground (c) appeal

3. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. It is for the appellant to show that their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.

4. The appeal site contains a semi-detached, two storey dwelling. At the rear of the dwelling is a single storey flat roof extension. The works attacked by the notice have involved the laying of timber decking across the extension roof. The decking is enclosed at the rear and on one side by blockwork walls laid on top of the outer walls of the extension.
5. The above works have involved building operations falling within the statutory definition of development¹. The enlargement, improvement or other alteration of a dwelling can be permitted development, subject to certain limitations and conditions². The effect of one such limitation is to prevent works which consist of or include the construction of a verandah, balcony or raised platform from being permitted development³. This means that the construction of a raised platform requires express planning permission following the submission of a planning application.
6. Constructing the decking and the associated enclosing walls has created a raised level surface on which people or things can stand. The decking can be accessed from the French doors at first floor level in the rear elevation of the dwelling. As such, the works have resulted in something that is commonly recognised as a platform. A platform with a height greater than 0.3 m above ground level is regarded as "raised" in the permitted development rules. As the decking and walls clearly exceed that height, the works amount to construction of a raised platform.
7. The date the works commenced has little relevance to the matter at issue. The May 2019 amendments to the permitted development rules made no change to the requirement to obtain express planning permission for the construction of a raised platform.
8. Therefore, the works are not permitted development. No express grant of planning permission for carrying out the works was drawn to my attention. Accordingly, on the balance of probability the works are in breach of planning control and the ground (c) appeal fails.

Ground (f) appeal

9. The ground of appeal is that the requirements of the notice are excessive.
10. An enforcement notice can serve any of the following purposes. Firstly, it can seek to remedy the breach of planning control, including by restoring the land to its condition before the breach took place. Secondly, the notice can remedy any injury to amenity caused by the breach. Although the Council did not specify in the notice which of these purposes applied, total removal of the works is required. This is opposed to, for example, making the decking and walls smaller or some other modification. Total removal of the works would restore the site to its condition before the breach took place. Accordingly, the purpose of the notice must be to remedy the breach.
11. Based on what I have seen, there is no good reason why the careful dismantling of the decking and walls should cause undue damage to the roof of the extension. No firm evidence was provided which might have shown

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

² By the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Article 3, Schedule 2, Part 1, Class A.

³ Class A, paragraph A.1 (k) (i).

otherwise. Erecting a conservatory on top of the extension and/or erecting a trellis together with tree and shrub planting would involve further unauthorised development. Moreover, the breach would not be remedied as the works would still remain in situ. No other alternatives to remedying the breach that stop short of totally removing the works were drawn to my attention and to my mind, there are none. The appellant's ability to fund the remedial works has no bearing on whether such works are excessive in the context of this appeal.

12. Therefore, the requirements of the notice are reasonable for the purpose of remedying the breach of planning control, they are not excessive for that purpose and the ground (f) appeal also fails.

Conclusion

13. For the reasons given above I consider that the appeal should not succeed.

Formal Decision

14. The appeal is dismissed and the enforcement notice upheld.

Stephen Hawkins

INSPECTOR