



Appeal Decisions

Site visit made on 20 September 2022

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2022

Appeal Refs: APP/F2360/C/22/3293432 & APP/F2360/C/22/3293433 White Cottages, Potters Lane, Salmesbury, Preston PR5 0UE

- 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 Karen Corbishley and Mr Ian Wright against an enforcement notice issued South Ribble Borough Council (the LPA).
- The enforcement notice, reference 2020/0203/NOPLN, was issued on 13 January 2022.
- The breach of planning control as alleged in the notice is as follows:
The erection of a balcony/raised platform at a height approximately 1.35m at the rear of the property, enclosed by a metal spindle balustrade at the back and timber fencing at each end in the approximate position shown as blue cross-hatched on the plan.
- The requirements of the notice are as follows:
 - (i) Remove the balcony/raised platform.
 - (ii) Remove from the land all materials and waste arising from requirement (i) above and reinstate previous platform and steps (or similar) to that which were in place before the balcony/raised platform was installed. The access platform area from the rear door shall not exceed 1m².
- The period for compliance with the requirements is two calendar months.
- The appeal is proceeding on grounds (a), (c) and (f), as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeals succeed to a limited degree on ground (f) only. Otherwise the appeals are dismissed. See formal decision below.

Matters of clarification

2. There is a dispute, between the appellants and their neighbour at No 2 White Cottages, involving the fence erected by the occupant at No 2 along the boundary between the raised platform and the garden/yard area to No 2. The details of this are set out in the representations for this appeal.

3. However, I am only empowered to deal with the enforcement notice as issued and which relates to the raised platform and balustrading. I have noted the details regarding the timber fence but this is not before me. Neither is any other dispute or disagreement that the appellants may have with their neighbour or the LPA. I have also noted the references to a platform possibly being erected on the side (north-east) elevation, but again this is not a matter before me. If the appellants wish to proceed with such a proposal and the resulting platform

exceeded 300mm above ground level, then a planning application would need to be made to the LPA.

4. A retrospective planning application for the raised platform and balustrading was submitted by the appellants on 22 February 2022. However, this was after the issue of the enforcement notice and the Council exercised its right under section 70C of the Town and Country Planning Act 1990 in declining to determine the retrospective application for the unauthorised raised platform.

Background information

The appeal site and its surroundings

5. The appeals property at No 1 is an end of terrace stone dwelling, at the northern end of a group of 5, within a quiet area of Salmesbury and within the Green Belt. It has a small front garden (to the south-east), a garden to the side (to the north-east) and a very narrow space to the rear (to the north-west). This narrow space is the location of the unauthorised balcony/raised platform. Prior to its construction there was a rear passageway at ground level leading to steps up to a small landing, which then gave access to the rear door of the cottage at the raised ground floor level.

6. The relatively narrow garden/yard area to the neighbouring dwelling at No 2 wraps around the rear of No 1. It comprises a narrow paved area, approximately 3.5m wide adjacent to the raised platform. Beyond there is a small garage and another garden area. To the front (south-east) of the cottages there are open fields and several other detached properties to the north-east. St Leonards Church lies to the south-west further along Potters Lane towards the A59.

7. The layout of the 5 cottages and the relationship between Nos 1 and 2 is shown on the Title Deed document, reference LA826950. The 1.35m high balcony/raised platform, which is the subject of the enforcement notice, runs the full length of the rear (south-west) narrow space and overlooks the garden/yard to No 2. Along its length it differs in width. At the south-west end, adjacent to the entrance door and No 2, it is approximately 1m wide. This increases to around 1.5m further along.

The balcony/raised platform

8. The balcony/raised platform had been erected in 2019 with a wrought iron open balustrade. In response, the occupant at No 2 built a 2.26m high fence across its full length, in order to screen his garden/yard area. In December 2019 the appellants made a formal complaint to the Council regarding the erection of this 2.26m high fence. An enforcement officer visited the properties in January 2020 and was informed, by the occupant at No 2, that the fence had been erected to stop any overlooking from No 1. The occupant at No 2 was told that the Council would be writing to the appellants to indicate that the balcony/raised platform was a breach of planning control and that it was unlikely to be granted permission due to its effect on his privacy.

9. The Council now indicates that it is not clear whether such a letter was issued prior to the officer's retirement in January 2020. However, nine months later, in October 2020, the new enforcement officer visited the site at No 2 whereby the occupant had referred to the previous '*small landing area and steps*' which gave

access to the raised floor of No 1. It appears that there had always been an overlooking issue resulting from the use of that landing.

Communications prior to issue of the enforcement notice

10. The Council then opened the current enforcement case against the balcony/raised platform at No 1 and informed occupants of the properties that they were both in breach of planning control. The Council indicated that either the breaches be resolved or that planning permission be sought. The appellants did not submit an application but the owner of No 2 reduced the height of the feather-boarded timber fence to 2m. At that height the fence no longer constituted a breach of planning control and is permitted development. No enforcement action could, therefore, be taken against the occupant at No 2.

11. On 26 November 2020 a further site meeting was held at No 1 and options were discussed including one whereby the platform would be extended to the side (north-east) elevation. One of the appellants requested '*some time to think through the options*' and decide whether to submit an application for further works to the property and to include the raised platform in this. The Council gave the appellants until 'Christmas 2020' and this was later extended. On 18 March the LPA advised that once restrictions had eased the case would have to be reviewed.

12. A further site visit was held on 5 August 2021, attended by the enforcement officer and an enforcement consultant. It was noted that the raised platform was still in position. The appellants had been informed of the visit but were unable to attend. The Council could not rearrange the visit due to the enforcement consultant's unavailability.

13. By letter dated 10 August 2021 the Council then advised the appellants that the raised platform had to be removed, otherwise the Council would be left with no option but to serve an enforcement notice. There were also multiple phone calls and email correspondence between the Council and the appellants in order to resolve the matter prior to the issue of the enforcement notice.

Relevant Policy

14. The development plan is the South Ribble Borough Council Local Plan 2015 (SRBCLP) and the most relevant policy is Policy G17. Section a) of that policy states that development should not cause harm to neighbouring property by leading to undue overlooking, overshadowing or have an overbearing effect, and should not have a detrimental impact on the existing building and neighbouring buildings. The National Planning Policy Framework (NPPF) is also a major material consideration in that it aims to achieve sustainable development and to achieve good design without compromising the amenities of others.

The appeal on ground (c)

15. To be successful on this ground it must be shown that a breach of planning control has not occurred. In effect this means that either there would need to be a planning permission in place for the balcony/raised platform, or that it constitutes permitted development. Clearly there is no planning permission in place and so I turn to whether or not the works are permitted by virtue of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

16. Class A of Schedule 2, Part 1 allows the *enlargement, improvement or other alteration of a dwellinghouse* subject to conditions. Alterations can include the provision of external decking but condition (k) indicates that *'the construction or provision of a veranda, balcony or raised platform is not permitted'*.

17. I have noted that the appellants have referred to a recent enforcement appeal decision (Ref: APP/T5720/C/18/3204768) which related to decking and its height, as measured from the ground floor adjacent to the building and being permitted development if no higher than 0.3 metres. That is the case but the height measurement must be taken from ground level adjacent to the building. The circumstances of that appeal differ from this situation.

18. In this case the balcony/raised platform is approximately 1.35m above the normal ground level where it abuts the building. I agree, therefore, with the Council that this does not constitute similar decking but instead is a raised platform which cannot benefit from permitted development rights. This was evident from my site inspection, as well as from the submitted photographs. The appeals on ground (c), therefore, must fail.

The appeal on ground (a)

The Green Belt

19. The appeals site lies within the Green Belt and the National Planning Policy Framework (NPPF), at paragraph 149, indicates that a LPA should have regard to the construction of any new building as being inappropriate development in the Green Belt. However, there are exceptions to this and these include the exception at paragraph 149(c) which is: *'the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building'*.

20. In this case the works carried out constitute a small external alteration involving the formation of the raised decking. In effect the existing dwelling has not been physically *'extended'* and, in terms of its volume alone, in my view the raised platform does not have any detrimental impact.

21. Paragraph 149(c) specifically refers to *'size'* and having seen the structure I do not consider that it has resulted in a *'disproportionate'* addition to the dwelling and, therefore, does not constitute inappropriate development in the Green Belt within the terms of the NPPF. Therefore, it is not necessary to consider its effect on the *'openness'* of the Green Belt and whether or not *'very special circumstances'* are required in order to justify its construction.

22. In this appeal and in deciding whether or not to grant planning permission for the raised platform, I can only consider the original design; that is, what had been erected prior to the feather-boarded timber fence. I cannot consider whether or not the original platform/balustrading, together with the current feather-boarded timber fence should be granted permission. As indicated above the latter is permitted development and has been erected by the occupant at No2, on the boundary between the two properties.

Main issues

23. The main issues in these appeals are, firstly the effect of the original raised platform and balustrading on the character and appearance of this part of

Salmesbury and, secondly, the effect on the living conditions of the occupant at No 2, with particular reference to overlooking and loss of privacy.

Effect on character and appearance

24. Having seen the raised platform as originally built, I do not share the Council's concerns regarding its character and appearance. In itself it is a simple timber raised platform and the balustrading is of a typical wrought iron design. In my view the design of the original platform and balustrading is acceptable and I acknowledge the point made by the appellants that the structure cannot be readily seen from any public viewpoint.

25. Clearly the original appearance has now been affected by the feather-boarded timber fencing which has been erected by the neighbour at No 2. I accept that this has affected the overall visual effect of the raised platform and balustrading. However, as indicated by the Council, due to the reduction in height from 2.26m to just 2m, this fence now constitutes permitted development. The occupant at No 2, is no longer in breach of planning control. Due to the position of the rear landing and access to No 1, it seems highly likely that the occupant would wish to keep the fence in position, irrespective of the outcome of these appeals.

Effect on living conditions

26. Having walked along the length of the raised platform it is evident that, before the feather-boarded timber fence was erected, anyone using it would have had a clear view through, and over the top of, the balustrading as built. Even with the timber fence in place, if standing on the platform, it is still possible to see over the top and into the paved yard area of No 2. This is especially the case at the south-western end of the platform, adjacent to the rear entrance door to No 1. However, there had been a landing in place at the top of the steps which led up to the rear door. Therefore, even before the appellants carried out the unauthorised works, there must have been an overlooking issue from No1 into the yard of No 2.

27. However, it was the obvious additional loss of privacy, resulting from the raised and extended platform that prompted the owner at No 2 to erect unauthorised Timber fence which initially exceeded 2m in height. Even with the reduction in height, to the permitted 2m level, it is still possible to overlook the garden/yard of No2 if walking or standing on the raised platform.

28. On this issue, therefore, I conclude that the original raised platform and balustrading would have caused harm to the living conditions of the occupants at No 2, due to overlooking and loss of privacy. It follows that it is contrary to Policy G17 of the SRBCLP and that I do not consider that planning permission should be granted for the retention of the raised platform and the metal balustrading as originally constructed.

The appeal on ground (f)

29. The appellants argue that the requirements are excessive; that the feather-boarded fencing and planting have already mitigated against the overlooking issue and that the platform cannot be seen from public viewpoints. It is further argued that compliance with the requirements would, in any case, lead to further loss of privacy for the occupants of both properties.

30. Clearly the feather-boarded fencing has stopped open views through the initial metal balustrading and, to a certain extent, the increase in height due to the timber fence has also reduced the potential for overlooking. This is because the yard area to No 2 is only around 3.5m wide and, due to the different levels, the ground floor of the yard is only fully visible if standing or walking along the length of the platform.

31. If seated on the platform at the end where it is the widest, or from within the rear room to No 1, it is not possible to have a direct view into the yard to No2. However, the fact remains that, with the timber fence at its current height, the occupants at No 1 can still see over the top of the 2m high timber fence and into the neighbour's garden/yard if standing or walking along the platform. In my view the feather-boarded fencing, at its current height, is not sufficiently high enough to overcome the overlooking problem.

32. However, ironically if the timber fence had not been reduced to its 2m height then, even when standing on the platform, the neighbouring garden/yard area would be screened. I consider, therefore, that it would be a reasonable lesser step (than total demolition and removal) if the fence on the appellants' side of the boundary was to be increased in height to the top of the already constructed timber posts. These posts currently rise above the balustrading and the feather-boarded timber fence. This could be done either in solid feather-boarded timber or even toughened obscure glass and would ensure that the garden/yard area to No 2 could not be overlooked.

33. In the overall circumstances, therefore, I consider it appropriate and reasonable to vary the notice by setting out an alternative to the requirements as drafted. This could have implications for the appellants' use of the raised ground floor in that they clearly considered the initial fence erected by the neighbour to be oppressive and overbearing.

34. However, it would be up to them to decide whether to accept this option; to comply with the original requirements or to apply for planning permission for a balcony on the north-east elevation. In varying the enforcement notice in this way I am satisfied that no injustice will be caused to any of the parties involved.

35. If the initial requirements are carried out then there would still be an overlooking problem where the former small landing would remain where it abuts the boundary with No 2 and gives access to No 1. This reinforces my view that the alternative requirement is a reasonable alternative option.

Other Matters

36. In reaching my conclusions on all of the grounds pleaded I have taken into account all of the other matters raised by the appellants, the Council and the neighbour at No 2. These include the full planning history; the appellants' dealings with the Council leading up to the issue of the notice; the initial submissions; the detailed statements including details of each ground of appeal; the photographic evidence and any subsequent/final submissions.

37. However, none of these carries sufficient weight to alter any of my conclusions on the grounds pleaded and nor is any other factor of such significance so as to change my decision that the appeals should succeed in part on ground (f) only and that otherwise they be refused and the enforcement notice be upheld as varied.

Formal Decisions

38. I direct that the enforcement notice be varied by adding the following alternative requirement after the Requirements in (i) and (ii) of Part 5 of the Notice (WHAT YOU ARE REQUIRED TO DO):

'OR,

Raise the height of the whole length of the balustrade to the raised platform to align with the top of the existing extended timber posts (an extension of approximately 300mm). The panels between the posts, from platform level to the top of the posts and to the end of the raised platform, are to be either solid feather-board fencing or toughened, obscure glass panels'. No part of the balustrading to the whole length of the raised platform shall be left open to allow any sight through to the adjoining garden/yard area of No 2.

39. Otherwise the appeals are dismissed and the enforcement notice is upheld as varied. The planning permissions deemed to have been made under section 177(5) of the Act are refused.

Anthony J Wharton

Inspector