



Appeal Decision

Site visit made on 12 July 2022

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2022

Appeal Ref: APP/P4415/C/21/3293197

Land at 63 Ryton Road, North Anston, Sheffield S25 4DL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Christine Baggott against an enforcement notice issued by Rotherham Metropolitan Borough Council.
 - The notice was issued on 16 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a staircase and platform, identified in blue on the notice attached and fencing, identified in green on the notice attached, allowing for the use of the flat roof area as a balcony.
 - The requirements of the notice are to: Remove the staircase, platform and fencing from the Land.
 - The period for compliance with the requirement is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and(b) 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. 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.

The appeal on ground (b)

2. The appeal on ground (b) is directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the '*balance of probabilities*'.
3. The Council allege the erection of a staircase, platform and fencing allowing for the use of the flat roof area as a balcony.
4. The appellant states that the stairway is being sealed off to turn into a garden feature, therefore does not breach planning control. The appellant therefore acknowledges as a matter of fact the staircase existed at the time of the Notice being issued and indicates she intends to do further works.
5. I saw that the staircase, platform and fencing were in place allowing for the use of the flat roof area as a balcony. The allegation does not indicate it is being used as a balcony.
6. The development has therefore occurred as a matter of fact and the appeal under ground (b) fails.

That the works were lawful through the passage of time when the enforcement notice was issued.

7. Although not raised as a ground of appeal the appellant states that a fence was originally erected in 2015/2016, and was allowed to be retained for safe access for maintenance of the roof. For the appellant to succeed on this point the development would need to have been substantially complete for 4 years. The material date is 16 November 2017.
8. The fence attacked by the Notice is attached to the wooden platform on the flat roof area. The appellant has not stated or substantiated that the wooden platform was in situ in 2015/2016. The development which is attacked in the Notice comprises the platform, staircase and fence and was not substantially completed until all three elements were erected/constructed.
9. The appellant has provided correspondence with the Council which relates to 'railings' being erected. Photographs stated to be from February 2016 show the neighbours balcony and picket fencing laid across the flat roof area of the appeal property. This indicates that the picket fencing at the appeal property was taken down during this time period. There is no substantiated evidence as to when the picket fencing was re-erected.
10. Nonetheless, I have no substantiated evidence that the fence stated to be erected in 2015/16 is the same fence attacked by the Notice. The fence attacked by the Notice is physically attached with the wooden posts inserted into metal brackets and bolted down to the wooden platform on the flat roof area. The appellant has not stated or substantiated that the wooden platform was in situ in 2015/2016 when she states the fencing was erected. The staircase is stated to have been erected in 2020/21. As such, the development has not been substantially completed for more than four years before the Notice was issued and it is not therefore immune from enforcement action.

The appeal on ground (a) and the deemed planning application

Main Issue

11. The main issue is the effect of the development on the living conditions of the occupiers of No.65 Ryton Road (No.65), with particular regard to overlooking and privacy.

Reasons

12. The Rotherham Local Plan, Householder Design Guide, Supplementary Planning Document, Adopted June 2020 (SPD), adds further detail to the policies in the development plan. The Glossary to the National Planning Policy Framework (The Framework), states supplementary planning documents can be used to provide further guidance on particular issues, and are capable of being a material consideration in the planning decision. Therefore, in this case I consider the SPD is the most relevant and up-to-date guidance for the determination of the appeal, and I have dealt with the appeal on this basis.
13. The SPD at section 1.3 requires that balconies should be sited so that they do not allow someone on the balcony to directly look into the habitable windows of adjacent houses or their private gardens. The SPD sets out that balconies can create an unacceptable loss of privacy and are usually unacceptable on semi-detached and terraced properties. Where they are proposed they must be a

- minimum of 2m from any neighbouring boundary with appropriate screening to avoid overlooking.
14. The appeal site relates to a single storey detached dwelling with a flat roofed extension to the rear. The development consists of a fence, platform and staircase. The wooden fence and platform are sited on top of the flat roof element of the dwelling. Access to the platform is by a metal/ornate winding staircase attached to the platform and fencing is fixed and attached to the platform covering three sides of the roof.
 15. No.65 is a detached dwelling with a linear rear garden and sited adjacent to the appeal property along the access road from the main Ryton Road. The development is in close proximity to the boundary of No.65. I saw that when using the stairs and also from the platform on the roof there was a significant degree of overlooking when looking down and across into the rear garden area of No.65. This was due to the high level and siting of the staircase, in relation to the proximity of No.65 and the platforms position on the roof. This is greater than any view at ground level and along the access road, as the views were looking down from above directly into the garden area than over a boundary wall/fence that is in situ at ground level along the access road.
 16. Moreover, I was able to walk around the platform and it was clear that from the development that it could be used as a substantial sized balcony. Thus, the development results in significant overlooking and loss of privacy to an unacceptable degree for any occupiers of No.65 when using their rear garden as private amenity space.
 17. Whilst I note the appellant's personal circumstances, safety and appreciate that the roof area allows maintenance for the property. The development has evolved over time from having no access without a ladder to the erection of the platform, with fencing attached and the large high-level staircase, which allows the roof area to be used as a balcony, even if at this time they have chosen not to.
 18. For the reasons given, I conclude the development has resulted in a material loss of privacy and unacceptable overlooking for the occupiers of No.65. Therefore, the development does not accord with Policy SP55 of the Rotherham Local Plan, Sites and Policies (adopted June 2018), amongst other matters, the policy requires all development proposals to be of high quality, incorporate inclusive design principles, create decent living and working environments; and have regard to the presence of sensitive land uses and be designed in such a way that the amenity of any land use and the specific characteristics of the sensitive area are not adversely affected. It would also be contrary to the guidance in the adopted SPD.
 19. It is also contrary to the provisions in the Framework, which at paragraph 130, requires development to have a high standard of amenity for existing and future users.
 20. As such, the appeal on ground (a) fails.

Other Matters

21. A representation was received that the development impacts on the living conditions of No.61A. However, I saw that there were limited views towards this property and boundary, with significant tree and vegetation coverage and

the distance was significantly further than to the garden at No.65. Due to the separation distances, the development does not, in my view, unacceptably harm the living conditions of the occupiers of No 61A.

22. The appellant states that the stairway could be sealed, so it could not be used as a staircase and kept as a garden ornament. Nonetheless, no substantive evidence has been provided which confirms that this would be the case. Even, if I accepted this could be done, I am not persuaded that this would overcome the planning objection. I do not consider conditions would be reasonable in not allowing the staircase to be used to climb up to the roof area.
23. The appellant has referred to other stairways/balconies in the area, and representations were made to the effect that the appellant's human rights under Article 1 of the First Protocol, as set out in the Human Rights Act 1998, would be violated in respect of a neighbouring balcony. However, I do not have the details of these developments and whether planning permission has been granted for them or whether they are lawful through the passage of time. The existence of other development contrary to current adopted policies and guidance does not justify the development the subject of this appeal. I have identified significant harm resulting from the development and that it is contrary to adopted policies and guidance.
24. Nonetheless, I note other developments and the matters of whether other properties have carried out unauthorised development is not within my remit in this appeal. In any case, I have dealt with the appeal on the evidence before me and site observations.

Conclusion

25. I conclude that the appeal under ground (a) should fail and that planning permission should be refused in respect of the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Conclusion

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

K A Taylor

INSPECTOR