



Appeal Decision

Site visit made on 12 April 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2023

Appeal Ref: APP/Q9495/C/22/3296410

4 Havelock Road, Windermere LA23 1EH

- 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 Mick Larkin against an enforcement notice issued by Lake District National Park Authority.
 - The enforcement notice, numbered E/2019/125, was issued on 3 March 2022.
 - The breach of planning control as alleged in the notice is, without planning permission, operational development consisting of installation of a balustrade on top of a flat roof single storey rear extension to create a roof terrace.
 - The requirements of the notice are to remove the balustrade, including the top railing, support posts and glass panels 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) (a) of the 1990 Act.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld with a variation

Procedural matters

1. The requirement at paragraph 5 of the notice includes the word 'permanently'. Having regard to the provisions of Section 181(1) of the 1990 Act, which states that compliance with an enforcement notice shall not discharge that notice, the word 'permanently' is unnecessary. I shall therefore vary the notice by deleting the word 'permanently' from paragraph 5. I am satisfied that no injustice would be caused by doing so.

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

2. The ground of appeal 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. The Authority has stated one substantive reason for issuing the enforcement notice, from which the main issue raised is the effect on the living conditions of the occupiers of surrounding residential properties, specifically in relation to privacy.
3. The appeal property is an end-of-terrace house on the south side of Havelock Road. The dwelling has been extended to the rear by a single-storey extension with a flat roof. The balustrade subject to the notice was erected in late 2019, with a more secure door being fitted at the same time. Prior to that access to the flat roof could only be gained via a window in that same position. The appellant assumes that, in the absence of any usable space at ground floor level, residents have been using the flat roof as amenity since prior to 2009 but I have no evidence before me to show that this was indeed the case.

4. The erection of the balustrading does facilitate the safe use of the flat roof as a roof terrace: without the balustrade the use of the flat roof as a terrace would not be safe and would therefore be less likely to be used for that purpose. The balustrade therefore enables the occupiers of the appeal property to use the roof terrace for sitting out and socialising, and this in turn increases the prospect of overlooking of the surrounding residential properties.
5. The adjoining dwelling, No. 6 Havelock Road, also has a rear extension at ground floor level. There is a window at first floor level in the rear elevation and views into that window are possible when standing or sitting on the roof terrace. However, photographic evidence provided by the appellant confirms that this window serves a staircase. I understand that the neighbouring property is currently used as a holiday rental and as such is not continuously occupied all year round, although of course that could change. In any event, given the use of the space served by that window, I consider that the views obtained do not constitute an unacceptable loss of privacy to the occupiers of that property.
6. The rear elevation of the appeal property faces directly onto a residential property known as Barn End Cottage. The facing elevation of the dwelling contains a garage door and a pedestrian door at ground floor level but no windows at either level. I am satisfied that the occupiers of Barn End Cottage have not suffered any significant loss of privacy as a result of the roof terrace.
7. To the west, beyond the alleyway that adjoins the appeal property, the rear elevations of the properties fronting onto Oak Street are clearly visible from the roof terrace. At the time of my site visit, the boundary wall to one of those dwellings had been demolished whilst works are taking place to that property. This allowed unrestricted views of the rear elevation and garden of that property, which I recognise were unrepresentative of the usual situation. I have taken that into account.
8. However, in other cases, the boundary wall/gate was intact. In those cases, clear views towards the ground and first windows of those properties were still possible from the roof terrace. Views were also possible of the rear gardens, albeit in some cases only the part of the garden close to the rear elevation was visible. In other cases, the garden had been transformed into parking areas. In all cases, the views possible from the roof terrace were at relatively short distance and from an elevated position. I consider that the resultant degree of overlooking of the occupiers of those properties is greater than might normally be encountered in a residential environment, and therefore causes an unacceptable loss of privacy to those occupiers.
9. I conclude that the balustrade, insofar as it facilitates the use as a roof terrace, unacceptably harms the living conditions of the occupiers of surrounding residential properties, specifically in relation to privacy. I therefore conclude that the breach of planning control is contrary the Policy 06 of the Lake District National Park Local Plan which, amongst other things, requires that development must not have an unacceptable impact on the amenity of adjoining residents due to overlooking.
10. The breach of planning control would also fail to accord with paragraph 130 of the National Planning Policy Framework (Framework), which requires that development creates places with a high standard of amenity for existing and future users.

Other considerations

11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the balustrade fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
12. The appellant points out that the Framework places a very clear presumption in favour of approving applications which comprise sustainable development. However, I have found that the roof terrace result in the unacceptable overlooking of adjoining residential properties and therefore fails to create a place with a high standard of amenity for existing and future users, contrary to paragraph 130 of the Framework. For that reason, the balustrade (which facilitates the roof terrace) does not constitute a sustainable form of development.
13. At the site visit, my attention was drawn to other examples of balustrades and balconies in the area. I duly noted several such examples as I walked around the surrounding area. However, I have not been provided with the planning histories behind those balustrades and balconies. There could be sound reasons why those balustrades and balconies were considered by the Authority to be acceptable in planning terms. It could also be the case that those balustrades and balconies do not have the benefit of planning permission. In the absence of any evidence relating to the planning history of those developments, I can only afford very limited weight to them.
14. The appeal site is within the Windermere Conservation Area. Section 72 of the Planning (Listed Building and Conservation Area) Act 1990 requires that special attention must be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
15. The significance of the Windermere Conservation Area as a whole is as an example of mainly late-Victorian built development that was largely constructed following the opening of the railway station. The conservation area contains several buildings of architectural interest as well as public open spaces commensurate with the period in which it was developed. The buildings within the conservation area have a consistent form, with stone buildings (some rendered or painted) under a slate roof being predominant.
16. The significance of the conservation area in the vicinity of the appeal site is, in part, derived from the scale and character of the residential buildings and the commonality in the use of materials and features. These combine to give this part of the conservation area its distinctiveness.
17. The balustrade consists of polished metal uprights infilled with glass panels and a metal handrail. These materials and design are not typical of the conservation area. Nevertheless, balustrades are not unusual in a residential environment such as this. The Authority accept that the balustrade does not harm the character or appearance of the host building. I see no reason to take a different view. It follows that the balustrade at least preserves the character and appearance of the Windermere Conservation Area.

Conclusion

18. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. I therefore conclude that planning permission ought not to be granted.

Formal Decision

19. It is directed that the notice is varied by:
- In paragraph 5 of the notice, deleting the word "Permanently"
20. Subject to that variation, 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.

Paul Freer
INSPECTOR