



Appeal Decisions

Site visit made on 11 July 2023

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7th September 2023

Appeal A Ref: APP/N4720/C/22/3306746

Appeal B Ref: APP/N4720/C/22/3306747

Land at 39 Woodbourne Avenue, Moortown, Leeds LS17 5PQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeals are made by Mr Niall Mackinnon (Appeal A) and Ms Juliet Brown (Appeal B) against an enforcement notice issued by Leeds City Council.
- The notice was issued on 18 August 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a first floor balcony to rear.
- The requirements of the notice are:
 - STEP 1
Cease the use of the roof area as a balcony, roof garden or similar amenity area.
 - STEP 2
Remove the unauthorised balcony railings.
 - STEP 3
Install the Juliet balcony railings / balustrade fixed flush permanently to the rear wall so that the additional platform outside the original dwelling house cannot be accessed.
- The periods for compliance with the requirements are:
 - STEP 1
28 days.
 - STEPS 2 and 3
Three months.
- The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice is varied by:

- 1) At section '5. What You Are Required To Do – Period for compliance' the deletion of the words '*STEPS 2 and 3: three months*' and substitution with the words '*STEPS 2 and 3: six months*'.

Subject to the variation, the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. An application for planning permission for a first floor balcony at the rear of the appeal property was refused¹ by the Council and subsequently dismissed at appeal². In dismissing the appeal, the Inspector concluded that the balcony's elevation and its proximity to the boundary with the neighbouring property at 37 Woodbourne Avenue meant it afforded invasive views into the adjacent first floor bedroom window, as well as views across the patio and garden of No. 37.

¹ LPA Ref No: 21/06293/FU – refused 18 October 2021

² APP/N4720/D/21/3289872 – decision dated 20 April 2022

As a consequence significant harm to the living conditions of occupiers of No. 37 by virtue of a loss of privacy would result.

3. The appellants have submitted, as part of the current appeals, an alternative scheme whereby the balcony railings would be re-sited and the extent of the balcony platform enclosed by them reduced. The appellants refer to their depth as being 56mm, which equates to 0.056 metres (or 5.6cm). I am satisfied that, having sought clarification from both main parties present at the site visit, that this reference to 56mm should instead have been 560mm (or 0.56m or 56cm). I am satisfied that reference to the lesser dimension was a typographical error and return to this matter in relation to the appeals under ground (f), below.

The appeals under ground (f)

4. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
5. The balcony which the notice seeks to attack is effectively a small flat platform, accessed directly from a first floor bedroom by way of glazed double doors, cut into the sloping lean-to roof of a single storey build-out at the rear of the appeal property. Metal railings encircle the balcony on three sides.
6. The appellants have set out a revised scheme, whereby the balcony railings would be retained, but with a reduced depth from the rear of the house. Thus, it is proposed that the railings around the balcony platform would be reduced from their current 1.3m (or thereabouts) depth to 0.56m (or thereabouts), leaving a reduced area of enclosed flat balcony platform area. The reduced depth would, the appellants advise, equate to the projection of the outward-opening double doors in their open position.
7. Section 173 of the Town and Country Planning Act 1990 (as amended) (the Act) states that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.
8. In this case, the notice requires the removal of the balcony railings and the cessation of the flat platform area as a balcony, roof garden or similar amenity area. This is consistent with the purpose of remedying the breach of planning control in accordance with (s173(4)(a)) of the Act, the breach being comprised of the first-floor balcony in its entirety. Any lesser step in the manner set out by the appellants would not remedy the breach of planning control as the result of those revised works would still be a balcony and railings, albeit of reduced proportions.
9. Neither appellant has pleaded a case under ground (a) and no fee has been paid in that respect. As such the appeals on ground (f) cannot succeed and the planning merits of the alternative scheme in addressing the matters assessed by the previous Inspector do not fall to me to consider further.

The appeals under ground (g)

10. The time for compliance with the notice's requirements is split; 28 days for the cessation of use of the roof area as a balcony, roof garden or similar amenity

area (Step 1) and three months for the removal of the railings and the installation of Juliet balcony railings / balustrade fixed flush to the rear house wall (Steps 2 and 3). The appellants seek a longer compliance period of up to 6 months.

11. With regard to Step 1, a period of 28 days is entirely reasonable and adequate to cease the use of the roof area. The appeals on ground (g) therefore fail with regard to Step 1.
12. With regard to Step 2, the removal of the balcony railings does not strike me as being unduly complex, extensive or intrusive. As such, on the face of it I see little justification for granting a period longer than three months within which to comply with the Step 2 requirements.
13. However, I have sympathy with the appellants' argument that the installation of the flush fitting Juliet balcony railings / balustrade (Step 3) would prevent the opening of the existing outward-opening double doors from the bedroom. I am also inclined to accept the appellants' position that procurement of replacement inward-opening doors and appropriate railings / balustrade, and their appropriate fitting by suitably competent tradespeople cannot be guaranteed to be the work of a moment.
14. Although the Council maintain that the inability to open the doors should not delay the installation of the railings / balustrade it seems to me unreasonable to have to accept non-opening fenestration to a bedroom as a potential consequence of the notice's requirements and time periods. A period of 6 months for compliance with Steps 2 and 3 of the notice is therefore justified for the reasons set out, and the appeals on ground (g) therefore succeed in this respect. I will vary the period for compliance accordingly.

Other Matters

15. The appellants' grounds of appeal draw upon the previous Inspector's conclusions regarding the section 78 planning appeal² in setting out a revised scheme with the submission of the current appeals. These include consideration of how the revised scheme would address matters of overlooking, intervisibility between the appeal property and No. 37, comparisons between the current and revised balcony schemes and the previous rear bay window and responses to the previous Inspectors conclusions and reasoning. However, as the current appeal was not made under ground (a), there is no planning application deemed to have been made and so these planning matters do not fall to be considered within the scope of appeals under grounds (f) or (g).
16. The notice's requirements require the cessation of the roof area as a balcony, roof garden or similar amenity area. I do not disagree with the Council's conclusion regarding the placing of potted plants on the flat roofed element of the single storey build-out and note that Juliet balcony railings / balustrade fixed flush to the first floor rear of the appeal property would not preclude such placement.
17. I can appreciate the frustration expressed by the appellants in relation to attempts to engage in dialogue with the Council and the length of time that the process has taken. However, these are not material to my consideration of this appeal.

Conclusion

18. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation in the terms set out above.

G Robbie

INSPECTOR