

Item 10

DEVELOPMENT CONTROL COMMITTEE

22nd June 2007

Report of the Director of Neighbourhood Services

RECENT PLANNING APPEAL DECISION

The following planning appeal decisions are reported for the information purposes:

APPEAL REFERENCE NO. APP/M1330/C/06/2032404 & 7

LOCATION: Land at 1 Parkdale Spennymoor

APPEAL DESCRIPTION:

AP/2006/0017/EN

Appeal Description

The appeal was made by Mr. Gary Atkinson against the issue on 28th September 2006 of an enforcement notice by Sedgefield Borough Council in respect of the erection of a raised patio / decking area to the rear of 12 Kensington Gardens, Ferryhill.

The notice required the removal of the unauthorised development within 3 months of the notice coming into effect.

Appeal Decision

In the Inspector's decision letter dated 23rd May 2007, a copy of which is attached to this report, the appeal was DISMISSED

Analysis

The appeal was dealt with by way of an informal hearing held on 15th May 2007.

The appeal was made on the grounds that:

1. There had not been a breach of planning control (ground c)
2. The required steps to remedy the breach were excessive (ground f)

The Inspector agreed with many of the points raised by the Local Planning Authority. In particular, it is encouraging to note the following points:

- The development was not permitted development, as asserted by the appellant
- There was no clear evidence to show that a garage previously existed on the site that would affect this judgement
- It was irrelevant whether the development was carried out as a continuous action together with the erection of a garage, or in isolation
- It would be illogical to require removal of only part of the unauthorised development and the steps to remove the entire development were *'the minimum required to remedy the breach of planning control.'*

The Inspector however made the following observation:

- There needed to be more clarity in the wording of the steps to avoid uncertainty on the part of the appellant as to what he had to do to comply with the notice.

Conclusion

The enforcement notice has been upheld with only a minor correction to the text of the notice to increase clarity. The corrected steps to be taken are specified at the end of the attached decision letter.

The notice came into effect on the day of the appeal decision (23rd May 2007).

The corrected steps must be carried out by not later than 23rd August 2007.

The situation will be monitored by the Enforcement Officer to ensure compliance and to determine whether any further action will be required in the event of failure to comply with the notice.



Appeal Decision

Hearing held and site visit made on
15 May 2007

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by **B Barnett BA MCD MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

Decision date:
23rd May 2007

Appeal Ref: APP/M1330/C/06/2028638

12 Kensington Gardens, Ferryhill, Co Durham, DL17 8LU

- 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 Mr Gary Atkinson against an enforcement notice issued by Sedgefield Borough Council.
- The Council's reference is AP/2006/0017/EN.
- The notice was issued on 28 September 2006.
- The breach of planning control as alleged in the notice is *without planning permission, the erection of a raised patio/decking area.*
- The requirement of the notice is to *dismantle and remove the raised patio/decking, including the surface decking, timber fence, polycarbonate sheeting, planting boxes and the external staircase which provides access to the raised patio/decking.*
- The period for compliance with the requirement is three calendar months.
- The appeal is proceeding on the grounds set out in sections 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 application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

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

Preliminary Matter

1. At the hearing the appellant withdrew his appeal on ground c. I am concerned that he may not have fully understood the significance of this or of the relevant legal provisions which prompted his decision. In the interest of clarity and fairness I shall continue to consider this ground of appeal.

The Appeal on Ground c

2. This mid-terrace house has a small yard area to its rear which adjoins a road providing vehicular and pedestrian access to the houses on both sides of it. It was agreed at the hearing that this road is a highway.
3. A single storey structure has been erected between what was the rear of the house and the end of the yard. Although this has a garage-type door to the road, it adjoins the house and is accessible from within it by a communicating door. It is an extension of the house. An external staircase provides access to its roof which has been covered with timber decking and enclosed by a screen wall and post and rail fencing, mainly of timber.
4. The appellant agreed at the hearing that, as the extension is nearer to the highway than any part of the original dwelling house, its erection was not

permitted by Class A of Part 1 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). It was unlawful.

5. I heard conflicting views from the appellant and local residents as to whether the work on the roof and the staircase was part of a single act of development involving also the extension, or a separate and later act. However, this is of no consequence. If it was all one act of development it did not fall within Class A because of its position in relation to the road. If the work on the roof and the staircase was a separate act, it amounted to alterations or extensions to a building which was itself, at the time of the development, unlawful. Article 3(5) of the GPDO states that permissions granted by Schedule 2 (permitted development rights) do not apply where the construction of the building being extended or altered was itself unlawful. In either case, the work did not benefit from permitted development rights. It amounted to a breach of planning control so the appeal on ground c fails.

The Appeal on Ground f

6. After the work on the roof was completed the Council granted retrospective planning permission (under S 73 of the Town and Country Planning Act 1990) for the house extension, specifically excluding from this the work on the roof and the staircase. The extension is now lawful and potentially attracts permitted development rights. The appellant argued that if the enforcement notice as issued were complied with, the decking and staircase could thereafter be reinstated as permitted development. In his view, no purpose would be served by requiring their removal and he submitted that the requirement of the notice should be varied to require removal of only the enclosing wall and fencing.
7. I cannot accept this for three reasons.
8. Firstly, permitted development rights may not apply as the appellant claimed. At the site visit measurements of the extension, as enlarged by the addition of the decking, were taken and agreed between the Council and the appellant. These showed its volume to be about 68 cu m. An old ordnance plan indicates that there was probably a small projection attached to the rear of the original house. The volume of this can be estimated only very roughly but is unlikely to have been significantly greater than that of the present external staircase. Allowing for both these factors, the content of the building resulting from adding the decking, the staircase and the ground floor extension is likely to exceed that of the original dwelling house by more than 50 cu m. Consequently, if the decking and staircase were removed, their re-erection would probably not be permitted by Classes A or B of Part 1 of the GPDO.
9. The decking would make the extension higher overall and so would materially alter the shape of the dwelling house as seen from neighbouring properties. Its re-erection would not be permitted by Class C.
10. Although the appellant claimed that there was previously a garage attached to the house, local residents disputed this. In the absence of clear evidence to show that this building existed, its size and that it was part of the original dwelling house, I am not convinced that allowance should be made for it in assessing the limits of permitted development.

- 11: Secondly, the appellant's submission, even if correct, essentially addresses the expediency of issuing the enforcement notice. That is not a matter before me.
12. Thirdly, the breach of control has had effects on the appearance of the site and, by facilitating active use of the roof, on the privacy of neighbouring residents. As there is no ground a appeal, it is not open to me to consider whether or not these effects are acceptable wholly or in part or to vary the notice in a manner which would, in effect, grant planning permission for some or all of what has been done. Only the total removal of the decking, staircase and associated items can remedy the breach of planning control and remove the effects of the development.
13. In my judgement, the steps required by the notice are the minimum necessary to remedy the breach of planning control. The appeal on ground f fails.
14. I shall, however, correct the requirement in the notice to make it clear that it refers to the decking on top of the extension and to the screen wall and fencing around that decking. As issued, the notice could be interpreted as referring to decking on the ground and the nature and location of the polycarbonate sheeting referred to, which actually forms part of the fencing, is unclear. This correction reflects the appellant's understanding of the intent of the notice and will cause no injustice.

Formal Decision

15. I direct that the enforcement notice be corrected by replacing the text under the heading WHAT YOU ARE REQUIRED TO DO by the following text:
Dismantle and remove from the roof of the extension to the dwelling the decking, the screen wall and fencing around the decking and the plant boxes on it and also dismantle and remove the external staircase which provides access to the roof.
16. Subject to this correction, I dismiss the appeal and uphold the enforcement notice.

B Barnett

INSPECTOR

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