



Appeals Decision

Site visit made on 14 May 2019

by Anthony J Wharton BArch RIBA RIASI

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

Decision date: 17 May 2019

Appeal Refs: APP/J4525/C/18/3210822 & 3210823

29 West Bridge Street, Houghton-le-Spring DH4 7PZ

- 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 appeals are made by Peter Thompson and Mrs Janet Thompson against an enforcement notice issued by Sunderland City Council.
- The enforcement notice was issued on 3 September 2018.
- The breach of planning control as alleged in the notice is: the construction of a roof terrace to the rear of the dwelling, the approximate location of which is shown cross-hatched on the attached plan annotated 'Enforcement Notice Plan EN1'.
- The requirements of the notice are as follows:
 - (i) Stop using the roof terrace as such.
 - (ii) Restore the land to its condition prior to the breach by dismantling and removing the roof terrace in its entirety including all furniture, railings, screens, planters, artificial grass and any roof reinforcement and make good the underlying roof structure and covering as necessary. Following the above, remove from the land the dismantled components and any wastes arising.
 - (iii) Remove the French doors in the first floor rear elevation, providing access to the roof terrace, reduce the opening size with bricks laid in sand cement mortar, painted buff to match the existing elevation, and reinstate a timber or UPVC window of the style and size indicated on the plan entitled 'Existing floor plans, elevation and site plan' submitted as part of the retrospective planning application reference 18/00965/FUL. In particular the drawing within that plan entitled 'Existing Rear Elevation 1:100' A copy of the plan is attached entitled 'Enforcement Notice Plan EN2'. Following the above, remove from the land the dismantled components and any wastes arising.
- The periods for compliance with the requirements are: one calendar month for requirement (i) and three calendar months for requirements (ii) and (iii).
- The appeals are proceeding on grounds (d), (f) and (g), as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

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 and background information

2. There is no appeal on ground (a) for either appeal and the appellants have not **appealed against the Council's decision** (dated 20 August 2018) to refuse a retrospective application for the erection of the unauthorised roof terrace (reference 18/00965/FUL). Therefore, the question of whether or not planning permission should

be granted for the development as carried out does not fall to be considered. I have dealt with grounds (d), (f) and (g) only, as pleaded and as referred to above.

3. The two-storey, mid-terrace, brick built dwelling house is located on West Bridge Street in the Mount Pleasant area of Houghton-le-Spring, to the south west of Mount Pleasant Lake and the James Steel Park. The street is located to the south-west of Station Road and to the north of the major A182/Station Road junction. The surrounding area is predominantly residential with some more modern detached and semi-detached dwellings located in short cul-de-sacs located off Station Road. The terraced houses in West Bridge Street and East Bridge Street lie on the south bank of the River Wear and the Public Right of Way (PROW), '*The Weardale Way*', passes the terraced houses.

4. The roof terrace has been formed on top of the rear offshoot of No 29 and is accessed from a pair of French doors via a rear first floor bedroom. The surrounding railings and planter boxes are constructed of softwood timber with vertical and diagonal rails. The surface of the roof has been covered with artificial grass and, at the time of my visit, there were several items of furniture on the terrace. It would appear that the French doors were formed well before the other works were carried out and I deal with this point below.

5. Following a complaint about the roof terrace, the appellants submitted the retrospective planning application for its retention. As indicated above, this was refused on 20 August 2018. On 29 August 2018, the Council considered it expedient to issue the enforcement notice to secure the removal of the unauthorised roof terrace and to restore the original window.

The appeals on ground (d)

6. To be successful on this ground of appeal the onus is on the appellants to conclusively show that the roof terrace (comprising all of the works), as alleged in the notice, has been in position and was substantially completed 4 years prior to the issue of the enforcement notice. The relevant date, therefore, is 3 September 2014.

Summary of the Appellants' case

7. In support of their case the appellants contends that the roof top terrace was '**substantially completed in the past 4 years**'. It is stated that the French doors were installed around the summer of 2013 when the bathroom was moved upstairs and that the flat roof was strengthened and renewed and covered with artificial grass. It is indicated that the doors replaced a picture window of the same size, to initially create a fire exit for the first floor bedroom. It is acknowledged that the decorative panels were not added until 2018.

8. To support the argument relating to the French doors being installed in the summer of 2013, a copy of an estimate from a builder is submitted. This is dated 3 March 2013 and sets out that the estimate covers the removal of the '**large picture window**', removal of brickwork to create an opening for the French doors (fire escape) and the creation of a cupboard under the stairs. The appellants set out further arguments (see ground (f) below) but these relate to the merits of the works carried out as opposed to showing conclusively that the whole of the works enforced against have been in position since 3 September 2014.

Summary of Council's case

9. The Council refers to Section 171B(1) of the 1990 Act which sets out that where there has been a breach of planning control consisting of the carrying out without planning permission of building operations, no enforcement action may be taken after

the end of the period 'of 4 years beginning with the date on which the operations were substantially completed'.

10. The Council also refers to the cases of '**Ewen Developments Ltd V SoS & North Norfolk DC 6/2/80 and Worthy Fuel Injections Ltd v SoS 23/7/82**', both of which clarified that a building constructed gradually, over the course of time, was one operation, even though parts of the structure or development had been constructed more than 4 years prior to the service of an enforcement notice. Thus, any operational development carried out more than 4 years prior to the issue of an enforcement notice, would not be immune from enforcement action, unless the development as a whole was substantially completed at least 4 years prior to the issue of the notice.

11. It is contended by the Council that the insertion of the French doors is an integral part of the development by providing a safe and convenient means of access to the roof. The doors are considered to be a component part of a single or overall operation, carried out over a period of time, in order to create the usable roof terrace. In the **Council's opinion** this could not have been '**substantially completed**' until the peripheral railings were installed and thus enabled the roof terrace to be used.

12. Secondly, the Council refers to the appellants' own evidence, in an e-mail to the Planning Inspectorate dated 22 October 2018 (relating to the ground (f) appeal), that '**only the decorative panels were added earlier that year**'. It is stressed that it was only after these decorative panels or railings were installed that a formal complaint had been made to the Council. At a site visit by a Council Officer on 15 May 2018, when the railings were noted to be in place, the appellant had confirmed that the railings had been **installed in 'recent weeks'**.

13. The Council contends that the operations comprising the formation and access to the roof terrace are a single operation which was not completed until May 2018 and that the enforcement action was taken well within the required 4 year period.

Assessment

14. I acknowledge that the French windows were installed before the surrounding railings were completed. The estimate for these works was dated 3 March 2013, although there is no confirmation from the contractor of the date when the works were completed. However, this date would tie in with the appellants' confirmation that the works were carried out in the summer of that year and there is no other evidence to suggest that this was not the case. On the balance of probabilities, therefore, I consider that the French doors were installed prior to 3 September 2014.

15. However, it is indicated that the doors were installed to provide a fire exit from the first floor bedroom onto the flat roof of the extension. If this is the case then, when installed, they did not provide access onto the roof terrace as completed and enforced against. There is some evidence from the occupier of No 30, including photographic evidence, that shows the French windows in place in August 2017. At that time the railings and planters had not been installed. It was only in April of 2018 that the railings and planters were completed and again there is a submitted and dated photograph taken from the adjoining property rear area which shows these works as carried out and enforced against.

16. In conclusion on this ground of appeal I do not consider, therefore, that the appellants have conclusively shown that what has been enforced against had been in place or substantially completed by 3 August 2014. Although the French doors could have been used for exit/escape from the bedroom onto the flat roof, from before that date, they could not have been used for access onto the roof terrace because it had not been completed until April/May 2018. By the appellants' own admission, therefore, the

whole of the alleged works could not have been substantially completed on the relevant date. The LPA was not precluded, therefore from taking enforcement action and the appeal must fail on ground (d)

The appeal on ground (f)

17. The notice was issued to remedy the breach of planning control and to alleviate the harm caused. Any arguments under this ground should be on the basis that lesser steps would overcome the harm caused. It is suggested by the appellants that any loss of privacy for the occupants of No 30 could be overcome by the erection of screening panels and that there are many such panels available. However, as indicated by the Council, no details of design, height or location of such screens have been submitted for consideration.

18. **I agree with the Council's conclusion, therefore**, that it is not possible to consider this suggestion to be a 'lesser step' or, **if it is**, that it would alleviate the harm caused. **I also agree with the Council that the appellant's suggestion would** amount to additional development which would, itself require planning permission. Thus on this particular point I consider that the appellants have failed to show that 'lesser steps' would alleviate the harm. These 'lesser steps' are directly related to the railings and works around the flat roof including the planters.

19. However, I have concluded above that the operational development comprising the formation of the French doors was carried out prior to 3 September 2014. The submitted estimate was for the French doors and referred to them **as being a 'fire escape'**. Although I agree with the Council that the doors later facilitated the use of the roof terrace and consider that this must have been the appellants' overall plan, it is clear that the doors and the railings were carried out at different times.

20. On this point, therefore, I consider that despite the legal cases referred to above, as a matter of fact and degree, the French doors, as a fire exit onto the flat roof, were lawful when installed and that the Council could not have taken enforcement action solely against the doors at that time.

21. In fact the doors had been in place for a considerable period prior to the rest of the roof terrace works being completed and, if it had been considered expedient, enforcement action could have been taken against the installation of the French doors. The Council did not take such action until the complaint was made in 2018 regarding the installation of the railings, planters and artificial grass.

22. On balance, therefore, and in the overall circumstances of this case, I consider that the requirement to remove the French doors is excessive. I shall, therefore, vary the notice accordingly by deleting that part of requirement (iii) which requires removal and replacement with a window to match that which was in position previously. In taking this course of action I am satisfied that no injustice will be caused to the appellants, the Council or any interested person. The appeal succeeds to this limited degree on ground (f).

23. With regard to the appellants' comments on the trellis at No 30; the extensions from Nos 25 down to 31 and the loss of daylight caused by the extension at No 31, these are matters relating to planning merits and are not before me. Any grievances that the appellants might have in connection with these points would be a matter between them and the Council. The other comments relating to the visual effect of the roof terrace (including favourable comments by residents and local Councillors) are also merits arguments which do not fall to be considered under the grounds pleaded in this appeal.

The appeal on ground (g)

24. I have noted that Mr Thompson has indicated that he works away from home, sometimes for 3 months at a time. However, no alternative period for compliance has been put forward. In any case, by the partial success on ground (f), the works required to be carried out are now much less. In my view a period of 3 months is more than sufficient to carry out requirements (i) and (ii) and the remaining part of requirement (iii). The appeal fails, therefore on ground (g).

Other Matters

25. In reaching my conclusions in this appeal I have taken into account all of the other matters raised by the appellants, the Council and the occupier of No 30. These including the planning history, the initial grounds of appeal and facts pleaded, the statements and other e-mail submissions, the third party representations, the photographic evidence and all other comments relating to other developments in this part of Houghton-le-Spring.

26. However none of these carries sufficient weight to alter my conclusions on the grounds of appeal and nor is any other matter of such significance so as to change my decision

Formal Decision

27. The appeals succeed to a limited degree on ground (f) only. I direct that the notice be varied by deleting the following words in requirement (iii):

'Remove the French doors in the first floor rear elevation, providing access to the roof terrace, reduce the opening size with bricks laid in sand cement mortar, painted buff to match the existing elevation, and reinstate a timber or UPVC window of the style and size indicated on the plan entitled ' Existing floor plans, elevation and site plan' submitted as part of the retrospective planning application reference 18/00965/FUL. In particular the drawing within that plan entitled 'Existing Rear Elevation 1:100' A copy of the plan is attached entitled 'Enforcement Notice Plan EN2'.

28. Otherwise the appeals are dismissed and the enforcement notice is upheld as varied.

Anthony J Wharton

Inspector