Appeal Decisions

Hearing held on 22 July 2008

by Alan Upward BA(Hons) MCD MRTPI

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

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Decision date:
13 August 2008

Appeals A & B: Refs: APP/W4223/C/08/2063468 & 2063472
6 Thorncliffe Park, Royton, OL2 5RX

- The appeals are 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 Mr Paul Armstrong and Mrs Amanda Armstrong against an enforcement notice issued by Oldham Metropolitan Borough Council.
- The Council's reference is W4223.
- The notice was issued on 27 November 2007.
- The breach of planning control as alleged in the notice is **without planning permission, the erection of railings around the roof of the garage forming a roof terrace at 6 Thorncliffe Park, Royton.**
- The requirements of the notice are to **permanently remove the decking and railings from the garage.**
- The period for compliance with the requirements is 1 month.
- The appeals were lodged on the grounds set out in section 174(2)(a), (c), (f) & (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees were not paid within the specified period, the ground (a) appeals have lapsed and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.

Formal Decisions: I vary the notice at section 5 by deletion of the words "decking and". Subject thereto, I dismiss the appeals, and uphold the notice as so varied.

Appeal C: Ref: APP/W4223/A/07/2056928
6 Thorncliffe Park, Royton, OL2 5RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Armstrong against the decision of Oldham Metropolitan Borough Council.
- The application Ref HH/052254/06, dated 16 October 2006, was refused by notice dated 30 May 2007.
- The development proposed is the **erection of safety railings.**

Formal Decision: I dismiss the appeal.

1. The appeals relate effectively to the same development, being works carried out to create a roof terrace above a garage and attached single storey house extension at this semi-detached dwelling within a small residential estate. As I saw the property during the hearing, this single area of flat roofing above a ground floor level structure had been covered with timber decking with balustrade fencing erected around all its sides. Apart from the sides facing number 4 Thorncliffe Park and the rear, the fencing comprised timber posts infilled by sections of ornamental metalwork, broadly to a height of 1 metre above deck level. Along the remaining sides the fence was of horizontal boarding to a similar height.

2. The application for planning permission referred only to "safety railings". The accompanying plan showed metre high fencing as now constructed except that balustrading facing the estate road and the inner side between the garage and the house was shown as closely spaced timber paling. An additional plan submitted with the appeal showed the side facing 4 Thorncliffe Park bounded by a 1.8 metre high close boarded fence. This had not formed part of the application as decided by the Council, and cannot therefore form the basis for consideration of the appeal, although I shall have regard to the extent to which objections to the development could be overcome by the imposition of a condition relating to such an amendment of what was applied for and what was erected.

Ground (c) appeals

3. The issue is whether the erection of the railings constituted a breach of planning control. It was accepted that use of the roofspace above the existing buildings as a terrace for purposes

incidental to the enjoyment of the dwellinghouse did not separately amount to a material change of use requiring planning permission.

4. The Appellant argued that there had been dilapidated railings around the roof previously when he had moved into the property some 13½ years ago, and he had simply 'replaced new for old'. He had replaced the side facing glazed door in the landing level at the side of the house with a uPVC unit. The means of access to the roof terrace was not being challenged by the Council. There had similarly been roof decking, which had been replaced as part of his project to make a safe roof area for use by his family, and his children in particular.

5. Aside from the question of what might have existed beforehand, it was apparent that the railings amounted to a wholly new structure. Whether railings attached to dwelling extensions are development permitted by the 1995 Town and Country Planning (General Permitted Development) Order [GPDO] is generally assessed in relation to the terms of Class B of Part 1 of its Schedule which concerns *the enlargement of a dwellinghouse consisting of an addition or alteration to its roof*. Class A of Part 2, permitting fences, would not apply as the structure constructed around the garage roof clearly exceeded 2 metres above ground level.

6. The Council believed that the structure was excluded from being permitted by the terms of Class B.1(d)(ii) which sets an upper limit of 70 cubic metres on the extent to which the cubic capacity of the original dwellinghouse can be exceeded by roof enlargements. It was not argued that the alternative of "15%" would have given a higher figure.

7. The roof mounted railings were works of enlargement of the dwelling, materially affecting its external appearance and amounting to development. In calculating such enlargements of the "original dwellinghouse", it was accepted that the railings had some volume, albeit fairly small and not calculated in detail for the purposes of the appeals. The question of whether the 70 m^3 level had been exceeded in this case turned on the treatment of the garage at the side of the house and a single storey extension which had been built to its rear, which had had the effect of connecting the garage to the house itself.

8. Although formally part of the "Interpretation" of Class A rather than Class B, it is reasonable for the purposes of Class B to calculate the cubic content of the building and enlargements by reference to its terms. This provides that a building within the same curtilage and within 5 metres of any part of the dwellinghouse shall be treated as forming part of the resulting building for cubic content calculations.

9. The largest element in addition to the house at number 6 is the volume of the garage. It is less than 2 metres from the main dwellinghouse. The Appellant was unable to offer any evidence on the history of the garage and other structures now attached to the house. It has to be borne in mind that the onus under ground (c) falls on an Appellant to demonstrate the facts supporting a claim that the matters stated in the notice did not constitute a breach of planning control. He was unable to do this.

10. The Council had sought to investigate the status of the garage from their 'microfiched' records relating to the development of the estate during the 1950s. They had been able to trace a permitted plan for a house on a plot which equated to number 6, which also showed a flat roofed garage in the approximate position of the garage now built. It was by no means clear that this was the scheme which was ultimately built to the boundaries now found. The same plan had shown a quite different dwelling on the plot now forming number 4 with a garage attached to the one for number 6. Number 4 had ultimately been developed with a bungalow incorporating an integral garage located elsewhere on the plot. The available documents did not show either that the garage now built at number 6 had been permitted at the time of planning permission for the house or that it was built at the same time as the original dwellinghouse. There were, moreover, no records relating to the utility/dining room now built to its rear which formed with the garage a single enlargement of the main house structure. As their combined volumes exceed the 70m^3 level, any further extension subject to cubic capacity limits would not have been permitted development.

11. There is the additional question of whether the garage, if built at the same time as the house, should be regarded as part of the "original dwellinghouse". It was not disputed that the link extension at the rear came at a later date. Definition of the term "original" in Article 1(2) of the GPDO is by reference to a single building. Any other separate building could not form part of the original dwelling regardless of whether it was built at the same time or within 5 metres. The

commentary in the Encyclopedia of Planning Law and Practice confirms this approach at 3B-2065.

12. My conclusion is therefore that the railings were development falling outside the terms permitted by Part 1 Class B. They constituted a breach of planning control, and the ground (c) appeals should fail.

The appeal against the refusal of planning permission

The main issue is

- the impact upon the amenity of neighbours, in particular the occupants of the adjoining dwelling at number 4.

Appraisal

13. 'Saved' Policy D1.11 of the Oldham UDP seeks to preclude extensions which would have a significant adverse impact on the amenity of adjoining residential property. The garage and attached extension occupy the space at the side of the dwelling between it and the bungalow at number 4. The flank wall of the garage reaches up to the common boundary. There is then a paved space of a little less than 2 metres width up to the main gable wall of the bungalow. That bungalow is set at a significantly lower level than the buildings at number 6.

14. The gable wall of the bungalow contains the window to its bathroom. Although obscure glazed, this window is physically close to, and at a lower level than the roof terrace. Although I accept the Appellant's indication that he would not choose to stand alongside the balcony edge at this point so as to affect the sense of privacy for occupants of the bungalow when using the bathroom, there would be nothing to prevent this happening. Obscure glazing is a standard arrangement for such a room, but with the extreme proximity of the balcony allied to its higher level, the sensation of being overlooked that people using the shower or toilet would have, would be very marked. Obscure glazing does not wholly prevent the shapes of things inside the room being seen. The effects would be more extreme at times, particularly during hours of darkness, when artificial lighting was used inside the bathroom. Mr and Mrs Southby indicated that they felt constrained to keep their window blinds shut as a regular arrangement. As I observed the situation during the site visit (when the blind was not shut and the window light was open), the hinging arrangement of the uPVC window meant that there was limited direct sight of the interior of the bathroom from the terrace.

15. I consider this situation to be wholly unsatisfactory, and unacceptably to damage the standard of amenity available to the neighbours in the use of their dwelling. I agree with the Appellant that this problem could be overcome by the replacement of the existing metre high balustrading by a 1.8 metre close boarded structure, and that such a feature could be required by condition of planning permission. Such a structure would also reduce the degree of overlooking experienced by the Southby's from the rear portion of the terrace. There would remain a section of metre high balustrade on the south-eastern face of the structure, and some loss of privacy would remain for the neighbours in their use of the section of garden immediately alongside their dwelling. The intrusive effect is accentuated by the change in ground level between the 2 sites. I accept that the large level changes between dwellings on this estate has already produced a number of situations where overlooking of neighbours' gardens at close quarters occurs. That does not justify development at a property which creates unreasonable loss of privacy as a new matter.

16. Whilst I consider the privacy implications for number 4 unduly damaging, the effects upon the occupants of number 9 were somewhat different. As I saw the situation from within the back garden of that property, the height of the new roof terrace was such as to allow for the first time overlooking of the neighbour's private garden area above boundary structures and plants. There would be some effect upon privacy, but the intervening distance involved, across the estate roadway within a frontage zone, was such as would normally be regarded as sufficient to secure a reasonable level of amenity for the respective occupants. Although there would be a sensation of intrusion, arising partly from the higher level of the terrace, this matter would be insufficient on its own to justify rejection of the appeal.

17. The most serious amenity harm relating to the bathroom window would only be resolved by a 1.8 metre high structure placed on top of the garage at the boundary. Having regard to the total height of such a structure and the ground level changes between the sites, I consider that the

effect of such railings would be visually dominant and oppressive both for persons using the path along the side of the bungalow and people inside the bathroom. The overall height of such a structure would be such as significantly to affect the open sky component facing this window. There would as a result be a material direct loss of daylight reaching that room. That would in my view amount to an unacceptable amenity effect upon the occupants of number 4. A close boarded screen fence along the south-western face of the roof terrace would not therefore represent an acceptable resolution of the privacy problem for the neighbours in their use of the bathroom.

18. As I saw the situation with a 1 metre high balustrade along this edge, the overall height of the development already resulted in significant amenity impact in terms of an over-dominant structure close to the neighbour's living areas. Direct daylight loss was probably not substantial, but the overbearing effect of the fence is materially damaging to amenity.

19. Activity by family members using the roof terrace would be of a kind and scale which could be expected to occur within residential estates at similar distances to neighbours. The situation differs in that the activity would be occurring along the side of the building rather than within back garden land, and the height of the roof terrace would probably make noise generated by users of the space more noticeable.

20. The matter adds some weight to my overall assessment of the amenity harm caused by the development. My conclusion is that the effects are serious and unacceptable, and incapable of resolution by the imposition of conditions. The development conflicts therefore with UDP Policy D1.11. Whilst I note the Appellant's claim that, if required to remove the balustrading, he would continue to use the roof as a sitting area, as he said that he had done before, the terrace railings effectively serve the purpose of facilitating the use of the roof for such purposes. Without fencing to provide for safety I consider it unlikely that the space would be used to anything like the same extent as could now be expected. Such a 'fallback' position does not therefore affect my conclusion that the development, as proposed in the appeal against refusal of planning permission, should be refused.

Ground (f) appeals

21. For reasons discussed above, a requirement to erect a 1.8 metre high screen would not represent an acceptable alternative to removal of the development.

22. The allegation in the enforcement notice relates only to "railings". The requirements refer to removal both of "railings" and the "decking". Whether or not there had formerly been some kind of decking structure on top of the garage roof, there was no doubt that what was now in place was a wholly new structure placed on top of the flat roof. In the absence of any mention of the decking in the allegation, its inclusion additionally in the requirements would be excessive in going beyond the unauthorised development being alleged. Addition of the decking to the allegation of the notice at the appeal stage would expand the scope of the enforcement action significantly. I consider that it would be beyond the powers available to me to correct the notice in such a manner without causing injustice.

23. The Council took the view that the railings and the decking were a single structure, and that removal of the decking would therefore be implicit in the terms of the notice. The Council's representatives had no detailed knowledge of the construction methods used in attaching the structures to the roof area. From what I was able to see, the decking had been fixed on top of joists which had been laid across the top of the garage roof with fixings at sides. Balustrade posts appeared to have thereafter been fixed to the sides of the joist timbers. Whilst similar materials were being used, and one was now physically attached to the other, there was nothing to indicate that it amounted to a single integral structure. Use of the term "railings" would not imply also the decking to which they were attached in the way that, for example, a uPVC door would be a single structure with its framing.

24. My conclusion is that the requirement to remove the decking is excessive.

25. A separate suggestion was made by Mrs Bordiuk that consideration could be given to reduction of the roof terrace area to overcome amenity harm. This would be bound to mean reduction by re-positioning of railings from the front of the garage to some point behind the position of the bathroom window in number 4. This would reduce the impact to some extent, but there would remain some loss of privacy in relation to the bathroom unless the railings were re-sited

substantially further back. There would remain overlooking of the garden of number 4, and part of the visually dominant structure would remain in place. I do not consider that this course of action represents a reasonable or realistic alternative to removal of the railings in full.

26. Deletion of reference to decking amounts to a partial success under ground (f). In dismissing the appeals and upholding the notice, I shall vary its terms to exclude this element.

Ground (g) appeals

27. The Appellant entered no detailed arguments relating to the adequacy of the 1 month compliance period. The works required would involve simply the dismantling and removal of the railings along the edges of the buildings. This would represent a fairly straightforward operation, and I consider that the period specified should be sufficient for this purpose. The ground (g) appeals fail.

Alan Upward

INSPECTOR

PERSONS SPEAKING AT THE HEARING

FOR THE APPELLANTS:

Mr Paul Armstrong	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Schofield	Principal Planning Officer, Development Control, Oldham Metropolitan Borough Council
Mr D McArtney	Principal Planning Officer, Enforcement, Oldham Metropolitan Borough Council

INTERESTED PERSONS:

Mr T F Southby	Of 4 Thorncliffe Park, Royton, Oldham OL2 5RX
Mrs C Southby	Of 4 Thorncliffe Park, Royton, Oldham OL2 5RX
Mrs K Bordiuk	Of 9 Thorncliffe Park, Royton, Oldham OL2 5RX

DOCUMENTS SUBMITTED AT THE HEARING

Document	1	List of persons present at the hearing
Document	2	Letter sent by the Council notifying hearing arrangements
Document	3	Extract from EPL – 3B-2065