



Planning Committee
6th January 2011

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

8 Kelway Avenue, Great Barr, Birmingham, B43 7QY

1.0 PURPOSE OF REPORT

To request authority to take planning enforcement action in respect of the erection of a timber balcony structure.

2.0 RECOMMENDATIONS

- 2.1 That authority is granted for the issuing of an enforcement notice** under the Town and Country Planning Act 1990 (as amended), to require removal of the balcony (See in 2.3 below).
- 2.2 To authorise that the decision to institute Prosecution proceedings**, in the event of non-compliance with an Enforcement Notice, or the non-return of Requisitions for Information or a Planning Contravention Notice; and the decision to institute injunctive proceedings in the event of a continuing breach of control; be delegated to the Assistant Director - Legal and Constitutional Services in consultation with the Head of Planning and Building Control.
- 2.3 That, authority to amend, add to, or delete from the wording** set out below stating the nature of the breach (es) the reason(s) for taking enforcement action, the requirement(s) of the Notice, or the boundaries of the site (in the interests of ensuring an accurate and up to date notice is served) be delegated to the Assistant Director - Legal and Constitutional Services in consultation with the Head of Planning and Building Control.

Details of the Enforcement Notice

The Breach of Planning Control:-

Operational development comprising the erection of a balcony structure including decking area, balustrades railings, newel posts and hand rail.

Steps required to remedy the breaches:-

Completely dismantle the balcony by removing the decking area, hand rail, balustrades railings and newel posts

Remove all resultant components and debris from the land.

Period for compliance:-

1 month

Reasons for taking Enforcement Action:-

The railing provides for use of the flat roof as a balcony which results in overlooking and visual intrusion of the neighbouring houses, in particular their garden patio areas. This loss of privacy severely diminishes the amenity previously enjoyed by adjoining neighbours. The balcony use, due to its close proximity to bedroom windows of neighbouring houses, also gives rise to an unacceptable increase in the level of noise and disturbance to these habitable rooms. Furthermore, the timber materials used fail to adequately integrate into character of the property and surrounding area. The balcony is therefore contrary to Walsall Unitary Development Plan policies 2.2, GP2, 3.6, 3.7, ENV32 and H10; supplementary planning document Designing Walsall and Planning Policy Statement 1.

3.0 FINANCIAL IMPLICATIONS

None arising from the report. The Council would seek to recover all costs against the owner in any subsequent appeal or court action.

4.0 POLICY IMPLICATIONS

The report recommends enforcement action in order to seek compliance with planning policies.

5.0 LEGAL IMPLICATIONS

None arising from the report.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

None arising directly from this report.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED

Pheasey Park Farm

9.0 CONSULTEEs

None

10.0 CONTACT OFFICER

James Fox

Planning Enforcement Team: 01922 652527

11.0 BACKGROUND PAPERS

Enforcement file not published.

D. Elsworthy

Head of Planning and Building Control

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12.0 BACKGROUND AND REPORT DETAIL

- 12.1 Number 8 Kelway Avenue is a detached house in a row of similar properties. This report relates to the use of a flat roof at the back of the house as a balcony which is facilitated by the unauthorised laying of decking and the erection of a balcony rail. A plan showing the location of the house and balcony is attached to this report.
- 12.2 The balcony use and railing was first reported to Planning Enforcement Officers during August 2009. This complaint followed the erection of a timber decking area and railings onto the flat roof of an existing rear ground floor extension. An enforcement officer conducted a site inspection and noted details of the balcony as follows.
- 12.3 The balcony is situated on top of an existing ground floor rear extension accessed through the window of the first floor bedroom window. This extension was built approximately 10 years ago by the former owners of the property and the current owner has admitted previously using the flat roof as an outdoor area for sunbathing. The owner has suggested the balcony is purely a decorative feature that will function as a means of escape in the event of a fire and suggested adding an external staircase to facilitate this in the future.
- 12.4 The balcony comprises a floating timber raft decking area covering the whole area of the existing flat roof and stretching across the full width of the house. The edge of the balcony is fitted with timber balustrade railings, handrail and newel posts measuring 1 metre in height, the total height of the balcony measured from the garden is no more than 4 metres. The balcony projects forward of the rear elevation by approximately 3 metres on the boundary of the neighbouring property at 10 Kelway Avenue and 1.5 metres adjacent to 6 Kelway Avenue.
- 12.5 During the inspection the owner cited medical and personal reasons for erecting the balcony. Although we recognise these issues, no medical evidence has been provided by the owner and Government guidance suggests personal circumstances should not outweigh the more general long term material planning considerations of a case, particularly when the development would be unneighbourly and harmful to the amenity of others.
- 12.6 The owner has been advised that the balcony will require planning permission in order to be retained and planning permission is unlikely to be granted, as set out in the reasons given in section 2.3 of this report. The owner has not submitted a planning application because she considers work on the balcony to have commenced prior to the changes to the Householder Permitted Development Rights in October 2008. The new permitted development regime explicitly requires a planning application for any development consisting of a balcony. Before October 2008 a planning application would not have been required providing the balcony does not exceed 4 metres in height.
- 12.7 The owner was asked to provide evidence to confirm that work on the balcony commenced before the new regime came into force on the 1st October 2008. The

owner was also advised to submit an application for a Certificate of Lawful Development so that the Council could formally consider the evidence provided and issue a statutory document confirming our decision. Following this request the owner provided a copy of an invoice from A1 Roofspec dated 3rd August 2008. The invoice contains information that suggests the work on the balcony was carried out in two stages, initially commencing on 3rd August 2008. The invoice may be unreliable, because it appears unclear and imprecise, in that the invoice is shown in the form of a quotation dated 3rd August 2008, this being the same date confirmed for the work to commence. Furthermore the information in the invoice suggests the work initially carried out included the fitting of a timber raft and knurl posts, this is not only contrary to the evidence provided by the complainant but the terminology used is also inaccurate and the suggestion that posts would be fitted in such a prominent position and go unnoticed for 12 months is highly dubious. The complainant is suggesting the whole project was carried out over 2 – 3 days during August 2009.

- 12.8 The information contained in the invoice is ambiguous and as a result does not provide sufficient certainty to confirm the lawful status on its own. In order to assist the investigation a letter was sent to A1 Roofspec requesting further details and confirmation of the authenticity of the document. The letter was sent on 4th October 2010 but at the time of writing this report and despite several attempts to chase a reply a response has still not been provided. Furthermore no additional supporting evidence has been provided by the owner.
- 12.9 Without further information the invoice provided is inconclusive and in view of the contrary claims by the complainant we cannot rely on this as evidence to confirm work on the balcony started before October 2008. In the absence of any further evidence officers consider work to have commenced shortly before receiving the original complaint during August 2009 and therefore consider planning permission is required.
- 12.10 It is unlikely that retrospective planning permission would be granted to retain the balcony as its position adjacent to the bedroom windows of the neighbouring properties will result in an opportunity for increased noise and disturbance. Furthermore the balcony will also result in an increased degree of overlooking which will harm the private amenity space available, particularly in the rear garden of No.6 and No.10 Kelway Avenue. On this basis the owner has already been advised to dismantle the balcony structure.
- 12.11 The owner has failed to demonstrate that the balcony was built as permitted development before the planning regulations changed in October 2008. A planning application has not been submitted to retain the balcony and no action has been taken to resolve the breach of planning control. In the circumstances because of the harm the development is causing, as explained above, it is considered expedient that enforcement action is now taken through the issue of an enforcement notice. Officers therefore request that authorisation is given to take this course of action.

8 Kelway Avenue

