Development Control – Delegated Officer Report

Application Number: AWDM/0567/15 **Recommendation – Issue**

Site: **17 Whiterock Place, Southwick**

Proposal: **Application for Lawful Development Certificate for existing use of flat roof of ground floor flat-roofed single-storey extension as balcony with balustrading.**

Neighbours checked: Y

Additional neighbour notifications: N

Site and Surroundings

The application site is situated on the northerly side of Whiterock Place and comprises a mid-terrace two storey dwelling. The property is located within a long row of terrace properties which are relatively uniform in appearance to their frontages and predominantly comprise smooth rendered painted exteriors with ground floor bay window features. To the rear the terrace properties have two storey projecting elements and some of the properties have converted their roof spaces and created dormer extensions to the rear.

To the rear of the application property the original two storey projecting element appears to have been altered at some point and the single storey addition to the rear which originally incorporated a hipped roof was altered to a flat roof in 2002 with access also formed onto the flat roof for use as a balcony with associated balustrading enclosure.

Proposal

The application seeks a lawful development certificate for existing use of a flat roof of the ground floor single storey extension as a balcony with associated balustrading enclosure.

<u>Evidence/documents submitted with the application</u>

The Applicant has provided the following supporting information and documents to substantiate his claim that the balcony and balustrade have been in situ for more than 10 years:

- A statutory declaration from the Applicant, witnessed, signed and stamped by a Solicitor
- A copy of the invoice for the completion of the decking on the balcony in September 2003

- A letter from the occupier of 15 Whiterock Place who has confirmed that the balcony has been in use as a seating area with table and chairs since she moved in in July 2004
- A letter and original tender of the works from the Construction Company dated 13th June 2002 which includes in the itemised list "alterations to roof to balcony with railings and new opening in wall".
- A delivery note dated 26th July 2002 listing plants in the garden shown in the submitted photos
- Photos taken from the garden and the roof balcony (date is hand written on back of photos as "Taken in Summer 2003)

Consultations: None received.

Representations

One letter of representation has been received from the occupiers of 19 Whiterock Place who have objected to the balcony on the basis that it causes a loss of privacy to their neighbouring property (specifically their kitchen, dining room and bedroom windows) and garden.

The neighbouring occupiers have also provided the following account:

"We have always objected to this balcony right from its initial construction and as a result of a visit from your office, Mr Carne was advised that it was not to be used, the table and chairs were removed and a gate placed across the access doorway. This request was initially met but eventually lapsed without consequence as it was not enforced by the relevant department."

Relevant Planning History

AWDM/0154/15 – Planning permission was refused in April 2015 for a rear extension at second floor level with Juliet balcony.

SW/52/03 – Planning permission was approved on 18th July 2003 for the formation of flat roof at rear replacing pitched roof.

Planning Assessment

The determination of applications for Certificates of Lawfulness is restricted to consideration of the lawfulness of the proposal. Effectively, the issue for consideration is whether the proposal needs planning permission by means of an application, or, alternatively may be carried out without any such need because it is not development or is permitted development or is *de minimis* or is not a material change of use or is immune from enforcement and so has achieved lawfulness. The, otherwise, planning merits or de-merits of a proposal are outside of the scope of the determination and, to this extent, the representations received on such matters should be disregarded.

The relevant test for such an application is whether, on the balance of probabilities, the applicant has proven the use of the flat roof as a balcony is lawful.

The main issues are whether:

1. the proposal is development requiring express planning permission through an application ; and
2. the proposal has achieved immunity through the passage of time – in this case whether the flat roof of the single storey extension has been used as a balcony for 10 years or more (due to the imposition of a planning condition) immediately prior to the application.

Whether the proposal is development requiring express planning permission through an application

The history of the site shows that following the original construction of the first floor balcony in 2002 clarification was sought from the Council regarding whether planning permission was required. The Chief Executive clarified in a letter dated 27th January 2003 to Tim Loughton MP that under the Town & Country (General Permitted Development) Order 1995 (as amended) the roof terrace on the single storey rear extension would have constituted permitted development at the time as the no part of the development was found to have exceeded 4 metres in height.

The development had however also involved the change in the shape of the roof on the single storey rear extension to a flat roof. This was considered to be a material alteration to the shape of the roof and it was subsequently confirmed to the Applicant that planning permission was required.

Planning application SW/52/03 was subsequently submitted to the Council on the 30th May 2003 for the replacement of a pitched roof to a flat roof to the single storey extension at the rear of the property. During the consideration of this application the Case Officer had appeared to negotiate the installation of a guard/railing over the first floor doors to the rear of the property to prevent access onto and use of the flat roof of the single storey part of the property as a balcony.

A planning condition was also attached to the planning permission SW/52/03 which specified:

"Notwithstanding the provisions of the Town & Country (General Permitted Development) Order 1995 as amended (or any Order revoking and re-enacting that Order with or without modification), no part of the roof of the extension hereby permitted shall be converted into or used as a balcony or terrace nor shall any access be formed thereto."

A site visit was subsequently undertaken by a Building Control Officer who confirmed in a file note on the 28th October 2004 that the railing/guarding was in situ and prevented the first floor doors from opening onto the flat roof and balcony.

Whether the proposal has achieved immunity through the passage of time

As a planning condition was imposed on planning permission SW/52/03 which restricted access onto and use of the flat roof of the single storey rear section of the building as a balcony, it would need to be proven that the balcony has been in use for 10 years from the date of the planning decision, 18th July 2003 in order to be considered as lawful.

Since the consideration of the 2003 application and the inspection undertaken from the Building Control Officer on 28th October 2004 whereby it was confirmed that a guard/railing had been put over the first floor doors preventing access onto and use of the balcony, there is no recorded documentation informing the Council that the guard/railing had been removed or that the balcony was being used again as an outdoor seating area. The Council became aware that the balcony was being used following a Planning Officer's site visit in connection with recent planning application AWDM/0154/15 which sought planning permission for a rear extension at the second floor level of the property. This matter was subsequently passed to the Council's Planning Enforcement department for further investigation.

<u>Evidence/documents submitted with the application</u>

The original set of documents submitted with the application provided a lack of supporting evidence to show when the rail/guarding was removed from the first floor doors and the use of the balcony was re-instated. The photos submitted showing the balcony had a hand written year Summer 2003 on the back and the delivery note showing the delivery of plants does not provide any solid evidence in relation to when the use of the balcony was re-instated after the 2004 Building Officer's visit. Likewise, the itemised original tender list from the construction company dated the 13th June 2002 does mention "alterations to roof to balcony with railings and new opening in wall", it does not however give any information as to when the use of the flat roof as a balcony was re-instated. The Case Officer therefore requested further information from the Applicant in relation to when access onto the flat roof and the use of the balcony was re-instated subsequent to the Building Control Officer's visit in October 2004.

The Applicant has now submitted a statutory declaration which has been witnessed, signed and stamped by a Solicitor and has confirmed that he has enjoyed uninterrupted use of the flat roof of the single storey rear extension as

a balcony since the latter part of 2004. The sworn statement provides some supporting evidence from the occupier that the balcony has been in use since the later part of 2004 and this would be over 10 years from the 18th July 2003.

The Applicant has also submitted a letter from the occupier of 15 Whiterock Place who has confirmed that the balcony has been in use as a seating area with table and chairs since she moved in in July 2004. The Building Inspectors visit in October 2004 however shows that the rail/guarding was in place on this date. The neighbouring occupier's letter however still confirms the balcony has been in use for over 10 years.

In order to gather further evidence in relation to how long the balcony has been in use, Officers have consulted the immediate neighbouring occupiers at 13, 15, 19 and 21 Whiterock Place. A letter of objection has been received from the occupiers of 19 Whiterock Place who have raised concern regarding the loss of privacy the balcony area causes to their neighbouring amenity and it has been explained to the neighbouring occupiers that the planning merits of the balcony are outside of the scope of this type of determination. No written confirmation has been submitted from the remaining occupiers at 13, 19 and 21 Whiterock Place; however verbal communications with the occupier at 19 Whiterock Place indicates that the balcony has been in continuous use for over 10 years.

The supporting statement from the Applicant which states that the balcony has been in use since late 2004 is collaborated by the information provided by the neighbouring occupiers to the east and west. As the sworn statement has been witnessed, signed and stamped by a Solicitor and is supported by the accounts of the occupiers of the immediate neighbouring properties who have lived at their properties for over 10 years it is considered that there is adequate supporting evidence to show that the balcony has been in use for over 10 years from the 18th July 2003.

Conclusion

A Certificate of lawfulness should accordingly be issued.

Recommendation:

Issue Certificate for the following reason:

The use of the flat roof of the single storey rear extension as a balcony as shown in drawings no.s, 1767/01 (Existing Floor Plans), 1767/07 (Existing Eastern Side Elevation & Existing Northern Rear Elevation) and 1767/04 A (Existing Western Side Elevation) received on 12th May 2015 has achieved immunity from enforcement by virtue of being in continuous use for at least 10 years prior to the submission of the application.

Case Officer: Rebecca Tier Date: 4th August 2015

Authorised by: Jo Morin Date: 04.08.2015