



Appeal Decision

Site visit made on 5 December 2016

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 30 December 2016

Appeal Ref: APP/W4705/C/16/3149674

10 The Hallows, Keighley BD20 6HY

- 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 Fiaz Akhtar against an enforcement notice issued by City of Bradford Metropolitan Borough Council.
 - The enforcement notice, numbered EN 07, was issued on 17 March 2016.
 - The breach of planning control as alleged in the notice is the unauthorised construction of raised timber decking on land to the rear of the premises.
 - The requirements of the notice are to demolish the raised timber decking and remove from the premises all materials resulting from such demolition.
 - The period for compliance with the requirements is two calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (c)

2. In pursuing an appeal on this ground, the onus is squarely upon Mr Akhtar to show, on the balance of probabilities, that the matters stated in the notice do not constitute a breach of planning control.
 3. The subject decking extends along the side and rear elevation to the building. It comprises a raised timber deck with perimeter handrail, balustrades and newel posts raised on posts off ground level. The posts appear securely bedded on a solid foundation. Because of its physical attachment, the decking is accessible from the garden and house. It forms a raised platform. Measurements agreed at the site visit show that the raised deck is 1.885 m off ground level and the perimeter balustrading is much higher. Given the nature and scale of the timber decking, its construction is likely to have involved significant building operations, which amount to *development* for planning control purposes. Mr Akhtar provides no evidence to suggest that he has planning permission for the alleged matters.
 4. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) indicates there is no deemed planning permission for this type of development. This is because section I - Interpretation of Part 1 – states that the term *raised* in relation to platform means a platform with a height greater than 0.3 m. This type of development is expressly excluded from permitted development (PD) rights found in Part 1 Class A, B and E. Although garden decking may be PD under Class E, such decking
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must not exceed 0.3 m height limit. Clearly, the raised platform at no. 10 The Hallows exceeds 0.3 m in height.

5. My application of the relevant legislative provisions to the material facts is consistent with guidance found in the Department's widely known document titled: *Permitted development rights for householders: technical guidance*, revised April 2016.
6. On the balance of probabilities, the matters alleged constitute a breach of planning controls. Therefore ground (c) must fail.

Ground (a)

7. The **main issue** is the effect of the decking on nearby residents' living conditions, with particular regard to privacy.
8. No. 10 is situated within residential area. The raised platform is located to its side and rear elevation. Despite the existence of means of enclosure along the site's boundary, I could see directly into neighbours' gardens while standing on the raised deck, because of its overall height. Given the layout of the estate combined with the elevated position of the deck, neighbours are likely to see people standing or sitting outdoors. That is likely to increase the perception of being overlooked and reduce the amenity value of neighbour's gardens. In my assessment, the decking harms the amenity of existing residents as it results in loss of privacy to adjoining properties, due to excessive overlooking. In this location, I find the depth, size and scale of the decking has an adverse effect on occupants of adjoining land. The development is at odds with guidance found in section 10 of the Council's *Householder* supplementary planning document.
9. Mr Akhtar refers to platforms in the locality, which are noticeable from the decking. In comparison, these other elevated platforms seem limited in scale and extent. He suggests improvements could be made to minimise intrusion, but an alternative scheme has not been submitted for my consideration. A raised deck could be constructed as PD, but the impact would be significantly less compared to what has been built on the site.
10. Pulling all of the above points together I conclude that the decking, as erected, has a materially harmful effect upon neighbours' living conditions. Accordingly, I find that the development conflicts with saved policies D1 and UR3 of the Council's Replacement Unitary Development Plan 2005, which are broadly consistent with paragraph 17 of the National Planning Policy Framework.

Ground (f)

11. Mr Akhtar needs to show that the steps specified in the notice exceed what is required to remedy the breach of planning control or, as the case may be, any injury to amenity caused by the breach. Apart from a vague assertion that improvements could be made to minimise intrusion, I am afraid Mr Akhtar advances no lesser step that can remedy the breach of planning control, which the notice seeks to achieve via its restorative requirements. I find that the remedial purpose requires full compliance. Consequently, the appeal on ground (f) must fail.

Conclusion

12. Having regard to all other matters, my inescapable conclusion is that the appeal should not succeed.

A U Ghafoor

Inspector