
Appeal Decision

Site visit made on 18 May 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 25 May 2017

Appeal Ref: APP/Q3305/C/16/3160232 and 3160233
The Full Moon, 42 Southover, Wells, BA5 1UH

- 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 Sean Dyke (the Full Moon) and Miss Sarah Nichols against an enforcement notice issued by Mendip District Council.
 - The enforcement notice was issued on 14 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a raised timber decking area in the rear garden of the public house.
 - The requirements of the notice are:
 - (i) Dismantle and remove the raised timber decking set out in part 3 of this notice;
 - (ii) Remove from the site any material and debris resulting from (i) above;
 - (iii) Restore the land to its previous condition and height.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b) 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.

Reasons

2. The burden of proof in legal grounds of appeal, such as ground (b), lies with the appellant/s and the test of the evidence is the balance of probability.
 3. An appeal on ground (b) of section 174(2) of the Act is "that those matters have not occurred". The "matters" referred to are the matters stated in the notice which may give rise to, or constitute, the breach of planning control. The relevant date for determining whether those matters had occurred is the issue date of the enforcement notice, hence 14 September 2016.
 4. Having carried out preparatory works for its installation beforehand, which included lowering of the natural ground level, the appellants dispute the Council's description of the height of the raised decking area and they argue that there is no harmful effect as a result. However, that is an argument that relates to the merit of the development, more appropriate to an appeal under ground (a) that planning permission should be granted. No fee or appeal was made under ground (a) and hence I am unable to take that argument into account in this ground (b) appeal.
 5. Although the decking had been removed by the time of my visit to the appeal site, there is no dispute that the decking had not previously been installed. Therefore the matters stated in the notice which may give rise to the breach of
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planning control have clearly occurred and the appeal on this ground (b), that they had not occurred, must fail.

6. The appeal on ground (b) therefore fails.

Thomas Shields

INSPECTOR