
Appeal Decisions

Site visit made on 6 January 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

Appeal A: APP/N4720/C/19/3234644

Appeal B: APP/N4720/C/19/3234645

Land at Far Causeway, Long Causeway, Adel, Leeds LS16 8DU

- 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 appeals are made by Mr I O'Toole (Appeal A) and Mrs S O'Toole (Appeal B) against an enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 18 July 2019.
- The breach of planning control as alleged in the notice is: Without Planning Permission the erection of a raised decking area, a balustrade with a supporting structure with an associated retractable awning/canopy to the rear of the property.
- The requirements of the notice are: Remove the external decking, with balustrade including the supporting structure including the retractable awning/canopy from the rear of the property and dispose of any waste.
- The period for compliance with the requirements is four months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
- Appeal B proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeals are dismissed, and the enforcement notice is upheld with variation in the terms set out in the formal decision.

Decisions

APPEALS A and B

1. It is directed that the enforcement notice is varied by deleting the wording at paragraph 5 and substituting it with:

"Remove the external decking, with balustrade including the supporting structure including the retractable awning/canopy from the rear of the property and dispose of any waste;

Or, adapt the external decking, with balustrade including the supporting structure such that it complies with the Certificate of Proposed Lawful Use or Development, Reference 18/04064/CLP issued on 13 September 2018 and those plans attached to it. Remove the retractable awning/canopy from the rear of the property and dispose of any waste."

2. Subject to the variation above, the appeals are dismissed, and the enforcement notice is upheld.

APPEAL A only

3. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal on ground (a), deemed planning application (Appeal A only)

Main Issue

4. The main issue in this case is the effect of the development on the living conditions of the occupiers of the adjoining property, Middle Causeway House, with particular regard to privacy, outlook and light.

Reasons

5. The appeal property comprises an end of terrace dwelling which appears to have been previously converted from a single larger property. The decking and canopy have been constructed onto the rear elevation of the dwelling adjacent to its common boundary with Middle Causeway House. The decked area sits approximately 600mm above ground level and it projects to a depth of some 4.5m from the rear elevation of the property. However, the retractable awning/canopy and its structure only extend to cover the first 3m depth of the decking.
6. Middle Causeway House has a ground floor living room window within its rear elevation and adjacent to its common boundary with the appeal site. It is a patio style window which also provides access onto an area of decking. The decking associated with Middle Causeway House is not as deep as the decking the subject of this appeal. It extends to just over 3m in depth and is stepped so that only the section immediately adjacent to the patio windows is positioned at a similar height to the appeal deck, with the remaining area at a lower level of approximately 150mm above ground level.
7. The beech hedge which is situated along the appeal site's common boundary with Middle Causeway House provides some screening between the two decked areas and to views into and out of the neighbour's living room. However, during the winter months when the hedge loses its leaves it provides a less effective screen. Moreover, even with the hedge screening, the height and depth of the decking means that people using the area beyond the canopy have views back towards the neighbour's living room and the activities on that part of the decking are clearly visible to their neighbours.
8. I appreciate that the neighbours also have a decked area at the rear of their house. However, as set out above, the decking the subject of this appeal is more extensive. Furthermore, at its point farthest away from the house, the unauthorised decking is much higher than the neighbour's garden and its use in this location is particularly intrusive to neighbouring residents. The erection of a screen the depth and height required to provide effective screening and privacy, would have a harmful effect on outlook for the occupiers of Middle Causeway House, and is not therefore an option available to mitigate the existing harm.

9. The retractable awning/canopy and its supporting structure covers the portion of the decking closest to the house. It has open sides, and when the canopy is down it generally aligns with the top of the neighbour's patio window. Whilst the canopy is visible to neighbouring occupiers, by reason of its predominantly open structure and height, it does not have an enclosing or dominating effect, and nor does it have a harmful effect on outlook or any daylight available to the occupiers of Middle Causeway House. Furthermore, its scale and position to the north of its neighbours, mean that the structure does not overshadow their decking or adjacent patio windows. For these reasons, I am satisfied that the retractable awning/canopy and its supporting structure do not have a harmful effect on the living conditions of neighbouring occupiers.
10. Although I have found that the awning/canopy does not have a harmful effect on the living conditions of neighbouring residents, I have found that the decking does, with particular regard to overlooking and loss of privacy. The development as a whole is therefore in conflict with Policy P10 of the Leeds Core Strategy (2014) and Saved Policy GP5 of the Leeds Unitary Development Plan (Review 2006) which together with adopted Supplementary Planning Documents, Leeds Householder Design Guide and Neighbourhoods for Living, seek to ensure, amongst other things, that new development protects amenity, including the privacy of existing and future occupiers.

Other Matters

11. I have taken into consideration the certificates of lawful development (LDC) which the appellants have recently had granted for alternative developments at the rear of their property. These include a smaller area of decking, a conservatory and a garden room. Each of these developments would be within the area where the unauthorised decking and canopy is currently positioned, and the appellants state that these would be alternative fallback positions in the event that planning permission is not granted for the existing development.
12. For significant weight to be afforded to a fallback position, there needs not only to be a reasonable prospect of it being carried out in the event that planning permission is refused, but it would also need to be equally or more harmful than the scheme for which permission is sought.
13. The LDC for the decking¹ is for an area of decking which only extends to a depth of three metres and to a height of 300mm above ground level. The impact of this decking on the privacy of the neighbouring occupiers would therefore be significantly less than the unauthorised decking which provides much greater opportunities for overlooking due to its height and extent. The lawful decking would be less harmful than the development the subject of this appeal and I therefore give it little weight.
14. There is also an LDC for a conservatory² that would be positioned in roughly the same location as the unauthorised decking. However, whilst I appreciate that the enclosed nature of the conservatory would mean that it may to be used more regularly than the existing decking, again its depth is limited to three metres. The opportunities for overlooking are therefore not as great as that afforded by the extent of decking that currently exists and its overall effect would be less harmful. I therefore give this consideration limited weight.

¹ 18/04064/CLP, Approved September 2018

² 18/04065/CLP, Approved September 2018

15. The garden room LDC³ would be a substantial detached structure which would abut the rear elevation of the host property and extend along its common boundary with Middle Causeway House. Whilst it would extend into the garden by a much greater depth than the unauthorised decking and would have windows facing towards its neighbours, its floor level would be much lower than the existing raised decking and the existing common boundary hedge or any replacement permitted fencing, which could extend to two metres in height, would provide effective screening of the building and its facing windows. Consequently, I do not consider that the lawful garden room would have a harmful effect on the privacy of the occupiers of Middle Causeway House. Furthermore, the building would abut the existing living room windows in the host property, prevent access to the garden from them and obscure all views from this room to its garden area. This development would not therefore provide the appellants with an accessible sunny area which they suggest is what they are seeking to achieve in this location. I am not therefore convinced that there is a reasonable prospect of this development being carried out in the event that planning permission is refused and consequently I give this consideration little weight.
16. The appeal site lies within Adel-St John's Conservation Area (CA). In my opinion the significance of the CA as a heritage asset is mainly derived from its open spaces and sylvan appearance which provide a rural setting for the historic church, farmsteads and the built development which in general comprise high quality architectural detailing with a consistent palette of materials. The decking and awning/canopy structure are contained within the extensive domestic garden area of the host property and not visible to the public realm. Overall, the development is relatively small scale in relation to the host property and its siting is such that it does not have a harmful effect on the character and appearance of the host property and preserves the character and appearance of the CA.

Conclusion

17. For the reasons given above, and taking into account all other matters raised, I conclude that Appeal A on ground (a) must fail.

Appeal on ground (f) (Appeal A and Appeal B)

18. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
19. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case, the purpose of the notice is to remedy the breach of planning control.
20. It can be seen by my decision on ground (a) that I considered individually the impact of both the awning/canopy with its supporting structure and the decking/balustrade. However, although I found that the awning/canopy with its supporting structure does not in itself have a harmful effect on the living conditions of neighbouring occupiers, I found that the decking does. The

³ 18/07375/CLP, Approved January 2019

canopy and its supports are affixed to and supported by the decking. It is not therefore an independent structure and only the removal of the whole structure would remedy the breach of planning control.

21. However, the LDC for the smaller area of decking is a material consideration. I agree with the appellants that it would be unreasonable to require the existing decking/balustrade and resultant waste to be removed from the site when a large proportion of this structure could be re-used and modified to create a structure that complied with the drawings attached to this LDC.
22. I shall therefore vary the requirements of the notice to allow for the adaptation of the existing decking/balustrade to comply with the LDC as an alternative to the complete removal of the unauthorised development. To this extent the appeals on ground (f) succeed.

Appeal on ground (g) (Appeal A and Appeal B)

23. The issue is whether the compliance period of four months is reasonable. The appellants consider that the time period is too short as significant works are required which would require a builder. A time period for compliance of a year is requested.
24. I appreciate that it may be necessary to engage the services of a builder to adapt or remove the development. However, I am mindful of the ongoing harm the development is causing to neighbouring residents. Moreover, given the small scale and nature of the development, I am not persuaded that a period of four months is not achievable to engage those services and carry out the works.
25. The appeals on ground (g) fail.

Overall Conclusion

26. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR