
Appeal Decision

Site visit made on 7 July 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2020

Appeal Ref: APP/C3240/C/20/3245139

Land at The Lion Inn, Shifnal Road, Priorslee, Telford TF2 9NN

- 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 Russell Moreton against an enforcement notice issued by Telford and Wrekin Council.
 - The enforcement notice was issued on 2 January 2020.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised erection of a raised decking with balustrade and erection of an outdoor bar.
 - The requirements of the notice are:
 - (i) Remove in its entirety the decking and balustrade located in the public house beer Garden.
 - (ii) Remove in its entirety the outdoor bar and associated decking located in the public house beer garden.
 - (iii) Remove any debris arising from the works.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) 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.

The appeal on ground (a) and the deemed planning application

2. The main issue is the effect of the decking and bar on the living conditions of the occupiers of neighbouring dwellings with particular regard to privacy, outlook and noise and disturbance.
3. The decking and bar are located within a beer garden at a public house. The beer garden is located to the rear of the property and is relatively generous in size, extending for some distance beyond the rear of the main building. The decking is located in a corner of the garden close to the garden boundaries of the neighbouring dwellings, Rose Cottage and Rutherglen. The bar has been built adjacent to an existing projection to the rear of the pub facing into the garden, close to the decking.
4. Due to the topography of the land, the garden and consequently the decking, which is raised above ground level, occupies an elevated position above the gardens and ground floor levels of Rose Cottage and Rutherglen.

5. There is some established vegetation between the decking and those neighbouring gardens nevertheless, clear views are possible for anyone standing on the decking into the gardens at Rose Cottage and Rutherglen, in particular I observed views of the patio area to the rear of Rutherglen. Furthermore, anyone using the decking would have clear views into the first-floor windows of Rose Cottage and Rutherglen, as well as oblique views into the ground floor patio windows of Rutherglen. Vegetation between the decking and boundary with Rose Cottage limits views into their ground floor windows however, should the vegetation be removed anyone standing on the decking would have clear views into those windows.
6. The appellant stated that the decking and balustrade are a 'like for like' upgrade and that they replace an area of slabbed hardstanding around 40m². However, no details have been provided to demonstrate what existed, so I am unable to make any meaningful comparison.
7. In any event, the raised decking is elevated above the ground level and results in a greater level of actual and perceived level of overlooking and loss of privacy, resulting in considerable harm to the living conditions of the occupiers of Rose Cottage and Rutherglen. The impact felt by the occupiers of those houses would be compounded by their positioning below the level of the decking.
8. The beer garden, along with seating areas, has a reasonably large children's play area and it seems likely that the garden would be well used, particularly in warm, dry weather and at weekends and public holidays.
9. However, the decking with its hard-wearing surface is likely to encourage more frequent use, including the potential for use of items of furniture to enable year-round use – such as patio heaters. In combination with the bar, I consider that this is likely to result in customers remaining outside later into the evening, including at times of the year when nearby residents would expect some relief from noise associated with the use of the garden.
10. Whilst noise associated with this use during the day may not be unacceptably harmful, it would be likely to be more intrusive during the evenings, when background noise levels would be lower, and residents would expect a quieter environment. Overall, I find that the use of the decking and bar would cause harm to the living conditions of nearby residents as a result of noise and disturbance.
11. Although the decking is elevated above those neighbouring gardens, the structure itself would not appear as a prominent visual feature when viewed from those gardens. Notwithstanding the identified harm associated with the use, I find that the decking would not have a materially harmful overbearing impact on the outlook of the occupiers of Rose Cottage and Rutherglen.
12. The appellant stated that the bar is only open for two months of the year and this could be controlled by condition. However, no substantive justification has been provided to support the temporary nature of the use, and this would not in any event outweigh the harm to the living conditions of nearby residents in respect of noise and disturbance.
13. That there is no overlooking from the bar is a neutral matter which cannot outweigh the identified harm.

14. Overall, for the reasons given above, I conclude that the raised decking causes harm to the living conditions of the occupiers of Rose Cottage and Rutherglen with regard to loss of privacy. Together with the outdoor bar it also harms theirs and other nearby residents living conditions as a result of noise and disturbance. The development is therefore contrary to Policy BE 1 of the Telford and Wrekin Local Plan 2011 – 2031 Adopted January 2018 (the Local Plan) which requires that there is no significant adverse impact on nearby properties by noise. It also conflicts with the National Planning Policy Framework which seeks a high standard of amenity for existing and future users.
15. In their reasons for taking action the Council referred to Policy BE 2 of the Local Plan however, that policy relates to residential alterations. The decking and bar are not residential alterations and consequently this policy is not directly relevant and weighs neither for nor against the development.

Other Matters

16. The Council acknowledge that the notice was issued prior to the COVID-19 pandemic and stated that they would be prepared to consider extending the compliance period in order to assist with the premises complying with the current temporary COVID-19 requirements.
17. There is no appeal on ground (g) however, I acknowledge the uncertainty regarding the current restrictions associated with the pandemic and note that the Council have powers under s173A(1)(b) to extend any period for compliance, a matter which is entirely at their discretion, without prejudicing their right to take further action.

Conclusion

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

Felicity Thompson

INSPECTOR