



Appeal Decision

Site visit made on 3 September 2020

by Jessica Graham BA(Hons) PgDipL

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

Decision date: 14 September 2020

Appeal Ref: APP/X1165/C/20/3252712

Land at 104 Primley Park, Paignton, Devon TQ3 3JX

- 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 Ms Catherine Annie Large (now Mrs Gubby) against an enforcement notice issued by Torbay Council.
- The enforcement notice was issued on 27 February 2020.
- The breach of planning control as alleged in the notice is without planning permission, the construction of an area of raised decking and associated railings, in the approximate position shown hatched blue on the attached plan, and shown on the attached photographs numbered 0100 and 0102 ('the Decking'). For the avoidance of doubt, this notice does not relate to the area of decking shown hatched black on the plan.
- The requirements of the notice are "Permanently remove the extended area of the Decking beyond that previously existed and all materials used in its construction from the Land and return the Land and the Decking to the condition it was in before the Decking was extended."
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with correction.

Procedural matters

1. The papers submitted by the Appellant and the Council indicated that it would be necessary for the Inspector appointed to determine this appeal to enter the rear garden of No. 104. It is customary for an Inspector who enters private property to be accompanied by a representative of each of the main parties. However, in the light of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance as to the advisability of minimising human contact, and given the existence of a side access to the rear garden, the Planning Inspectorate wrote to the parties suggesting that the visit could be carried out by an Inspector without representatives being present. The Appellant having given consent for an Inspector to enter the rear garden on that basis, I carried out an unaccompanied visit at 11:30am on 3 September 2020.
2. Paragraph 3 of the notice explains that it is concerned only with the extension to the pre-existing decking at the lower level: this extended area is identified as "the Decking". This is helpful, but paragraph 5 then goes on to include a requirement to return "the Decking" to the condition it was in before "the Decking" was extended, which is confusing. I am however satisfied that this

confusion is not fatal to the sense of that paragraph, and that I can correct the wording to improve clarity without injustice to the Appellant or the Council: the Appellant has clearly understood that the Council seeks the removal of the extension to the garden-level decking so as to return it to its original footprint, and has brought the appeal on that basis.

The appeal on ground (a)

3. The ground of appeal is that planning permission should be granted for what is alleged in the notice. The main issue is the impact of the development on the living conditions at the neighbouring residential properties, with particular regard to privacy.
4. No. 104 and its neighbours are two-storey dwellings built on sloping land, such that access from the highway to their front doors is at upper-storey level, while the rear gardens are at lower-storey level. The accommodation is arranged to take advantage of the extensive views from the rear-facing windows, with living space at first-floor level and bedrooms below. Both Nos. 104 and 106, which form a semi-detached pair, have outdoor seating areas at first-floor level with steps leading down to decked areas, adjoining the rear wall, in each of their gardens. No. 102, the neighbouring property to the east, has a single-storey rear extension, the roof of which is accessed by patio doors and forms an outdoor seating area.
5. I saw at my site visit that there is a considerable degree of overlooking between the rear gardens of the properties on this part of Primley Park, the majority of which have low boundaries. There are views out over the gardens from the rear-facing windows of the houses, particularly at first-floor level, and views back towards these rear windows from the gardens of adjoining properties. In a setting where (as here) overlooking between dwellings already takes place, any new development needs to be carefully designed so as not to create any undue further reduction in the privacy of the occupiers.
6. The decking which is the subject of this appeal is an extension to the original decked area at the top end of the garden, which protruded some 2m from the rear wall of the house. The new addition, which has been made at the same level as the existing decked area rather than being stepped down, extends outward over the garden by a further 2.3m. This means that at its outer edge it is some 1.4m above the natural ground level.
7. While views into the rear windows of Nos. 102 and 106 would have been possible from the original area of decking in the garden of No. 104, the substantial extension of this area has decreased the angle of those views and thereby significantly increased the extent to which the windows are overlooked. The height of the close-boarded boundary fence between Nos. 104 and 102 prevents any appreciable increase in the extent to which the garden of No. 102 is overlooked. However, the extended area of decking runs alongside the boundary of No. 106, increasing the availability of views back towards the decked area of that property, and down into its garden.
8. I note the Appellant's point that the current occupiers of No. 106 are not troubled by this, but future occupiers may take a different view. I also appreciate that the Appellant simply wishes to provide a safe and usable outdoor amenity space for her family, but in the absence of any evidence to demonstrate that there are no suitable alternative methods of providing this

that would result in a less harmful impact to the amenity of neighbouring residents, it is not a consideration which can carry much weight. I agree with the Appellant and the Council that increasing the height and opacity of the boundary fence, or erecting some other form of "privacy screen" on the decking, would not be appropriate here as it would appear unduly overbearing.

9. Taking all of this into account, I conclude that the unauthorised extension to the decking results in a material increase to the extent to which the rear windows of both neighbouring properties, and the garden of No. 106, are overlooked. This has a significant adverse impact on the privacy of occupiers of those dwellings, and so conflicts with the aims of Policy DE3 of the Torbay Local Plan 2012-2030, which seek to ensure that any development does not unduly impact upon the amenity of neighbouring uses.
10. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction and refuse to grant planning permission on the deemed application.

Decision

11. It is directed that the notice be corrected by:

At paragraph 5, deleting all of the text which follows the words "Permanently remove..." and replacing it with "the Decking, and all of the materials used in its construction, from the Land and return the Land to the condition it was in before the breach of planning control took place."

Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Jessica Graham

INSPECTOR