



Appeal Decision

Site visit made on 21 September 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2020

Appeal Ref: APP/P0119/C/3252312

19 Blackthorn Walk, Kingswood, South Gloucestershire

- 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 Paul Chamberlain against an enforcement notice issued by South Gloucestershire Council.
- The enforcement notice, numbered COM/19/0883/OD/1, was issued on 28 April 2020.
- The breach of planning control as alleged in the notice is the erection of a raised decking area, glass balustrading and boundary fence.
- The requirements of the notice are:
 1. Remove the raised decking area, glazed balustrading, boundary fence and all associated materials from the land.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

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

The ground (c) appeal

1. The appeal on ground (c) is whether the matters alleged in the notice do not constitute a breach of planning control. The onus of proof is on the appellant.
2. The issue in this case is whether the decking, glazed balustrading, and boundary fence are permitted development by virtue of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO), that being the Order in place at the time the notice was issued. Class E of Part 1, Schedule 2 of the GPDO states:

"The provision within the curtilage of the dwellinghouse of—

(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or

(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas"

3. Class E.1 goes on to state:

"Development is not permitted by Class E if—

(g) it would include the construction or provision of a veranda, balcony or raised platform;"

4. Similarly, whilst Class A, Part 1, Schedule 2 of the GPDO allows various enlargements, improvements or other alterations to a dwelling, paragraph A.1(k) also excludes the construction or provision of a veranda, balcony or raised platform.
5. Section I.1 of Part 1 of the GPDO clarifies *““raised” in relation to a platform means a platform with a height greater than 0.3 metres”*.
6. Therefore, the construction of a raised platform, such as decking, is permitted development, provided it does not exceed 0.3 metres.
7. The decking is adjacent to the rear elevation of the dwelling and the ground slopes away, resulting in the decking gradually rising in height from the immediate ground level.
8. Paragraph 2(2) of the GPDO states:
“(2) Unless the context otherwise requires, any reference in this Order to the height of a building or of plant or machinery is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph “ground level” means the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.”
9. Due to the sloping ground, the appellant has taken a datum point from the highest part of the surface of the ground immediately adjacent to the dwelling when calculating the height of the decking, considering the dwelling to be the *“building...in question”*.
10. Paragraph 2(1) of the GPDO defines a “building” as:
“(a) includes any structure or erection and, except in [Class F of Part 2, Classes P and PA of Part 3, Class B of Part 11, Classes A to I of Part 14, Classes A, B and C of Part 16, Class T of Part 19 and Class ZA of Part 20 of Schedule 2] 5, includes any part of a building; and
(b) does not include plant or machinery and, in Schedule 2, except in Class F of Part 2 and Class C of Part 11, does not include any gate, fence, wall or other means of enclosure;”
11. Therefore, the reference to “building” in the GPDO can apply to structures and erections such as decking. Consequently, having regard to the provisions of paragraph 2(2) the GPDO, the “building...in question” is the decking as that is the subject development. As such the ground level should be taken from the highest part of the surface immediately adjacent to the decking, not the dwelling.
12. When measured from the highest part of the surface adjacent to it, the decking clearly exceeds the permitted development threshold of 0.3m. This includes the height of the concrete base, which forms part of the overall raised platform. As such, the decking is not permitted development.
13. Turning to the boundary fence, the appellant again uses the highest part of the surface adjacent to the dwelling in measuring its height. However, fencing and enclosures, which includes the balustrade, are explicitly excluded from the

definition of “building” and therefore paragraph 2(2) and the guidance on measuring building heights on non-uniform ground does not apply.

14. Class A, Part 1, Schedule 2 of the GPDO allows the erection of a fence. One of the conditions is that it shall not exceed 2m in height above ground level. For the purposes of this Class, “ground level” is considered on its ordinary meaning, i.e. the ground level upon which it is immediately sited, which could result in the top of a fence rising and falling. Given that the height of the fence exceeds 2m in height in parts when measured from the ground upon which it immediately rises above (approximately 2.11m (1.21m high measured from the top of the decking plus 0.9m measured from the base of the concrete base to the top of the decking) as agreed between the parties on site), it is therefore not permitted development.
15. I have had regard to the Permitted Development Rights for Householders Technical Guidance (September 2019) as referred to me by the appellant. My consideration of the proposal does not conflict with this guidance.
16. I find therefore that the development is not permitted development and therefore requires planning permission. As there is no evidence before me that planning permission has been granted for the decking, glazed balustrade and fencing, the matters alleged in the notice constitute a breach of planning control and therefore the ground (c) appeal fails.

Other Matters

17. I acknowledge the appellant’s argument that the decking provides a safe and level access to the rear of the house and provides a usable outdoor amenity space. However, the planning merits of the development have had no bearing on my consideration of whether the matters alleged in the notice constitute a breach of planning control.

Formal Decision

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Alexander Walker

INSPECTOR