



Appeal Decisions

Site visit made on 26 October 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2020

Appeal A: Ref: APP/Z4718/C/20/3256342 64 Lumb Lane, Liversedge WF15 7NB

- 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 Chris Wood against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 8 July 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a timber deck (hatched black on the attached plan).
- The requirements of the notice are demolish the timber deck.
- The period for compliance with the requirements is within 6 weeks of the date that the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Appeal B: Ref: APP/Z4718/W/20/3254369 64 Lumb Lane, Liversedge WF15 7NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Chris Wood against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2020/62/90374/E, dated 5 February 2020, was refused by notice dated 3 April 2020.
- The development proposed is described as 'retrospective planning application for construction of decking platform to side and rear of property. Application to include reconfiguration of decking level to section of platform at the eastern side of rear garden'.

Summary Decision: The appeal is dismissed

Procedural Matters

1. Appeal A was lodged by the appellant under the aforementioned reference number and Miss Kerry Garforth under reference APP/Z4718/C/20/3256343. The appeal was withdrawn in the name of Miss Kerry Garforth and so the appeal is proceeding in the name of Mr Chris Wood only.
2. The appellant ticked ground (f) only on the form for the S174 appeal. However, during the appeal the appellant requested that the appeal also be considered under grounds (a) and (c). I have therefore considered the appeal on that basis.

S174 appeal

Ground (c)

3. An appeal on ground (c) is made on the basis that those matters (if they occurred) do not constitute a breach of planning control. Consideration of ground (c) involves whether the matters constitute development and if so, whether the development already benefits from a grant of planning permission.
4. The decking projects from the rear elevation of the dwelling and extends the full length of the garden. Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO) permits the provision within the curtilage of the dwellinghouse any building or enclosure...subject to certain limitations, including (h) it would include the construction or provision of a verandah, balcony or raised platform.
5. Within the Technical Guidance: Permitted development rights for householders (2019), a raised platform is defined as any platform that has a height of more than 0.3 metres. Height is defined as the height measured from ground level but does not include any addition laid on top of the ground. Although decking is cited as the example of such an addition, in such circumstances a concrete slab would not be included within the meaning of "ground level" as set out in the GPDO.
6. Although joins are visible within the decking it forms as a continuous projection from the rear of the dwelling and, as a matter of fact and degree, appears as one structure. Whilst parts of the decking do not exceed 300mm, significant parts of the decking do exceed 300mm and, for the purposes of the GPDO, it comprises a raised platform. Accordingly, the development does not accord with the limitations set out in Part, Class E of Schedule 2 of the GPDO and is therefore development for which planning permission is required. The appeal under ground (c) therefore fails.

Ground (a)

Main issue:

7. The main issue of the ground (a) appeal is the effect of the appeal scheme on the living conditions of occupants of Number 62 Lumb Lane with regard to privacy.

Reasons

8. An appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.
9. The appeal dwelling is a traditional semi-detached dwelling set in modest grounds in a generally residential area. Land levels slopes generally slope downwards from west to east resulting in rear gardens with different land levels. The rear garden of the appeal site is bound by wooden fencing. The existing decking projects from the rear of the dwelling and extends the full length of the rear garden of the property. The decking is stepped from the property and was laid out with seating at the time of my visit.

10. Policy LP24 of the Kirklees Local Plan (KLP)(2019) seeks to ensure development provides a high standard of amenity for future and neighbouring occupiers, amongst other things. Chapter 12 of the National Planning Policy Framework seeks well-designed places with a high standard of amenity for existing and future users.
11. Given the extent and layout of the decking, users of the appeal site are likely to spend time in this part of the garden, particularly during the summer months. Although the seating faces towards No 66 Lumb Lane, the occupants of which did not raise any objection, due to its height and the difference in land levels, people standing on the decking can easily peer into the garden of No 62. Although the appeal site is located in an urban area where there is already a degree of overlooking, this gives rise to an unacceptable degree of overlooking and is harmful to the living conditions of the occupants of No 62, contrary to Policy LP24 of KLP which seeks a high standard of amenity for neighbouring occupiers and the expectations of the Framework. Consequently, the appeal on ground (a) must fail.

Ground (f)

12. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
13. It is established in case law that if there is an alternative to the notice requirements which would overcome the planning difficulties, at less cost and disruption it should be considered. Under the ground (f) appeal, the appellant suggests that it is unreasonable to require the removal of sections of decking which are within 300mm height and do not therefore comprise a raised platform for the purposes of the GPDO.
14. 'Decking area 4', if considered in isolation, would not comprise a raised platform since it measures less than 300mm in height. Whilst permitted development rights cannot be applied retrospectively, the appellant would have permitted development rights to erect decking so long as it is less than 300mm above ground level.
15. I therefore conclude, having had regard to all other matters raised, that the breach of planning control could be remedied by a lesser step and the requirements of the enforcement notice should be varied to provide for the retention of the decking identified as 'Decking area 4' on drawing entitled 'Measurements of decking (annotated)'. The ground (f) appeal therefore succeeds in part.

S174 Conclusion

16. For the reasons given above I conclude that the requirements are excessive. I shall uphold the enforcement notice with variation and refuse to grant planning permission on the deemed application. The appeal under ground (f) succeeds to that extent.

S78 appeal

Main issues:

17. The main issues of the ground S78 appeal are:

- The effect of the appeal scheme on the living conditions of occupants of Number 62 Lumb Lane with regard to outlook; and
- The effect of the appeal scheme on the character and appearance of the area.

Reasons

Living conditions

18. The appellant has put forward a revised scheme which would retain the decking so that much of it is 150mm above the level of the garden. Stepped access would still be provided from the patio doors and an area of decking approximately 290mm above an in-situ concrete path would be retained. The appellant proposes to erect a 2.5m fence along the eastern boundary and suggests that the fence is an attempt to reinstate the boundary treatment in its correct location, closing a gap that has been created to the east boundary and to provide screening for the benefit of both No 62 and 64.
19. The appellant asserts that such fencing would be permitted development under Schedule 2, Part 1 Class E, however, this is not correct since fencing is expressly excluded from Class E, as set out in the Technical Guidance. The proposed fence would exceed the limitations set out in Part 2 Class A, which permits the erection of a fence, or other means of enclosure, unless the height would exceed 2 metres above ground level.
20. Although the fence would restrict views from the appeal site into the rear garden of No 62, the fence itself would be a dominant feature which would be overbearing for users of the garden which would therefore be harmful to the living conditions of the occupants of No 62, contrary to Policy LP24 of the KLP, the requirements of which are set out above.
21. The appellant has drawn my attention to a raised seating area at No 62 Lumb Lane. Whilst I agree privacy is not a one sided requirement, no seating area was present at the time of my visit, which is stated to have been demolished by the occupier in September 2019, and so this has no bearing on my decision.
22. The appellant has also referred me to planning permission which has been granted at Number 62 Lumb Lane for the construction of a brick sun lounge to the rear of the property. However, I have no substantive details of the approved scheme and cannot therefore be sure what its effect would be or that it would be built out.
23. The appellant suggests that a small shed structure for bicycles could be positioned to the east of the decking, directly adjacent to the rear house wall, which would enhance privacy of the neighbouring property at 62 Lumb Lane. However, the shed suggested would measure approximately 134cm in height and would therefore have no effect on the privacy of occupants at 62 Lumb Lane as it would not extend above the height of the existing or proposed fence. Furthermore, I do not consider it would be reasonable to secure the provision and retention of such a structure via condition.

Character and appearance

24. The appeal site is located in a generally residential area with wooden fencing of varying styles typically used to delineate rear gardens. The proposed fencing would extend around half a meter above the existing fencing and would be constructed in a similar style and materials to other boundary treatments in the area.
25. Although the fence would appear higher than the existing fence, the difference would not be so significant as to cause harm to the character or appearance of the area given the very limited views from the public realm. Consequently, there would be no conflict with Policy LP24(a) of the KLP, which seeks development which respects and enhances the character of the townscape, amongst other things, or the Framework in this regard.

Conclusion on the S78 appeal

26. Although I have found that there would be no harm to the character and appearance of the area from the proposed fence, this would be a neutral factor in my consideration of the appeal. There would be harm to the living conditions of the occupants of No 62 and so I conclude that the S78 appeal should be dismissed.

Formal Decisions

Appeal A: Ref: APP/Z4718/C/20/3256342

27. It is directed that the enforcement notice be varied as follows:

- (i) In paragraph 5, after the words 'demolish the timber deck' the insertion of 'except the area of decking identified as 'Decking area 4' on the drawing entitled 'Measurements of decking (annotated)'.

28. Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s177(5) of the Act.

Appeal B: Ref: APP/Z4718/W/20/3254369

29. The appeal is dismissed.

M Savage

INSPECTOR