
Appeal Decision

Site visit made on 9 November 2021

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 18 November 2021

Appeal Ref: APP/X1165/C/21/3275340
38 Warberry Road West, Torquay TQ1 1NT

- 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 Patrick Ward against an enforcement notice issued by Torbay Council ('the Notice').
 - The enforcement notice, numbered 2020/0149/EN, was issued on 16 February 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of raised wooden decking ('the Decking') shown on the attached photographs, to form an extension to the veranda on the front elevation of the Premises.
 - The requirements of the notice are Permanently remove the Decking and all materials used in its construction from the front elevation of the Premises and return the Premises to the condition it was in prior to the unauthorised works.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) 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.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. As the appeal made under Ground (a) has lapsed, my decision makes no reference to any 'planning matters'. This includes the effects of the development on the character and appearance of the Warberries Conservation Area, and its effects on the fabric or setting of 38 Warberry Road West, which is a listed building.

Reasons

3. 38 Warberry Road West is a quite large semi-detached building that is set above the road. To the front of the building is a veranda that is partially covered by an ornamental awning. It is on this veranda that the decking, which is the subject of this appeal, is situated. It projects a little beyond the veranda, over the garden below, where it is supported by wooden posts set into the grass. Timbers onto the veranda provide further support to a frame on which the decking boards have been laid.
4. From what I saw on site, I have no doubt that the construction of the decking was a building operation, as defined in S55(1) of the 1990 Act.

Ground (c)

5. An appeal under this ground is that the matters referred to in the Notice do not constitute a breach of planning control. In an appeal on this legal ground, it is for the Appellant to make his case on the balance of probability.
6. The Appellant has drawn my attention to a grant of planning permission¹ for the 'Division of dwelling into two separate dwellings' granted by the Council on 8 October 2020. In this regard, the Council submitted copies of: the decision notice; one of the approved drawings², which shows the proposed floor plans and site plan; the 'Historic and Design Statement' submitted with the application; and its Officer's report into the application.
7. In essence, the Appellant's case relies on there having been decking in-situ on the front of the property at the time of that application, and that this was seen by the planning officer who visited the property twice in their assessment of the application. That permission, the Appellant says, made no reference to a requirement to remove the decking. Although not explicitly stated, I read this to be an argument that the decision also granted planning permission for the decking.
8. There is no reference to the presence of decking in any of the documents that I have received, including the Historic and Design Statement put forward by the applicant. Although there is no date for the photograph of the property's front elevation that is on the title page of this document, this does not appear to show any decking in place. No photographs of the decking alleged to have been present have been submitted to me.
9. There is, therefore, no substantive evidence in front of me to show, on the balance of probability, that the decking was part of the development that was granted planning permission by virtue of planning permission P/2019/1182.
10. Even if decking had been in place at that time, I cannot be sure on the balance of probability that the decking that is in-situ presently is the same as that is alleged to have been present when the application was assessed. The Appellant's use of the words, "Decking to the same elevation was present at the current location at the time of the application" suggests that what is presently on the site might not be that which was there at the time of the grant of planning permission. However, this point is not of itself determinative in my decision.
11. In conclusion on Ground (c), there is no substantive evidence to show that the decking was granted planning permission by virtue of the terms of planning permission P/2019/1182. Given this, and in the absence of any other evidence to show that the construction of the raised wooden decking does not represent a breach of planning control, the Ground (c) appeal fails.

Ground (g)

12. An appeal on this ground is made on the basis that the period specified to comply with the requirements of the Notice is too short.
13. The Appellant points to the effects that the Covid pandemic has had on his business, and that this is recognised by the Council. He asks that the

¹ Council Reference P/2019/1182

² Drawing No 2969-02 Rev B

requirements of the Notice “be delayed”, but does not suggest an alternative period for compliance. For its part, the Council is of the view that the 3-month period is appropriate.

14. Whilst I appreciate that the pandemic has affected many businesses, I have not been told the nature of the Appellant’s business, how it was affected by the pandemic and, most importantly, how this has a bearing on the removal of the decking.
15. From what I saw on site, the removal of the decking would not present any great technical challenge. The Appellant, for his part, does not make any case to the contrary.

In the light of the evidence before me, I see no compelling reason to extend the period for compliance, which I find to be reasonable. Therefore, the appeal under Ground (f) fails.

Conclusion

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

Roy Curnow

Inspector