



Appeal Decisions

Site visit made on 14 September 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 07 December 2021

Appeal A Ref: APP/N4205/C/21/3276119 158 Markland Hill Lane, Bolton, BL1 5PB

- 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 Ben Chadwick against an enforcement notice issued by Bolton Metropolitan Borough Council.
 - The enforcement notice, numbered 20/0084, was issued on 6 May 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a raised patio/terrace.
 - The requirements of the notice are either a) Dismantle the raised patio/terrace and permanently remove from the land to an authorised place of disposal all resultant materials; or b) alter the raised patio/terrace so that it accords in size, scale and materials with that approved in permission reference 04545/18.
 - The period for compliance with the requirements is 90 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
 - **Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision**
-

Appeal B Ref: APP/N4205/W/21/3276118 158 Markland Hill Lane, Bolton, BL1 5PB

- 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 Ben Chadwick against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 10199/21, dated 11 January 2021, was refused by notice dated 6 April 2021.
 - The development proposed is the retrospective application for the erection of a raised patio and sun lounge at rear.
 - **Summary of Decision: The appeal is dismissed**
-

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 13 October 2021.

Decision

1. Appeal A is allowed on ground (g), and it is directed that the enforcement notice be varied: by the deletion of 90 days and the substitution of 6 months as the period for compliance. Subject to these variations 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.

2. Appeal B is dismissed.

Ground (a) and application for deemed planning permission and the s78 appeal

3. The application for permission deemed to have been made pursuant to Appeal A is for the erection of raised patio/terrace but does not specifically include the sunlounge as this structure is not included on the description in the allegation on the notice. The application for permission sought pursuant to Appeal B is retrospective and is described as the erection of a raised patio and sun lounge at rear. The application in Appeal B is for the 'as built' scheme and so includes some of the elements of the development for which the application for deemed planning permission is sought but not the sun lounge. In effect, the outcome will be the same as the sun lounge is located on and supported by the raised patio/terrace and so could not remain without these structures.
4. The main issues in both appeals are the effect of the development on: a) the character and appearance of the area and b) the living conditions of neighbouring residents. The notice states that the development impacts detrimentally on the outlook and living conditions of residents at 156 Markland Hill Lane and the reason for refusal for the planning application states that it would be detrimental to the living conditions at 1,3 and 5 Ripon Drive, and 156 and 160 Markland Hill Lane by virtue of increased overlooking and reduced privacy.
5. The host property is a semi-detached dwellinghouse with a fairly large rear garden in a well-established residential area which mainly consists of two story detached and semi-detached dwellings. The rear garden slopes down to the north and the boundary with the gardens on Ripon Drive. The houses on Ripon Drive are at a significantly lower ground level.
6. Planning permission reference 04042/18 included approval for a ground floor single storey rear extension with solid side walls with double width glass doors on the side elevation facing No.160, solid wall with no window on the side wall facing No.156 and bi-fold doors and window on the new rear elevation. The approved drawing is annotated to show the height of the patio as 'APPROX 1000 FROM GARDEN LEVEL TO RAISED VERANDAH' and the total projection from the original rear elevation of the house is 5m.
7. The second planning permission reference 04545/18 included approval for a raised patio/veranda. It did not include a covered area across the rear of the house, simply the 'raised decking' as described on the application drawings. It extends the width of the house and projects 3.6 metres from the original rear elevation. The drawings show that the patio is 15cm lower than the floor level of the ground floor of the house.
8. The appellant accepts that the raised patio as built projects 5.05m from the original rear elevation of the property and that its height from the current level of the garden is 1.68m. In addition, the sun lounge element projects 4m from the rear elevation.

9. The sun lounge as built and for which the retrospective permission in Appeal B is sought, has retractable walls on both of the side and on the rear elevations. The Council's case is that the increased level of the patio and the retractable side walls causes material harm to the residential amenity of 156 and 160 Markland Hill Lane as the rear gardens are significantly overlooked by the development. The Council state that the difference in ground levels between the site and Nos 1,3 and 5 Ripon Drive exacerbates the overlooking from the raised platform and sunlounge, and is unduly harmful to the living conditions of the occupiers of Nos 1,3 and 5. In addition, the Council's case is that the development , in both appeals, harms the character and appearance of the area.
10. The appellant argues that the development should be assessed against the two previous permissions and that the differences with those are negligible in terms of impact on the character and appearance of the area and on the living conditions of neighbouring residents.
11. Permission reference 04042/18 has expired and so is not a fallback permission as such as it cannot currently be implemented. It granted approval for a covered extension on the same level as the ground floor of the house which extended by 3.6 metres. It permitted a further raised patio area of 1.4 metres which was stepped down by 15 cm.
12. Permission reference 04545/18 is extant and permits a raised patio which extends 3.6 meters from the rear elevation of the house at a level 15 cm lower than the finished floor level of the ground floor of the house. It does not include a covered area. Neither of these permissions granted consent for the development as built.
13. The appellant's case is that it is likely that the as built development only projects 5 cm further overall from the rear of the house than permission 04042/18 and should be assessed in the context of that grant of permission. However, this permission is not a true fallback as it could not be implemented and it is therefore not currently a realistic prospect as an alternative. In addition, the covered area of that permission projected 0.4m less from the rear elevation of the original building than the sun lounge as built, which would have a lesser impact in terms of the effect on the living conditions of the occupiers of the neighbouring properties. It was previously granted permission but it is now not certain that it would be granted in the same terms again, and one obvious change in circumstances since that grant of permission is that the mature trees along the boundary with the properties on Ripon Drive have been removed (which has not been disputed by the appellant).
14. I accept the appellant's argument that the approved drawings in the extant permission 04545/18 (and also in permission 04042/18) show the correct level of the top of the patio when compared to the host property in that it is shown as at the same or very similar height to the finished floor area of the ground floor of the house which cannot have changed greatly (if at all). However, there is a large discrepancy on the height of the patio shown on the drawings as "approx 1000 from garden to raised verandah" on Permission 04042/18 . The appellant accepts that the full extent of the patio which is part of the development is at a raised level 15cm higher up the rear elevation of the host property as it is level with the ground floor of the house and does not include the 15cm step down. However, the overall height of the patio from the level of

the garden is much greater than an additional 15 cm when compared to the approved drawings in Permission 04042/18 . The appellant's case is that this must have happened due to the lowering of the level of the garden. Another reason for this could be that the drawing was never accurate and so the development could not have been built in accordance with it.

15. Even accepting the appellant's case at its strongest, the additional 15cm in the height of the raised patio to its full extent is significant due to the size and relationship of the development with the adjoining properties. It is also relevant that the original permission 04042/18, whilst extending overall as far as the as built development had a solid wall on the side facing No.156 as compared to the retractable wall now there. The appellant suggested that a condition to prohibit the use of the retractable wall could be used to make the development acceptable but I am not satisfied that this would meet the policy test as it would not be enforceable and it would not be reasonable to expect the Council to monitor its use.
16. The development, with the increase in height, retractable walls and removal of the trees along the rear boundary creates unacceptable overlooking into the garden of No.156 and the rear windows of 1,3 and 5 Ripon Drive (particularly the bedrooms on the first floor). The Supplementary Planning Documents in relation to Design and to House Extensions, which support the Bolton Core Strategy 2011 and are material considerations, specifically recognise that a development on a higher level than existing dwellings may be greater than if the site were flat, and part of the problem in this case is the change in levels. The SPDs seek to protect a reasonable degree of privacy within homes and ensure that new development should not have an overly dominant effect on adjoining dwellings, and whilst the Design SPD does suggest recommended interface distances between dwellings these are referred to as a 'rule of thumb' to be taken into account along with other factors such as any difference in levels. The development in this case causes material harm to the living standards of the adjoining properties, in part due to the differences in ground levels.
17. The sunlounge is clearly seen from the public viewpoints on Ripon Avenue and appears large and overly prominent when travelling along that road and pavement in either direction. The use of materials, which are very different to the original host property, do not blend or complement the house or the surrounding built environment which is predominantly made from red brick. The sunlounge looks incongruous and unsympathetic compared to the host property and surrounding area and does therefore cause material harm to the character and appearance of the area due to its raised location, size, design and visibility.

Conclusion

18. For the reasons set out above, I find that the development causes harm to the living conditions of the occupiers of No. 156 and Nos 1,3 and 5 Ripon Drive and the character and appearance of the area. This is contrary to the aims of Policy CG4 of the Bolton Core Strategy (which forms part of the development plan for the area) which is intended, amongst other things, to protect amenity and privacy of surrounding land uses contribute to good design, and also the House Extension SPD which is a material consideration. The development is therefore contrary to the development plan and in the absence of any material

considerations to outweigh this conflict, I conclude that the Appeal A on ground (a) and the deemed application for planning permission, and Appeal B should be dismissed.

Ground (f)

19. To succeed on this ground the appellant must show that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case the requirement is to dismantle the raise patio/terrace or to build it in accordance with permission 04545/18. The purpose of the notice is to remedy the breach of planning control.
20. The appellant's case is that the extension as approved under permission reference 04042/18 should be permitted, but this is not a lesser step which is part of the development which is being enforced against. That permission is no longer extant, the circumstances have changed in that the trees along the rear border of the garden are no longer there and that permission could not be implemented in accordance with the approved drawing which shows an approximate height of 1m from the patio to the garden (which would not be the case even if the patio were to be stepped down 15cm from the ground floor level of the host property). The resulting difference in height from the garden would not be de minimis or minor. The requirements cannot therefore be amended to require that Permission 04042/18 be implemented.
21. The steps required by the notice do not exceed what is necessary to remedy the breach of planning control and the appeal on this ground fails.

Ground (g)

22. The notice provides for the period of 90 days to fulfil the requirements but the appellant has indicated that he would wish to carefully deconstruct the sun lounge and if possible use it somewhere else in the garden which may require planning permission. It is reasonable to allow time for that to be done, and taking the appellant's representations into account, along with the ongoing situation caused by the Coronavirus Pandemic I agree that 90 days would not be reasonable. However, the development is causing harm to the living conditions of the neighbouring residents which also needs to be taken into account.
23. For the reasons given above I conclude that a reasonable period for compliance would be 6 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Zoë Franks

INSPECTOR