



Appeal Decisions

Site visit made on 12 October 2021

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Refs: APP/F2415/C/21/3266478 & APP/F2415/C/21/3266479 13 Knoll Street, Market Harborough, Leicestershire LE16 9QR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Michael Robinson (APP/F2415/C/21/3266478) and Mrs Penelope Robinson (APP/F2415/C/21/3266479) against an enforcement notice issued by Harborough District Council.
 - The enforcement notice, numbered EN630, was issued on 16 December 2020.
 - The breach of planning control as alleged in the notice is, without the benefit of planning permission, the erection of wooden decking to the rear and side garden area, as shown in photographs 1 and 2 attached to the notice.
 - The requirements of the notice are to remove all the wooden decking and any associated structures from the Land.
 - The period for compliance with the requirements is 2 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
-

Decisions

1. It is directed that the enforcement notice be varied by removing the words 'and any associated structures' from section 5, (What you are required to do). Subject to that change, the appeals are 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.

The development and the enforcement notice

2. Number 13 is a semi-detached house with a rear extension. The decking has been provided behind the extension and also wraps around the building along the pathway to the side. The ground slopes away to the rear of the building. As a consequence, the decking is raised significantly above the level of the remaining garden (the council indicates a height of 1.25m or 1.3m) with steps leading down to the lawn. A balustrade secures some edges of the decking and a storage area has been created underneath it, reached via doors in the end of the structure.
3. The decking butts right up to the house, with the patio doors in the extension opening out onto it. I have only limited information about the construction of the decking. I saw during my site visit that it is supported on a wooden framework, but have no details regarding the extent to which it is fastened to the main part of the house. The overall impression is of an addition to the house rather than a freestanding structure.

4. The appellants have provided screening along one boundary of the garden in the form of a row of wooden structures designed and painted to look like beach huts. Although shallower than real beach huts, they have sufficient depth to provide further storage, in addition to providing a colourful screen and securing the boundary. The beach huts continue along the lawn and onto the decking, although the last of these is a 'dummy' unit, being a flat screen with no depth to it.
5. The beach huts on the decking are attached to concrete posts. The weight of 2 of them also appears to be borne by the decking, and it appears that they would need to be moved if the decking were removed. However, the 'dummy' unit could remain even if the decking were removed, since it appears to be wholly supported by the concrete post it is attached to.
6. In making out their cases, both parties make reference to the beach huts, but they are not referred to directly by the enforcement notice. I wrote to the parties to seek clarity regarding this, and whether the reference to removing 'any associated structures' in the notice was a reference to the beach huts. The appellants advised that the structures were not fixed in place when the notice was issued, which is consistent with a photograph attached to the notice. The Council confirmed that its main concern is the wooden decking. It accepted that the wording 'any associated structures' is vague and confirmed that it would raise no objection to that wording being removed from the notice. I am satisfied that there would be no injustice to the appellants in making that change and will do so in order to improve the clarity of the notice.
7. The deemed planning application arising from the appeal on ground (a) is derived from the breach of planning control. Since it is now clear that the notice does not target the beach huts, it follows that the deemed planning application also relates to the decking only and not to the beach huts.

Whether a breach of planning control has occurred

8. The appeals are on ground (a) only. However, in making out their case, the appellants refer to *The Town and Country Planning (General Permitted Development) (England) Order 2015* (the GPDO). Implicit in this is the suggestion that planning permission may not have been needed for the development. Such matters are ordinarily the subject of an appeal on ground (c) (that the matters stated in the enforcement notice do not constitute a breach of planning control). While there is no ground (c) appeal in this case, I have nevertheless considered the appellants' comments with the question of whether or not a breach of planning control has occurred in mind.
9. The appellants state that the plans for their extension, which were approved by the Council¹, show bi-fold doors opening out onto decking. However, further details have not been provided, and there is nothing before me to show that permission was granted for the decking at that time. A planning application for the decking and beach huts was subsequently submitted, but was refused².
10. I have not been provided with any assessment of the development against the provisions of the GPDO to show that the decking is permitted development. Given that it adjoins the house, the most relevant category appears to be Class A of Part 1 of Schedule 2, which deals with the enlargement,

¹ Ref 18/00763/FUL

² Ref 20/00887/FUL

improvement or other alteration of a dwellinghouse. Yet developments are only permitted by Class A if a range of limitations and conditions are complied with, and I have no assessment of the development against those requirements.

11. Separate provision is made in Class E for any building within the curtilage of a dwellinghouse required for a purpose incidental to the enjoyment of the dwellinghouse as such. The Government publication *Permitted development rights for householders - Technical Guidance* states, 'Buildings which are attached to the house are not permitted under Class E (they would be subject to the rules in Class A)'. On the face of it, this appears to rule out the decking here, given it appears as an addition to the house (albeit I have no details regarding the extent to which it is physically attached to the house). But even if the appellants have Class E in mind, the development would still need to be assessed against its provisions, as with Class A. Yet I have no such assessment.
12. The appellants refer to a document from the Local Government and Social Care Ombudsman web site. Although I have not been provided with a copy of it, the underlying point is that, for the purposes of applying the GPDO, where the land is sloping, the ground level is the highest part of the surface of the ground next to the building. I agree that this is the correct approach, as set out in Article 2 of the GPDO (subject to the proviso 'unless the context otherwise requires').
13. Yet I have not been provided with any assessment of the height of the decking when measured in this way. Classes A and E both specifically exclude raised platforms (that is, any platform with a height greater than 0.3 metres). Furthermore, even if the decking here fell within that limitation, it would not show that it was permitted development, since there are other criteria to be considered. For example, neither class permits development where, as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse). Given the extent of the decking, the extension to the house, and other structures in the garden, it is not obvious, on the information before me, whether there is compliance with that requirement or not.
14. The burden of proof in an appeal on ground (c) falls on the appellants. In this case, for the reasons set out above, I am not satisfied that the appellants have demonstrated, on the balance of probability, that the decking is development permitted by the provisions of the GPDO, irrespective of its height. Nor has it been demonstrated that a specific planning permission has been granted for the development. Accordingly, if the appellants had submitted an appeal on ground (c), it would not have succeeded

The appeals on ground (a)

Main issue

15. The main issue is the effect of the development on the living conditions of neighbouring occupiers, with particular regard to any overlooking arising from it.

Reasons

16. The height of the decking in relation to the natural land level is such that it affords elevated views into the rear garden of the neighbouring No 11, despite

the extensive planting along that boundary. Since a reasonable degree of privacy is normally to be expected in a rear garden, the overlooking could seriously impede the enjoyment to be gained by the normal use of the garden.

17. To the other side, the beach huts on the decking limit views into that part of the garden of No 13A immediately to the side of the decking. However, the beach huts on the lawn are at a lower level, and the decking affords elevated views into the garden of 13A above the roofs of these structures. Consequently, even if all the beach huts were to remain, they would not resolve the overlooking problem. I have noted the suggestion that a fence could be added at No 13A, but any structure of sufficient height to address my concerns would be likely to be overbearing in my view.
18. For these reasons I conclude that the development has harmed the living conditions of neighbouring occupiers due to the loss of privacy arising from it. This brings the development into conflict with Policy GD8 of the Harborough Local Plan which, amongst other things, seeks to ensure that development does not have a significant adverse effect on the living conditions of existing residents through loss of privacy. This leads me to the view that there is conflict with the development plan as a whole.
19. I appreciate that the decking allows safe and easy use of the patio doors that open out onto it, but it is not clear to me that it is the only way of achieving that objective. I understand that the decking and beach huts replace an old garage, but I have little detail of that and am not persuaded that it justifies the development that has been carried out, given the harm I have found.

Conclusion

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice, with a variation, and refuse to grant planning permission on the deemed application.

Peter Willows

INSPECTOR