



Appeal Decision

Site visit made on 26 April 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Appeal Ref: APP/D4635/C/22/3291530

Land comprising 4 Waterdale, Wolverhampton, West Midlands WV3 9DY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Dr Nil Kamal Samanta against an enforcement notice issued by Wolverhampton City Council.
 - The notice was issued on 16 December 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the substantial raising of the ground level in the rear garden and the construction of a timber decked area.
 - The requirements of the notice are to: Return the ground levels in the rear garden to the original level before the development commenced and remove the unauthorised timber decked area.
 - The period for compliance with the requirements is: Two (2) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, 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 appeal on Ground (a) and the deemed planning application

Main Issue

2. This is the effect of the development on the living conditions of the occupants of neighbouring properties with particular regard to privacy and outlook.

Reasons

3. The appeal property (No 4) is a large, detached dwelling with a long garden to the rear. The house, like its neighbours on either side, sits on land that is considerably higher than the land at the end of the garden. Steps lead down from a large patio area on different levels around the property onto a lawned area by land raising, an engineering operation sufficient to comprise development. A cricket practice area encompassed by nets occupies half of the lawned area. At the end of the garden is a small water course over which a timber deck has been constructed. To the rear of the decking is a gap and then a high timber fence atop a low level brick wall. This defines the boundary with No 6 Horsehills Drive (No 6). This property and its neighbours either side sit at a higher level than the decking.

4. During my site visit, the council measured the difference in land levels by the decking and further along the garden towards the house. The measure showed a maximum difference of approximately 800mm from the original ground level to the built up level. This measurement was taken where the decking meets the lawn. Further measurements were taken moving back up the garden showing a steady decrease in levels. Consequently, the fences between the properties on either side, once likely to have provided an element of screening and protection from overlooking, have become ineffectual at the lower end of the garden, and the raised ground level allows uninterrupted views across the gardens belonging to the neighbouring properties No 3 Waterdale (No 3) and No 5 Waterdale (No 5) either side.
5. While there is a good degree of screening from mature vegetation, and the house and main area of domestic garden to No 5 remain relatively private, No 3 is devoid of structural planting to form any barrier and is thus very exposed. Although, the area of the neighbour's garden that is most susceptible to overlooking is a distance from the house, it is still private domestic outdoor space that previously would have benefitted from a sense of enclosure and privacy. Furthermore, from the raised decking area, there are longer uninterrupted views towards the house at No 3 taking in the entire rear private outdoor space.
6. There are also views into the rear windows of properties on Horsehills Drive and glimpses of garden. Moreover, the decking has formed a high level platform, facilitating an outdoor living area purposefully for people to gather, where previously there was none. It is likely that the space, will be used by family and friends, and a once peaceful part of the garden will no longer be such. I noted at my site visit that the rear gardens of the properties on Horsehills Drive, particularly No 6 which adjoins the appeal site, are limited in depth and the residential properties are close to the boundary.
7. In this context, I consider that the construction of the decking and the raised ground level of the garden has compromised the privacy of the occupants of the neighbouring properties resulting in an unneighbourly development. Whilst some mutual overlooking between neighbours is inevitable in such a suburban location, the development has created a situation that is materially harmful to the living conditions of neighbouring occupants.
8. The plans which form part of the appeal submissions show proposed fencing 1.8m in height surrounding the decking along its two sides and end. This was suggested to mitigate the loss of privacy to the neighbours. However, such development would appear contrived against the backdrop of the lower level gardens on either side. It would result in a discordant and unduly dominant feature at the end of the garden. This would have an unacceptable visual impact on the occupants of neighbouring properties regarding their outlook.
9. The appellant further suggests that 'adequate privacy levels can be resolved by the introduction of a hedge between the decking area and the rear fence to 6 Horsehill Drive'. Although the fence and the planting may go some way towards improving the loss of privacy that has occurred, due to the substantial change in ground level, the use would remain and that would likely have a negative effect on the level of privacy currently enjoyed by the near neighbours on Horsehills Drive.

10. Overall, I find the appeal development to be materially harmful to the living conditions of neighbouring occupants in terms of privacy and outlook. In this respect, the development is contrary to saved Policies D4, D7 and D8 of the Wolverhampton Unitary Development Plan 2006 and Policy ENV3 of The Black Country Core Strategy 2011 which collectively seek to ensure that new development relates to its surroundings and local topography and does not appear overbearing or adversely affect privacy. The guidance set out in SPG 4 'Supplementary Planning Guidance No.4 relates to extensions to houses and I consider that in these circumstances, its contents are not directly applicable, although the underlying principles are relevant.

Other Matters

11. From the evidence presented, large trees have been removed which have opened up the views between the appeal site and neighbouring properties. Although this will have likely led to an element of overlooking, the raising of the ground level and construction of the decking area will have exacerbated the situation.
12. I note the concerns that the decking has covered the water course that has 'big rocks and rusty iron frame', and it may indeed stop soil leaching into the stream and form a safety barrier. However, those matters could be dealt with by alternative means which would not compromise the living conditions of the occupants of the neighbouring properties.
13. Although I acknowledge the desire to provide the cricket pitch for training purposes for the appellant's daughter who plays county cricket, this does not outweigh the harm that I have identified.

Conclusion on ground (a) and the deemed planning application

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeal on ground (f)

15. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case it would appear from the requirements of the notice that its primary *purpose* is to remedy the breach by restoring the land to its condition prior to the breach taking place.
16. I have already considered the alternatives put forward under ground (a) and found them to be unacceptable. The issued requirements do not exceed the purpose behind the notice and there are no other lesser steps before me that would remedy the breach. Accordingly, the Ground (f) appeal fails.

SA Hanson

INSPECTOR