



Appeal Decision

Site visit made on 13 September 2022

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 September 2022

Appeal Ref: APP/Z4718/C/22/3295220

2 Dover Cottages, Dover Lane, Holmfirth HD9 2SG

- 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 Ann Adela Knowles against an enforcement notice issued by Kirklees Metropolitan Council.
- The enforcement notice, reference DEV/HG/D23-1290, was issued on 8 February 2022.
- The breach of planning control as alleged in the notice is as follows:
The erection of a timber-built raised decking structure.
- The requirements of the notice are as follows:
 - (a) Disassemble/demolish the timber-built raised decking structure in its entirety.
 - (b) Return the land its condition prior to the breach taking place and make good any damage caused by the removing of the raised decking.
 - (c) Remove from the land any rubble and materials arising from the carrying out of the above steps.
- The period for compliance with the requirements is 60 days.
- The appeal is proceeding on grounds (a), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal succeeds to a limited extent on ground (g) only. Otherwise the appeal is dismissed and the enforcement notice is upheld. See formal decision below.

Background information

2. The appeal property is a mid-terraced stone dwelling with a parking area and a small enclosed outside space to the front. To the rear the terraced properties face a steep retaining wall which is about 1.2m from the back wall of the houses. The land slopes very steeply upwards from the rear of the terrace. Between the retaining wall and the backs of the dwellings a path provides rear access to the appeal property and the other dwellings.

3. The raised timber decking structure extends out from the rear of the property over the access way, the retaining wall and on to the steeply sloping ground beyond. The decking is accessed from the first floor bedroom window opening and is supported by a wooden structure rising from the access area and fixed to the retaining wall. At this first floor level the length of the decking is around 3.3m. There is also a removable wooden ladder which gives access on to the raised deck from the ground level.

4. The decking was constructed in 2020 without planning permission and on 8 January 2021 a planning application (2021/62/90067/W) was submitted to the Council for its retention. The planning application was subsequently refused on 17 March 2021. The reasons given for refusal are as follows:

1. *The proposed decking, by reason of its height, appearance, scale and location would create a prominent incongruous feature being detrimental to the character and appearance of the area, visual amenity and would have a detrimental impact to the openness of the Green Belt in visual terms. To permit such a development would be contrary to Policies LP24 (a) and LP57 (c) of the Kirklees Local Plan and advice within Chapters 12 and 13 of the National Planning Policy Framework.*

2. *The proposed decking, by reason of its scale, height and position, elevated and at close proximity to adjacent unrelated dwellings would lead to detrimental overlooking and would be overbearing to adjacent neighbouring properties. The proposal would therefore lead to a detrimental loss of privacy for adjacent properties. To permit such a development would be contrary to Policy LP24 (b) of the Kirklees Local Plan and paragraph 127 (f) of the National Planning Policy Framework.*

5. Following the refusal of the planning permission to retain the timber decking structure an appeal (APP/Z4718/D/21/3276561) was made to the Planning Inspectorate, in accordance with section 78 of *The Town and Country Planning Act 1990*. The appeal was dismissed on 29 November 2021. The reasons for dismissal are basically the same as those set out above in the Council's refusal notice. During my visit I noted another decking structure to a neighbouring property, but it is not clear whether this either required or has been granted planning permission.

The appeal on ground (a)

The Green Belt

6. The appeal site lies within the Green Belt and the National Planning Policy Framework (NPPF), at paragraph 149, indicates that a LPA should regard the construction of any new building as being inappropriate development in the Green Belt. However, there are exceptions to this and these include the exception at paragraph 149(c) which is: *'the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building'*.

7. Based on the previous appeal and the representations it appears to be common ground that the existing dwelling has not been physically *'extended'* and that, in terms of its volume alone, the proposed decking area does not have a detrimental impact. Concerns were raised in the previous appeal about the position of the decking area and its impact on the openness of the Green Belt and this latter point was included as part of the LPA's first reason for refusal. However, paragraph 149(c) specifically refers to *'size'* and having seen the structure I do not consider that it has resulted in a *'disproportionate'* addition to the size of the dwelling.

8. I therefore agree with the previous Inspector that the raised decking structure does not constitute inappropriate development in the Green Belt within the terms of the NPPF. Therefore, it is not necessary to consider its effect on the *'openness'* of the Green Belt and whether or not *'very special circumstances'* are required.

The main issues

9. The main issues in this appeal are, therefore, as follows:

- The effect of the decking structure on the character and appearance of the appeal property and this part of Holmfirth, and secondly,

- Its effect on the living conditions of the occupants of the other dwellings in the terrace.

Effect on character and appearance

10. Having seen the structure from both near and distant viewpoints, I share the Council's and the previous Inspector's concerns about its visual impact in this location. I acknowledge that it is a novel and ingenious way to resolve the access from the appeal dwelling to the higher ground to the rear (beyond the retaining wall) and that it provides some external amenity space for the occupants of the house. However, in doing so it looks completely out of place alongside the typically traditional and vernacular rear elevations and detailing of the terraced properties.

11. In my view it is perceived as an incongruous and alien addition to the appeal property, as well as unacceptably altering and visually dominating the shared rear access to the other terraced properties. I find that its siting, form, scale and materials have resulted in a most obtrusive and inappropriate development which neither respects the appeal dwelling nor the general character of these terraced cottages in this part of Holmfirth. In essence it is very poorly designed.

12. On behalf of the appellant reference is made to the previous Inspector's conclusion that *'the introduction of side screens would further reduce light into next door windows, would be overbearing if designed to project sufficiently to prevent overlooking and would dominate the limited rear outlook of adjacent properties.'* To counter this a 'screening plan' drawing (2020/074/01) has been submitted and it is contended that by using opaque, toughened glazing to the sides of the structure the impact on overlooking and light reduction could be overcome.

13. I acknowledge that such glazing would allow for light penetration and that such panels can appear largely invisible against the skyline. I have also noted the details set out in the submitted 'sun path diagram' and accept that the houses to the south would not lose direct sunlight or be overshadowed. However, these suggested alterations would only slightly change the overall impact of the structure.

14. In my view the proposed changes can only be described as 'tinkering at the edges' of the problem. In essence the unauthorised structure is inappropriately located; has an unacceptable overbearing effect for occupants in the terrace and also affects their privacy. In my view the additional elements would exacerbate the already poorly designed decking by adding to the visual clutter to the rear of these dwellings. I do not accept, therefore, that the proposal to add the screening would mitigate against the harm identified by the Council, the previous Inspector or myself.

15. On this first issue, therefore, I again agree with the LPA and the previous Inspector that the timber structure harms the character and appearance of the area and is in conflict with Policy LP24 of the Kirklees Local Plan 2019 (KLP) which aims to promote good design. I also find it contrary to Policy LP57 which seeks to ensure that in the Green Belt regard is had to relevant design policies.

16. These policies are up to date with section 12 of the NPPF which seeks to achieve good design and to ensure that development is sympathetic to local character, will function well and add to the overall quality of the area. The development as carried out does not achieve any of these aims and objectives. In addition the proposals put forward at this appeal stage cannot, in my view, make the development acceptable in planning terms in this particular location. In conclusion on this first issue, therefore, the appeal must fail.

Effect on living conditions

17. The deck extends from the rear wall of the property over the rear access and the retaining wall. When stood on the deck there are clear views directly into the bedrooms and the ground floor living spaces of the neighbouring properties. This has an unacceptable impact on the privacy of the occupants. In addition the structure partially roofs over the access way and can be seen from the rear windows of the neighbouring properties. This results in an overbearing effect for occupants as well as reducing the already limited daylight into the rooms.

18. I have referred above to the proposed obscure glass screening but do not consider that this would make such a difference so as to make the decking acceptable. Although the screening would be effective in terms of direct lines of vision into neighbouring windows for anyone sitting on the terrace, the same is not the case for anyone standing or moving across the decking. There would still be clear views into some of the rear windows of the neighbouring property.

19. On this issue, therefore, I conclude that the raised decking is detrimental to the living conditions of the occupants of neighbouring properties with regard to outlook, and privacy and that it is contrary to Policy LP24 (b) of the KLP and the NPPF which require development to provide a high standard of amenity for neighbouring occupiers and to create places with a high standard of amenity for existing and future users.

20. For the above reasons I do not consider that planning permission should be granted for the retention of the raised timber decking and the appeal must fail on ground (a).

The appeal on ground (f)

21. On behalf of the appellant it is argued that the removal of the decking in its entirety exceeds what is necessary to remedy any breach, or to remedy any injury to amenity which has been proposed to be caused by such breach. It is therefore proposed to remove that part of the section of decking which projects over the walkway and adjoins the rear wall of the host dwelling. In addition it is considered that screening panels to the surrounding fencing would alleviate all perceived impacts and still allow the appellant to use of the flat section of banking to the rear of the property as much needed amenity space.

22. Having seen the submitted drawing and considered the above proposal, I acknowledge that this could overcome the overbearing effect that the structure has had due to its positioning over the walkway. There could however still be issues regarding overlooking and loss of privacy. However, in effect what is put forward is a completely different scheme and, in my view, this does not constitute 'lesser steps' under an appeal on ground (f). Rather, like the proposals referred to above in the previous drawing, it is an argument under ground (a).

23. Clearly the appellant would not be precluded from applying for planning permission for a smaller decking scheme in order to provide external amenity space for the dwelling. However, I do not consider that what is proposed amounts to 'lesser steps' which would remedy the breach and/or injury to amenity. Overall I consider that the requirements as set out in the notice are necessary and appropriate. The appeal must also fail, therefore, on ground (f).

The appeal on ground (g)

24. It is considered that the period of 60 days for compliance with the notice falls short of what should reasonably allowed. In the current circumstances with difficulties

in appointing a contractor to carry out the works it is considered that a period of 90 days would be required.

25. Although the Council still contends that 60 days is sufficient and despite the fact that the unauthorised development has been in place for some time, I consider that 120 days should be allowed. As well as allowing time to appoint a contractor this would also give the appellant time to liaise with the LPA as to whether or not a proposed reduced scheme might be acceptable.

26. The appeal succeeds to this limited degree on ground (g) and I shall vary the enforcement notice accordingly.

Other Matters

27. I have taken into account the fact that there is a clear need for external amenity space and that the decking access can provide a fire exit from the bedroom. I also note that some previous objections have been withdrawn. However, these matters do not alter my conclusions on the main points at issue.

28. In reaching my conclusions on each of the grounds pleaded I have taken into account all of the other matters raised by the parties. These include all references to policy and the NPPF; the full planning history including the details of the planning application and the previous appeal; all of the initial documents, the appeal statements and appendices; the photographic submissions and all other comments.

29. However, whilst having sympathy for the appellant's desire to have an external amenity space, again none of these carry sufficient weight to alter my conclusions. Nor is any other matter of such significance so as to change my decision that the appeal should be dismissed and that the enforcement notice should be upheld.

Formal Decision

30. The appeal is allowed in part on ground (g) only. I direct that the enforcement notice be varied by deleting the number and word '60 days' after the words 'To complete steps a) to c)' in part 6 of the notice (TIME FOR COMPLIANCE) and by substituting therefor the number and word '120 days'.

31. Otherwise the appeal is dismissed and the enforcement notice is upheld as varied and planning permission on the application deemed to have been made under section 177(5) of the Act is refused.

Anthony J Wharton

Inspector