



Appeal Decision

Site visit made on 25 July 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2023

Appeal Ref: APP/P4605/C/23/3319071

1776 Coventry Road, Birmingham B26 1PB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Zaid Thabit against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 23 February 2023.
- The breach of planning control as alleged in the notice is the erection of decking to the front of the Premises in the approximate position marked in green on the attached plan.
- The requirements of the notice are to: Demolish the decking in its entirety and remove all demolished materials from the Premises.
- The period for compliance with the requirement is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended. 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.

Summary of Decision: 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 ground (c) appeal

1. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the enforcement notice (the Notice) do not constitute a breach of planning control. The burden of proof is upon the appellant.
2. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) states that "*the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*" is permitted development, subject to limitations. One such limitation is that it is not permitted development if it exceeds 2m above ground level, or 1m if it is adjacent to a highway used by vehicular traffic.
3. The railing around the decking is approximately 1.37m high and is approximately 1.28m from the edge of the pavement. There is no definition of 'adjacent' within the GPDO and therefore each case must be determined on its own merits. In this instance, the gap of 1.28m between the railing and the edge of the pavement is relatively narrow and as a result the development is read as adjacent to the highway. Consequently, as the railing exceeds 1m in height and is adjacent to a highway used by vehicular traffic, it is not permitted development.
4. The appellant also contends that as the decking does not exceed 300mm in height it is therefore permitted development. Schedule 2, Part 7, Class A of the GPDO states '*The extension or alteration of a [commercial, business or service] establishment*' is permitted development, subject to a number of

limitations. Limitation A.1.(g) is that if any part of the development would extend beyond the front of any existing building it would not be permitted development. By reason that the decking is located to the front of the appeal building, it is therefore not permitted development.

5. Even if I found that the railing was not adjacent to the highway, it nevertheless is integral to the decking and both together are considered a single development. It is not permissible to separate out parts of one development and to argue that those benefit from the grant of planning permission by way of the GPDO and that other parts of the same development are to be assessed separately. As one building operation, falling within the meaning of development as set out in section 55 of the Town and Country Planning Act 1990 Act (the Act), either the whole of the development benefits from permitted development or none of the development benefits from permitted development.
6. Therefore, even if only part of the single development required planning permission, it would all require planning permission and therefore none of it would be permitted development.
7. The ground (c) appeal therefore fails.

The ground (a) appeal

Main Issue

8. The main issue is the effect of the development on the character and appearance of the area.

Reasons

9. The appeal property is a mid-terrace, two-storey property that forms part of a long parade of similar properties with commercial units at ground floor and what appears to be residential units at first floor level. The properties are set back from Coventry Road by wide, open forecourts. The depth of the forecourts makes a positive contribution to the openness of the area and helps separate the parade from the highway.
10. Although property frontages along the parade differ in terms of advertisements and roller shutters, they are generally uniform in terms of their scale. This uniformity and the building line of the parade following that of the adjacent residential properties to the south east of the parade creates a cohesive link between the commercial and residential developments.
11. The decking and its associated railings project out from the front elevation of the appeal property and extend almost its full width, occupying the majority of the property's forecourt. As a result, it dominates the frontage of the building and unduly disrupts the uniformity of the parade. Furthermore, its occupation of almost the entirety of the property's forecourt diminishes the openness of the parade frontage and introduces a cluttered appearance to the streetscene, which would disrupt pedestrian movement along the parade.
12. Moreover, the development is constructed of timber, which fails to reflect the palette of materials found on the parade and therefore exacerbates its incongruity.

13. I note there are other similar developments within the vicinity of the appeal site, including two along the same parade. Notwithstanding the Council's confirmation that these do not benefit from planning permission, these are significantly smaller than the appeal development and therefore are not a direct comparison that weighs in its favour.
14. I find therefore that the development significantly harms the character and appearance of the area, contrary to Policy PG3 of the Birmingham Development Plan 2017 and Policy DM2 of the Development Management in Birmingham Development Plan Document 2021, which, amongst other matters, seek to ensure development demonstrates high design quality and is appropriate to its location. It would also conflict with the Birmingham Design Guide 2022, which seeks to ensure development enhances the public realm. Moreover, it would fail to accord with the design objectives of the National Planning Policy Framework.

Conclusion on the ground (a) appeal and the deemed planning application

15. For the reasons given above, having considered the development plan as a whole and all material considerations, I conclude that planning permission should not be granted in response to the ground (a) appeal against the enforcement notice and the deemed application. Therefore, the ground (a) appeal fails.

The ground (f) appeal

16. This ground is that the notice requirements are excessive. Depending on the purpose of the notice, this can be assessed against the question of whether the requirements exceed what is necessary to remedy the breach of planning control; or, any injury to amenity.
17. The appellant contends that the height of the railing could be reduced to 1m in height so that it then falls to be permitted development. However, as I have set out in my consideration of the ground (c) appeal, the railings are part and parcel of a single development with the decking. Therefore, even if the railings were reduced to 1m in height, the development would still not be permitted development by reason of the decking breaching Schedule 2, Part 7, Class A of the GPDO.
18. Consequently, the reduction in the height of the railings to 1m in height would not remedy the breach of planning control nor the injury to amenity.
19. I therefore conclude that the ground (f) appeal must fail.

Conclusion

20. 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.

Alexander Walker

INSPECTOR