



Appeal Decision

by **P N Jarratt BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 October 2023

Appeal Ref: APP/Y1110/C/22/3312305

42 Wrefords Close, EXETER, EX4 5AY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jason King against an enforcement notice issued by Exeter City Council.
 - The notice was issued on 7 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of raised decking above 30cm in height in rear garden on south elevation and boundary fencing above 2 metres in rear garden along the northern boundary with 40 Wrefords Close.
 - The requirements of the notice are to
 1. Either i) remove the raised decking and supporting structure in the rear garden on the south elevation, or ii) lower the raised decking and supporting structure so that they are no higher than 30cm above ground level;
 2. Dispose of the materials formerly comprising of the decking and supporting structure in a responsible way;
 3. Either i) remove the fencing in rear garden along the northern boundary with 40 Wrefords Close or ii) lower the fencing so that it is no higher than 2m from natural ground level; and,
 4. Dispose of any materials formerly comprising of the fencing in a responsible way.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (d), (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. Despite a number of attempts to arrange a site visit, the appellant has not made himself available, other than on one occasion when it is understood that the Council failed to attend. The most recently arranged site visit was at a time and day requested by the appellant but this was cancelled the day before and the appellant was not prepared to arrange for a representative to attend on his behalf. This approach has been unhelpful and time wasting. Although there is power to instigate s79(6A) proceedings to dismiss an appeal where the appellant is responsible for undue delay in the processing of an appeal, in this case however, the public interest will be better served by determining the appeal promptly on the basis of the written submissions of the parties which include photographs of the decking and fencing.
3. The appeal is made on grounds (c), (d) and (f) and there is no appeal on ground (a) which would otherwise have considered the planning merits of the case. Notwithstanding this the appellant has made only a brief statement in which it is indicated that he built the decking to the back garden without steps to be safer for his young children. He says that he was also advised by the fire

service to have a metre flat surface from the back doors in case of a fire as he has a fire stove. This was also discussed and signed off by the building inspector. He also refers to need the decking for disabled access for his mother.

4. Where legal grounds of appeal are made such as in grounds (c) and (d), the onus of proof is with the appellant and the level of proof is on the balance of probabilities.

The appeal on ground (c)

5. An appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control.
6. The appellant claims that the decking is approximately 700 high and the fence 800 although no units of measurement are indicated. It appears that he considers that the works are permitted development but no evidence has been submitted to demonstrate that the decking is no higher than 30cm from natural ground level or that the fencing is no higher than 2m.
7. The rear garden is sloping ground and the photographs submitted by the Council and the neighbour clearly show the decking to be in excess of 30cm high from natural ground level in the photo taken from No 44. Similarly, the fence appears to exceed the permitted development height when viewed from No 40 in the proximity of the neighbour's greenhouse.
8. The appellant has not submitted any evidence to indicate that the works are within permitted development tolerances and they therefore represent development that requires planning permission.
9. The appeal on this ground fails.

The appeal on ground (d)

10. An appeal on this ground is that it is too late to take enforcement action. The appellant in December 2022 stated that the decking was over 4 years old, although did not make the same claim about the fence. The Council suggests that the appellant has been purposely obstructive in not responding to a Planning Contravention Notice and not co-operating with the Council to arrange a site visit indicating this represents the wilful concealment of the development.
11. The appellant has not provided any evidence in support of a date of substantial completion on or before 7 November 2018. However, this claim is contradicted by a neighbour who observed work being carried out from March 2020 to September 2021. It has not been shown on the balance of probabilities that the work on the decking was substantially completed within 4 years prior to the date of the application.
12. The appeal on this ground fails.

The appeal on ground (f)

13. An appeal on this ground is that the steps set out in the notice exceed what is necessary to remedy the breach and that lesser steps would overcome the harm caused.

14. The appellant has indicated he is "willing to compromise i.e. painting fence or lowering height." However painting the fence will not lessen its harmful impact on the neighbour at No 40 and lowering the fence and retaining the decking at its current level potentially worsens its impact on the neighbour resulting in additional overlooking.
15. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. The requirements provide the option to the appellant of lowering the decking and the fencing to the tolerances for permitted development.
16. The appeal on this ground fails.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

P N Jarratt

INSPECTOR