



Appeal Decision

Site visit made on 13 February 2024

By Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 8th April 2024

Appeal Ref: APP/Z4718/C/23/3326991

8 Dodlee Lane, HUDDERSFIELD, HD3 4TZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jake Burdass against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 23 June 2023.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the erection of timber-built raised platform.
 - The requirements of the notice are to: a) Dismantle and demolish the raised decking in its entirety, including any associated fixings; b) Remove from the land any debris arising from carrying out the above step.
 - The period for compliance with the requirements is: 60 days.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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.
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Decision

1. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Preliminary Matters

2. Since the enforcement notice was issued, the Government published a revised National Planning Policy Framework (NPPF) on 19 December 2023 and updated it on 20 December 2023. Those parts of the NPPF most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised NPPF, and I am satisfied that no party's interests have been prejudiced by taking this approach.
3. The Council refer to the letter of the Department for Communities and Local Government (DCLG) to the Chief Planning Officers in England, dated 31 August 2015. The letter comprised a planning policy statement to make intentional unauthorised development in the Green Belt a material consideration. Appeal decisions involving such development were to be monitored, and the situation was to be reviewed after six months to see whether the government's objective was being delivered.
4. However, this letter pre-dates the NPPF, which does not include this provision. The fact that the statement has not translated into national policy indicates that it is not a material consideration in this appeal.

Main Issues

5. The main issues are as follows:

- whether the development is inappropriate development in the Green Belt for the purposes of the NPPF and development plan policy;
- the effect of the development on the openness of the Green Belt;
- whether or not the development preserves or enhances the character or appearance of the Longwood Edge Conservation Area;
- the effect of the development on the living conditions of neighbouring residents, with particular regard to privacy; and,
- if the development does represent inappropriate development, whether the harm, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development within the Green Belt.

Reasons

Whether inappropriate development in the Green Belt

6. Paragraph 152 of the NPPF sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 of the NPPF requires local planning authorities to ensure that substantial weight is given to any harm to the Green Belt, stating that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
7. Paragraph 154 directs that the construction of new buildings should be regarded as inappropriate in the Green Belt, but sets out a number of exceptions, including 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. Similarly, Policy LP57 of the Kirklees Local Plan (KLP) states that the extension of buildings in the Green Belt will normally be acceptable provided that the original building remains the dominant element both in terms of size and overall appearance.
8. No 8 and its immediate neighbours were built under planning permission ref: 87/04931. The sunroom was an addition to the original building, having been granted under planning permission ref: 88/03388. The Council calculate that the sunroom extension and the decking, taken together, result in a 30% increase to the footprint of the original dwellinghouse. I note that they consider this increase to be borderline acceptable, in their words.
9. They have only found the decking to be disproportionate in the light of the DCLG letter referred to above. However, the provisions of that letter are no longer in force, and so it is not a sound basis on which to find that the decking is too large. From the evidence before me, and my observations on site, I am satisfied that the overall size of the new decking is not disproportionate, and that the original building remains the dominant element. As a result, the decking is not inappropriate development in the Green Belt, and so it complies with KLP Policy LP57, and NPPF paragraph 154.

10. Impact on openness is implicitly taken into account in the exceptions in NPPF paragraph 154, unless otherwise stated, and so there is no need for me to consider this factor in the context of this particular development.

Conservation area

11. The site lies within the Longwood Edge Conservation Area (CA). In accordance with the duty imposed by section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 (The Act), I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
12. The CA comprises two sections which are linked by the steep cobbled thoroughfare of Dodlee Lane. The northern section is primarily characterised by densely developed terraces of what appear to be workers cottages, clustered near the top of Dodlee Lane. The substantial Holmefield Hall and its grounds are located in the southern section, and at the bottom of Dodlee Lane, further terraces of modest dwellings are evident. The south-east tip of the CA is dominated by a large complex of industrial buildings. The significance of the CA lies in its surviving historic plan layout, the interrelationship of streets and spaces, and in the diversity of the age and styles of its historic buildings.
13. Dodlee Lane itself is characterised by more modern development, particularly in the area where the appeal site is located. On the other side of the road are further examples of modern housing.
14. No 8 and its neighbours are built of materials that broadly reflect the colour palate of the historic buildings in the vicinity. However, their design and layout are visibly modern in character. Whilst this development as a whole blends fairly well with its surroundings, it adds little to the historic or architectural elements that inform the significance of the CA.
15. The new decking is of modern construction, comprising grey composite boarding and cladding with a contemporary glazed balustrade. On my visit, I saw that the structure sits in an unobtrusive position, although it is partially visible from the road in a glimpse view between the two nearest dwellings. The Council accept that it is relatively obscured, but say that views of it from Dodlee Lane result in a contemporary feature being introduced to the CA, resulting in less than substantial harm.
16. However, in this case, an extension of a modern design has been added to a house of a modern design in a location that is largely enclosed by other houses of a similar character. The extension is visible from the road, but it is not intrusive. It is not perceptible in any longer range views into or within the CA.
17. Whilst I acknowledge the Council's concern over the cumulative erosion of significance, the development does not affect any element that contributes to the significance of the CA in this case. I therefore find that the effect on the character or appearance of the CA is neutral. No conflict arises with LP Policy LP24, insofar as it requires that development should respect the character of the heritage asset.

Living conditions

18. LP Policy LP24 promotes good design, requiring that development should provide a high standard of amenity for future and neighbouring occupiers.

19. The Council's concern relates primarily to the neighbouring property at 12 Dodlee Lane. Due to the topography of the land, the floor level of the decking sits above the height of the rear fencing on the boundary with No 12. The substantial height difference allows those using the decking to have clear and unobstructed views over the rear garden of No 12. As this is the only private outdoor space available to residents of that property, the loss of privacy is all the more significant.
20. There was a previous decking structure in the same position as the unauthorised decking, which the appellant regards as a material consideration. The Council state that they have no record of any planning permission being sought or granted for this decking. However, the appellant says that it was probably erected in the late 1980s and was in place when the property was marketed in 2015. He confirms that it was removed for safety reasons when the house was sold in 2021.
21. On this basis, it may well be that the decking became lawful through the passage of time. Nonetheless, as no permission was given for it, the decking was not subject to assessment against the planning policies that were in force at the time. Furthermore, the previous decking was removed a number of years ago, and so the current decking is not a direct replacement of the old structure. These factors lessen the weight I can give to the presence of the previous decking.
22. The appellant explains that the previous decking gave rise to overlooking of neighbouring property, and had a worse effect because it projected approximately a foot further from the house than the current structure. Whilst I acknowledge this factor, the proximity of the properties is such that this reduced projection is not sufficient to make the development acceptable in terms of its effect on living conditions.
23. The Council state that because the old decking was removed a number of years ago, the neighbours have not experienced overlooking for some time. However, the appellant says that when the new owners of No 12 moved in, the new decking was in place, and so the current owners did not enjoy any time where the decking was not in place. I note also that the previous occupants did not complain about the effects of the decking.
24. However, LP Policy LP24 seeks to protect the amenity of future as well as current occupiers. Therefore, the fact that previous and existing neighbours have not voiced concern does not justify the setting aside of the relevant development plan requirements.
25. The appellant argues that the decking serves to screen views from the rear windows of No 8 towards the properties to the south, due to their respective positions. That may be so, but it does not mitigate the harmful overlooking effects from the decking itself.
26. The parties refer to a hedge that screens the garden of No 12. On my visit, I saw fencing and some ivy growth on the boundary between the two properties, with thick hedging to the other sides of the garden of No 12. However, these features are not high enough to obstruct views from the platform. Even if there was hedging in place that did mitigate views into the neighbouring garden, this could not be relied on as a permanent solution as it could be removed at any time. Although the appellant suggests that boundary

treatments could be retained by condition, this would not be appropriate as they do not form part of the development for which permission is sought.

27. The appellant argues that a raised platform is needed in this location for safety as without it, there would be a significant drop into the garden below. However, I see no reason why a solution could not be found that would be less intrusive to the neighbouring property. That being the case, this factor has not led me to a different conclusion on this main issue.
28. Drawing these threads together, I conclude that the unauthorised development unacceptably harms the living conditions of existing neighbours, or will unacceptably harm the living conditions of future neighbours. It therefore conflicts with LP Policy LP24.

Conclusion

29. For the reasons above, I conclude that the development conflicts with the development plan as a whole. As a result, the appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR