



Appeal Decisions

Site visit made on 19 April 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2ND MAY 2024

Appeal A: APP/C4235/W/23/3326851

6 Clwyd Avenue, Edgeley, Stockport SK3 9DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Eileen Watson against the decision of Stockport Metropolitan Borough Council.
 - The application Ref DC/083028, dated 8 October 2021, was refused by notice dated 5 May 2023.
 - The development proposed is described as '*refurbishment and minor amendment to existing raised decking*'.
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Appeal B: APP/C4235/C/23/3326854

Land at 6 Clwyd Avenue, Edgeley, Stockport SK3 9DA

- 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 Mrs Eileen Watson against an enforcement notice issued by Stockport Metropolitan Borough Council.
 - The enforcement notice was issued on 11 July 2023.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the erection of a raised platform (decking) over 300mm in height covering the whole of the rear garden of the dwellinghouse.
 - The requirements of the notice are 1) remove all boundary screening and balustrade attached to or supported by the decking; 2) remove all decking boards and any other materials used to create the decking; 3) remove all timber and brick supports for the decking, and 4) ensure all waste materials are removed from the land and disposed of at a licensed waste disposal site.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) 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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Decisions

Appeal A: APP/C4235/W/23/3326851

1. The appeal is dismissed.

Appeal B: APP/C4235/C/23/3326854

2. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. The parts of the Framework most relevant to the appeal have not substantively changed from the previous iteration. Consequently, this update does not fundamentally alter the main parties' cases, and it is not necessary to seek further comments. References hereafter in the decisions to the Framework are to the December 2023 version.
4. It was agreed on the site visit that since the enforcement notice was issued, part of the boundary fencing with No. 8 Clwyd Avenue had been removed, although wooden posts were still visible. I have considered the ground (a) appeal and the deemed planning application based on what existed on the site when the enforcement notice was issued.

Reasons

Ground (c) appeal

5. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control.
6. The appellant claims that other than a section of infill decking near to the house, the '*majority of the decking*' is that which has been in situ for some time, and which was determined to be lawful by virtue of an issued lawful development certificate (LDC) on 6 July 2005¹.
7. The onus is on the appellant to make their appeal on legal grounds. While the appellant states that only part of the decking differs from that which was immune from enforcement action and hence lawful in 2005, there are nonetheless representations from neighbouring residents which cast significant doubt about such a claim. In particular, the photographs from the occupier of No. 8 Clwyd Avenue, which have not been disputed by the appellant, in my judgement show that the 2005 LDC decking and balustrades/fencing was removed and, as a matter of fact and degree, a new raised platform (deck) was constructed within the whole of the rear garden space.
8. The photographic evidence from the occupier of No. 8 Clwyd Avenue is also reflective of comments made by other neighbouring residents such as the occupier of No. 4 Clwyd Avenue. The latter resident says that '*this is a full deck replacement*' and '*the new deck being approximately 30 cm higher than the old one*'. Such comments are reflective of the photographs provided by the occupier of No. 8 Clwyd Avenue in respect of their '*image 6*'. I find that the evidence supports the Council's claim that a new raised platform has been erected and that it is materially higher than the one that pre-existed on the land. I find that image 6 within the representation from No. 8 Clwyd Avenue is likely to depict the approximate and relative increase in the height of decking at this point.
9. On the evidence that is before me, I conclude that when the enforcement notice was issued and, as a matter of fact and degree, a new raised platform (deck) had been constructed on the land. The evidence does not support the appellant's claim that the raised platform (deck) that was on the land when the enforcement notice was issued was merely an act of repair or maintenance.

¹ Lawful development certificate ref DC019871 for a decking at the rear of 6 Clwyd Avenue

10. Owing to its height above ground level, the raised platform is not permitted development by virtue of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Planning permission is therefore required for the raised platform (decking). Therefore, the matters alleged in the enforcement notice constitute a breach of planning control for which planning permission is required. Consequently, the ground (c) appeal fails.

Ground (d) appeal

11. The appeal made on ground (d) is that at the date when the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probabilities.
12. The appellant's claim under ground (d) is that apart from part of the upper section of the raised platform, the majority of it is lawful as it is 'decking' for which lawfulness was confirmed as part of the 2005 LDC. Therefore, the appellant claims that at least some of the decking is lawful by virtue of it being in place for more than four years. However, and, as per my reasoning in respect of the ground (c) appeal, I have concluded that the evidence indicates, as a matter of fact and degree, that a new raised platform (deck) was erected in the whole of the rear garden space and prior to the enforcement notice being issued.
13. It is noteworthy that in submitting a retrospective planning application for the retention of the raised platform (deck) (i.e., Appeal A), the appellant stated in her planning application form that the development commenced on 30 June 2021 and was completed on 9 July 2021. The enforcement notice was issued on 11 July 2023. Therefore, the evidence indicates that the substantially completed raised platform (deck) has not been on the land for more than four years.
14. On the balance of probabilities, the evidence does not clearly and conclusively demonstrate that when the enforcement notice was issued, it was too late to take enforcement action. Therefore, I conclude that the ground (d) appeal fails.

Ground (a) and section 78 appeals

Main issues

15. Appeal A is made under section 78 of the Act. Appeal B is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the enforcement notice. The Appeal A and B developments are essentially the same, although the Council and other interested parties dispute the accuracy of existing drawings (i.e., the raised platform (deck)) prior to the breach of planning control taking place. Given my ground (c) reasoning, I do not disagree with the Council's finding about the accuracy of the Appeal A 'existing' drawings, but this is not, in any event, a determinative matter in respect of the ground (a) and section 78 appeals.
16. In respect of the reasons for refusal of planning permission and the reasons for issuing the enforcement notice, the main issues for consideration are
 - i) whether the development constitutes good design and has preserved or

enhanced the character or appearance of the Alexandra Park Conservation Area (CA), and (ii) its effect on the living conditions of the occupiers of neighbouring properties in respect of outlook, light and privacy.

Design and Conservation Area

17. Alexandra Park is located within the Stockport suburb of Edgeley, approximately 1.5 miles to the west of the town centre. The CA is defined to the north, south and east by the pre-mid-19th Century routes of Edgeley Road (formerly Cheadle Road), Cheadle Old Road and Dale Street, taking in Reservoir Road, Moscow Road and Moscow Road East further to the east.
18. The special character and significance of the CA as a whole arises from the relationship between historic road routes (Edgeley Road, Dale Street and Cheadle Old Road), the lakes and green spaces of Alexandra and Edgeley Parks, and buildings of the 19th and early 20th centuries. The way in which these buildings and spaces are arranged reflects the history of the area as a significant early industrial site with the development of a substantial industrialist's villa and pleasure ground.
19. The appeal property falls within an area of the CA where the dwellinghouses have a pleasing consistency in terms of their design, layout, form, and use of materials. The streets in the locality are tree lined. In addition, Edgeley Park and Sykes Reservoir provide some welcome spacious and landscaped relief to the otherwise built form. Sykes Reservoir provides a splendid open backdrop when appreciated from the rear of the dwellinghouses on Clwyd Avenue. While the garden areas to the rear of Clwyd Avenue are not all the same, there is nonetheless a general consistency to the land levels and proportions and any decked or hardstanding areas are generally positioned well below boundary fences. Any raised platforms are generally confined to small spaces immediately adjacent to the rear elevations of the dwellinghouses. Hence, there is a pleasing consistency to the levels and appearance of rear garden spaces in this area. Overall, the above attributes add positively and distinctively to the significance of the character and appearance of this part of the CA.
20. The raised platform which is the subject of these appeals can be seen from neighbouring garden areas, from the Sykes Reservoir private footpath to the south (i.e., permitted for angling use only), and from parts of Reservoir Road (i.e., footpath and cycle route) which crosses Sykes Reservoir. Owing to its height, bulk and extent, the raised platform is appreciated by residents and passers-by as being a dominant, imposing and incongruous addition in the CA, departing unacceptably from the general consistency to the levels, pattern, and height of rear garden spaces to the rear of the properties in Clwyd Avenue. In this regard, I find that the development constitutes poor design. Moreover, it has not preserved or enhanced the character or appearance of the CA.
21. In the context of paragraph 208 of the Framework, I find that less than substantial harm has been caused to the character and appearance of the CA. I deal with the benefits of the proposal as part of the other considerations below. However, the identified benefits are essentially private in nature and relate to the personal circumstances of the appellant. In this case, there are no identified public benefits which outweigh the less than substantial harm caused to the designated heritage asset.

22. For the above reasons, I conclude that the development does not accord with the conservation and design requirements of saved policies SIE-1 and SIE-3 of the Council's Core Strategy DPD 2011 (CS), policy HC1.3 of the Stockport Unitary Development Plan Review 2006 (UDP), the Council's Supplementary Planning Document 'Extensions and Alterations to Dwellings' 2011 (the SPD), and chapters 12 and 16 of the Framework.

Living Conditions

23. As part of my site visit, I was able to stand on the raised platform (deck) and appreciate its relationship with neighbouring land. I acknowledge that the Council granted an LDC for a deck in 2005 to the rear of the appeal property. However, that LDC was approved owing to the passage of time and not based on its acceptability from a planning merits point of view.
24. As explained above, I find that the raised platform (deck) which is the subject of the ground (a) and section 78 appeals amounts to a new raised platform (deck). In this regard, the lawful 2005 deck has now gone.
25. The new raised platform (deck) is significantly higher than the rear outside amenity spaces associated with the neighbouring dwellinghouses. It is possible to stand on the raised platform and see down into these lower amenity spaces. In my judgement, the extent of overlooking is to the serious detriment of the neighbours' privacy. I accept that neighbouring rear gardens are already overlooked to some extent from the rear windows of existing dwellinghouses. However, there is a difference between residents fleetingly overlooking gardens from windows, and the very immediate and likely prolonged overlooking from the raised platform. The neighbouring garden areas are relatively narrow and hence the presence of users of the raised platform would be very apparent.
26. The appellant seeks to justify the overlooking of neighbouring properties with reference to existing overlooking from the private footpath, said to be used by members of the angling club, which is immediately to the rear of outside amenity spaces on Clwyd Avenue. However, there is no evidence that this path is used frequently, and, in any event, one form of overlooking does not necessarily justify another particularly in cumulative terms.
27. The appellant also highlights the removal of permitted development rights in respect of the erection of boundary treatments close to the water as a consequence of an Article 4 Direction in the CA. While I accept that outside garden areas may be overlooked from the private rear footpath, my site visit revealed that this was not likely to be in frequent use. In any event, I do not consider that the existence of the private footpath justifies the additional and harmful overlooking of neighbouring outside amenity spaces from the raised platform.
28. I have considered the raised platform alongside its associated fencing, balustrades, and its sub-structure. When appreciated from the much lower land levels associated with neighbouring outside amenity spaces (i.e., Nos. 4 and 8 Clwyd Avenue) it is experienced as a dominant, bulky, and imposing development which causes significant harm to the outlook of neighbouring residents. I have considered whether it would be possible to impose a condition requiring higher screen fencing/boundary treatment as a means of addressing privacy concerns. However, this would not be appropriate as it would make the

raised platform higher and bulkier. Hence, it would compound my concern relating to adverse outlook impacts.

29. The Council raises concern about loss of light to neighbouring residents. However, both the appeal property and neighbouring properties face south. I do not consider that the breach of planning control has therefore caused very significant harm to the neighbouring garden areas in terms of overshadowing or light penetration.
30. I conclude that while the development has not caused material harm to the living conditions of the occupiers of neighbouring properties in respect of light penetration or overshadowing, it has nonetheless caused very significant harm in terms of loss of privacy and outlook. In this case, it would not be possible to impose acceptable planning conditions to mitigate the identified harm caused to the living conditions of the occupiers of neighbouring land. Consequently, the development does not accord with the amenity and living conditions requirements of saved policies CDH1.8 of the UDP, the SPD and paragraph 135(f) of the Framework.

Other Considerations

31. The appellant states that she is partially sighted and hence it was necessary to essentially create a level raised platform in the rear garden. I do not doubt that the appellant recently suffered from a fall and that level areas would be safer for her from a day to day living point of view. In this regard, I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010.
32. The provision of a level raised platform weighs in favour of allowing the appeals as it would facilitate ease of access for the appellant.

Ground (a) and section 78 appeal conclusions

33. The development has neither preserved nor enhanced the character and appearance of the CA. The less than substantial harm caused to the character and appearance of the CA is not outweighed by any public benefits. Great weight should be given to the conservation of the designated heritage asset. Furthermore, very significant harm has been caused to the living conditions of the occupiers of neighbouring land in respect of outlook and privacy.
34. I conclude that the harm caused to the CA and the living conditions of neighbouring residents outweighs the desirability for extensive areas of level land considering the appellant's disability as a protected characteristic. It is therefore proportionate and necessary that the ground (a) appeal fails, and planning permission is refused in respect of the section 78 appeal. In respect of Appeal A and the ground (a) appeal, the development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeals should be dismissed.

Ground (f) appeal

35. An appeal made under ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is

necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.

36. The appellant makes the claim that the steps in the notice are excessive in so far that the 2005 LDC decking should be permitted to remain. In accordance with my reasoning as part of the ground (c) appeal, the evidence indicates, as a matter of fact and degree, that a new raised platform has been erected within the whole of the rear garden area of 6 Clwyd Avenue. In other words, the appellant has not demonstrated, on the balance of probabilities, and given the contrary evidence that is before me, that the 2005 LDC decked area is still on the land.
37. The purpose of the notice is to remedy the breach of planning control. In this regard, the steps required in the notice are not excessive. For the above reasons, I conclude that the ground (f) appeal fails.

Ground (g) appeal

38. The appeal on ground (g) is that the period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
39. The compliance period in the notice is six months. The appellant claims that nine months should be reasonably allowed. This is based on the need to employ a contractor to undertake the work and it is said that they may not be able to offer quotations swiftly.
40. There is no reasonable evidence before me to substantiate the claim made about contractors not being able to offer quotations within a reasonable timescale. I find that a period of six months provides adequate and reasonable time to obtain quotations and to ensure full compliance with the requirements of the enforcement notice.
41. I therefore conclude that the ground (g) appeal fails.

Conclusions

Appeal A: APP/C4235/W/23/3326851

42. For the reasons given above, I conclude that the appeal should be dismissed.

Appeal B: APP/C4235/C/23/3326854

43. 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 deemed application.

D Hartley

INSPECTOR