



Appeal Decision

Site visit made on 2 October 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2024

Appeal Ref: APP/B2355/C/23/3333704

**Land at Old Hall Farm, Haslingden Old Road, Rossendale, Lancashire
BB4 8RR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Darren Turner against an enforcement notice issued by Rossendale Borough Council.
 - The notice was issued on 24 October 2023.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, operational development has taken place comprising the installation of raised decking area edged in blue shown on the plan named "Raised Decking" and the construction of outbuildings and canopies.
 - The requirements of the notice are to:
 - permanently remove the decking that is edged in blue on the plan named "Raised Decking".
 - permanently remove the outbuildings and canopies.
 - reinstate the land back to a domestic garden by re-seeding it with grass as shown in photograph 1, enclosed herewith.
 - The period for compliance with the requirements is 9 months from the date the notice takes effect i.e. 23rd August 2024.
 - 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.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - the deletion of the word "outbuildings" from paragraph 3 and its substitution with the word "outbuilding".
 - the deletion of the word "outbuildings" from the second bullet point of paragraph 5 and its substitution with the word "outbuilding".
 - the deletion of the words in paragraph 5 "reinstate the land back to a domestic garden by re-seeding it with grass as shown in photograph 1, enclosed herewith" and their substitution with the words "reinstate the land back to its previous condition."
 - the deletion of the words in paragraph 6 "i.e. 23rd August 2024" and their substitution with "."
 - the substitution of the plan annexed to this decision for the plan named "Raised Decking" attached to the enforcement notice.
2. Subject to the corrections and variation, 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 Act.

The Enforcement Notice

3. I have a duty to ensure that the enforcement notice (EN) is in order. The EN alleges operational development. The purpose of the EN is to remedy the breach of planning control.
4. Under s176(1) of the Act, as amended, it is open to me to correct any defect, error, or misdescription in the EN or to vary its terms, provided I am satisfied that the correction or variation will not cause any injustice.
5. The alleged breach of planning control and the second requirement refer to 'outbuildings and canopies'. There are two canopies on the appeal site but only a single outbuilding. Correcting these matters would not cause injustice.
6. The plan named "Raised Decking" edges an area of land in blue. Although this captures most of the alleged breach of planning control, it does not include all of it. Although correcting the plan would increase the area of land that the EN would relate to, it would reflect the appellant's case on grounds (a), (c), and (f). Therefore, no injustice would be caused.
7. The third requirement of the EN states the need to reinstate the land back to a domestic garden by re-seeding it with grass. Despite the alleged operational development, the use of the land as a domestic garden has not changed. Furthermore, the requirement to re-seed the garden with grass is vague or uncertain, as it does not specify a particular standard so that the appellant would know how to comply with the terms of the EN. Equally, I am unclear whether all the land affected by the operational development was previously grassed or not. As the appellant is the person with the best knowledge of what the previous condition of the site was, I shall vary the requirement to that effect. This change would not cause injustice.
8. The wording setting out the compliance period refers to a date that has now passed. To avoid any confusion, I have corrected the EN by deleting reference to this date. No injustice would be caused in doing so.

The appeal on ground (c)

9. An appeal on ground (c) is that those matters stated in the EN do not constitute a breach of planning control. On this ground, the burden of proof lies with the appellant to show that the development does have planning permission, namely either express permission or by operation of permitted development (PD) rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ("the GPDO").
10. The alleged breach of planning control includes three elements, but they all relate to a single operation as they are all physically and functionally linked to each other and were undertaken contemporaneously. Hence, the works as a whole must be looked at. It is not possible to split the works into different components on the basis that one part is PD, and another is not.
11. Having regard to s55(1) of the Act, the works subject of the EN are 'development'. Planning permission was also sought and refused for the "retention of outdoor decking area" in 2023 (Council Ref: 2023/0314) ("the planning application"). A plan submitted as part of the planning application showed the development applied for outlined in red. This did not include the whole structure now subject to the EN. Even so, no planning permission has been granted expressly for the whole or part of the development in question.

12. It is the appellant's case that only part of the development subject of the EN requires the benefit of express planning permission. This is the same area as that edged red on the plan submitted with the planning application. The appellant contends that the remainder of the works are PD through the GPDO.
13. There is no condition imposed on any planning permission that prevents the use of PD rights granted through the GPDO, as an earlier planning permission, which did contain a restrictive condition in respect of the GPDO, was not implemented. As such, that condition is not in force.
14. Class E, Part 1 of Schedule 2 of the GPDO permits development within the curtilage of a dwellinghouse. Part (a) of this class permits any building or enclosure...for a purpose incidental to the enjoyment of the dwellinghouse. The term 'building' is defined by Article 2(1) of the GPDO. That includes any part of a building and includes any structure or erection but does not include mechanical plant or machinery or gates, fences, walls, or other means of enclosure. The development subject of the EN meets this definition.
15. Paragraph E.1 confirms the conditions and limitations to Class E. Paragraph (h) says that development is not permitted if it would include the construction or provision of a verandah, balcony, or raised platform. The GPDO defines the term 'raised' in relation to a platform to mean a platform with a height greater than 0.3 metres. Also of relevance is paragraph (e)(ii) and (iii) which limit the height of the building, enclosure, or container to 2.5 metres in the case of a building, enclosure, or container within 2 metres of the boundary of the curtilage of the dwellinghouse; or 3 metres in any other case. Further, paragraph (f) limits the height of the eaves of the building to 2.5 metres.
16. The appellant claims that the outbuildings erected would accord with the height limitations of paragraph E.1 (e) and (f), and that the raised decking would accord with paragraph E.1 (h) as it does not exceed 0.3 metres above original ground level.
17. Article 2(2) of the GPDO states that unless the context otherwise requires, any reference in the GPDO to the height of a building or of plant or machinery is to be construed as a reference to its height when measured from ground level. For the purposes of this paragraph, "ground level" means the level of the surface of the ground immediately adjacent to the building or plant or machinery in question, or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.
18. There is no analysis or plan that confirms the height of all of the works undertaken on the appeal site in relation to the varied ground levels. Therefore, the main parties measured the development and agreed those measurements as part of my site visit. I have determined the appeal based on those measurements.
19. The highest part of the ground adjacent to the development on the northern side of the decking, with a fire and bench seating around it. Although the decking here is either broadly level with or set below ground levels, the bench seating that surrounds the fire rises above ground levels in excess of 0.3 metres. The precise measurement varies due to the ground level, but it ranges between 0.375 metres and 0.52 metres. As the decking and the bench seating are contemporaneous along with the remainder of the structure, and the

height of the decking and bench seating exceeds 0.3 metres, the development includes a raised platform and does not accord with the limitation of paragraph E.1(h). While other parts of the raised platform are a greater distance above ground level, my assessment is based on how 'height' is defined in the GPDO.

20. The height of the outbuilding and canopies vary due to the ground levels, but even taking that at its highest, the outbuilding and canopy next to it exceed the eaves height permitted through paragraph E.1(f) and/or the height of the building permitted through paragraph E.1(e)(ii) given their proximity to the boundary of the curtilage of the dwellinghouse. There are also other parts of the canopies that exceed the height limitation set by paragraph E.1(e)(iii).
21. Accordingly, the works alleged by the EN are 'development' for which there is no express planning permission for or PD through the GPDO. Even if I am wrong about the height of the outbuilding and canopies, the development as a whole is not PD for the reasons explained. Therefore, a breach of planning control has occurred, and the appeal on ground (c) fails.

The appeal on ground (a)

22. The main issues are: the effect of the proposal on the character and appearance of the area; and the effect of the proposal on the living conditions of the occupants of Old Hall Barn with regards to privacy.

Character and appearance

23. The appeal site relates to the side/rear garden of a two-storey stone built farmhouse. Vehicular access to the house extends across the dwelling's frontage. A public footpath runs next to the access and to the north of Old Hall Barn after its junction with a public footpath on Haslington Old Road. The site lies within the countryside in an elevated position. Ground levels rise to the rear of the dwelling's garden and generally fall to the south of the amenity space associated with Old Hall Barn to the south of the access/footpath.
24. I have no reason to dispute the Council's assessment of the development's length, which is put at around 32 metres. In tandem with its scale and height, the development is an unsympathetic and visually dominant addition to the land. The structure has a contemporary finish that consists of a black composite material and glass balustrades with metal posts. The stone clad elevation to the structure's southern side softens part of the structure's appearance given the host dwelling's use of traditional materials, but the remaining contemporary finishes jar with the traditional materials found locally. While innovative design features should not be stifled, the materials used are not appropriate in this situation as they do not enhance the rural character of the area, especially given the scale of the development.
25. Further stone walling instead of the black composite material could be secured by planning condition, but that would not change the development's harmful size, scale, and height. The landscaping along the southern boundary does filter views of the structure, and over time this planting would strengthen as it matures over time. Yet, the planting does not and would not overcome the proposal's harmful effect when viewed from the public footpaths.
26. I therefore conclude that the proposal causes significant harm to the character and appearance of the area and conflicts with Policies SD2, ENV1, ENV3, and HS9 of the Rossendale Local Plan 2019 to 2036 (LP) and paragraph 135 a), b) and c) of the National Planning Policy Framework. Jointly, these policies seek,

among other things, development to take account of the character and appearance of the local area in terms of its scale, design, and materials.

Living conditions

27. The development lies to the north of land used as front amenity space by the occupiers of Old Hall Barn. This is not their only amenity space, however, but it has an open character despite the presence of several trees and shrubs.
28. The development facilitates elevated views out across the landscape. Within those immediate views is the front amenity space of Old Hall Barn. The extent and facilities on offer within the development (jacuzzi, loungers, seating, dining table, BBQ, and the outbuilding) encourage the use of the development during the day and night. Therefore, it is a purpose-built space designed to be occupied for long periods of time and potentially by a good number of people while overlooking the front amenity space of Old Hall Barn. Without the development, the use of the garden would unlikely be as extensive across the year. Therefore, the development has caused an adverse loss of privacy to the occupiers of Old Hall Barn in respect of their front amenity space. There is no adverse effect on the other amenity spaces serving Old Hall Farm owing to the distance to them and the angle at which they are sited to the development.
29. However, views into the amenity space are already possible from both public footpaths and from other parts of the appeal property's rear garden, despite the landscaping on the site's southern boundary. It is also not the only amenity space of Old Hall Barn. So, while the development facilitates more overlooking than was previously the case, I conclude that the proposal does not cause an unacceptable adverse effect on the living conditions of the occupants of Old Hall Barn with regards to privacy. Hence, there is no conflict with LP Policies ENV1 and HS9, which seek to ensure that there are no unacceptable adverse effects on the amenity of neighbouring properties through overlooking and privacy.

Other Matters

30. As I outlined earlier, the works subject of the EN are 'development' and there is not a real prospect of those works being PD through the GPDO. Further, they do not benefit from express planning permission either as a whole or in part. I have outlined that the proposal causes significant harm to the character and appearance of the area. This matter remains notwithstanding my view about the living conditions of the occupiers of Old Hall Barn. As the proposal does not pass the real prospect test, it carries no weight and does not alter my findings.
31. I have taken into consideration the letters of support concerning the proposal, but I have determined the ground (a) appeal on its planning merits alone.

Conclusion on ground (a)

32. Although I have not found the development to be harmful in respect of living conditions, this does not alter or outweigh my conclusion about the proposal's effect on the character and appearance of the area. Consequently, I conclude that the development conflicts with the development plan, and the material considerations do not indicate that a decision should be made other than in accordance with it. Therefore, the appeal on ground (a) fails.

The appeal on ground (f)

33. The purpose of the EN is to remedy the breach of planning control. The

appellant's suggestion that the terms of the EN should be varied to focus solely on the development subject of the planning application would not remedy the breach of planning control. As outlined, the appeal on ground (c) fails, and I have considered the planning merits of the proposal under ground (a) and determined that should fail also. As such, the steps within the EN are necessary to remedy the breach and address the harm caused. There are no lesser steps that would achieve this. The appeal on ground (f) fails.

Conclusion

34. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice corrections and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Andrew McGlone

INSPECTOR

Scale: DO NOT SCALE

