



Appeal Decisions

Site visit made on 17 March 2025

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 April 2025

Appeal Refs: APP/N2739/C/24/3346667 (Appeal A) & 3346668 (Appeal B)

1A West End, Ulleskelf, Tadcaster, North Yorkshire LS24 9DL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr Kristian Best (Appeal A) and Mrs Rachel Best (Appeal B) against an enforcement notice issued by Selby District Council.
- The notice was issued on 17 May 2024.
- The breach of planning control as alleged in the notice is without planning permission, with the installation of reinforced composite decking, the erection of fencing and a staircase for the creation of a seating area on the roof of the existing outbuilding.
- The requirements of the notice are to:
 - Step 1 Remove the composite decking, all fencing and staircase and other paraphernalia from the flat roof of the building.
 - Step 2 Return the building to its previous condition.
- The periods for compliance with the requirements are:
 - Step 1 6 months.
 - Step 2 6 months
- The appeals are 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.

Decisions

1. The appeals are 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.

Main Issue

2. The main issue of the appeals is the effect of the appeal scheme on the living conditions of the occupiers of 1 West End, having regard to privacy.

Reasons

3. The appeal premises comprises a semi-detached property, which is adjoined to No 1 West End. To the rear of the property is an outbuilding, which has been extended with a staircase, which provides access to the roof of the building. Composite decking has been laid to the roof and metal fencing has been erected, which together enable occupants of No 1A to utilise the roof of the outbuilding. Although the roof was not in use at the time of my visit, the Council advise that garden furniture has previously been placed on the roof, such as table, chairs and a hot tub.
4. Policy ENV1 of the Selby District Local Plan: Part 1 General Policies (2005)(the LP) seeks a good quality of development, taking account of the effect on the amenity of adjoining occupiers. The National Planning Policy Framework (December 2024)(the Framework) also seeks a high standard of amenity for

existing and future users. Due to the proximity of the outbuilding to No 1, users of the roof are able to peer into the first floor windows of No 1, which despite the angle of the view, occupants are likely to find highly intrusive. I saw that similar views are possible from the stairs, as users of the roof descend.

5. A previous appeal decision APP/N2739/D/22/3313174 considered a similar scheme at the appeal site: the replacement of a tiled roof, with a reinforced flat roof, installation of a staircase, installation of decking on the roof with a balustrade, blocking up of a side door and replacement of garage door with UPVC patio door. That appeal was dismissed in April 2023 due to its effect on the living conditions of neighbouring occupants, including views into the windows in the rear elevation of No 1.
6. I note the previous Inspector found uninterrupted views into the garden room of No 1 and patio to be harmful. However, by the time of my site visit, the rear of No 1 had been extended, limiting views into the ground floor of the building, as well as the patio beyond. As such, I do not share the Inspector's concerns in this regard and consider overlooking of the rear garden of No 1 is not significantly harmful to the living conditions of its occupants.
7. The Inspector also found there to be some loss of privacy to the occupiers of No 2, but found this to be relatively minor due to the distance to the more private areas immediately outside the rear elevation of that house. Fencing between the gardens of the appeal property and No 2 already allows a degree of intervisibility between the two gardens and so I agree with the Inspector's conclusions in this regard.
8. Nevertheless, as set out above, I share the Inspector's concerns with respect to overlooking of the windows to the first floor of No 1 and the resultant harm to privacy. The appellants suggest the area is intended to utilise views towards the river and that this is the focus of the vistas from the development, not towards the existing properties. However, individuals using the roof of the outbuilding will inevitably face towards the existing properties to use the stairs. Moreover, users of the roof would not be prevented from facing towards No 1. Where there are a number of users using the roof, for example, they are likely to sit facing each other, meaning that some are likely to face towards the buildings.
9. The appellants suggest a retractable screen would mitigate overlooking and also suggest moving the stairs. It seems from the evidence that the appellant has sought planning permission from the Council for a scheme which includes a retractable screen, which has been refused. However, the appeal before me is against the enforcement notice which has been issued, not refusal of that application for planning permission. I can only grant planning permission for the matters stated in the notice, whether in relation to the whole or any part of those matters¹. Relocated stairs would not, in my view, form part of the matters.
10. I consider mitigation in the form of planting is unlikely to address the harms I have found. With respect to the use of a screen, I consider this would itself raise concerns given its location at height and would not be appropriate to be dealt with via condition. Nor is the relocation of stairs something which could be dealt with by condition. I do not consider that conditions could overcome the harm I have found.

¹ Section 177(1) of the Act.

11. I note the appellants' concern that the extension to the rear of No 1. has reduced sunlight into their back garden. However, the acceptability of the extension to No 1 is not what is before me. The rear garden to No 1A is generous in size and so whilst I note the appellants' concerns about flooding, removal of trees and their desire to avoid the use of concrete, I consider there are likely to be areas within which the appellants could sit and enjoy their garden, which would be less harmful to the living conditions of neighbouring occupants than using the roof of the outbuilding.
12. The appellants suggest alternative permitted development of the garden would impact on the environment far more significantly than the appeal scheme. However, I have no substantive details as to what this would comprise, or whether there is a greater than theoretical possibility that the development might take place. I therefore afford this matter very limited weight.
13. The appellants suggest the view and proximity from the rear elevation of Ash Beck Cottage are similar to the view from the decking. However, I consider this unlikely to be so, given the distance and angle between Ash Beck Cottage and No 1 West End, which means direct views into bedrooms are unlikely to be possible.
14. While the appeal scheme makes use of an existing building to provide outside space which the occupants of the dwelling can enjoy, I consider the harm to the living conditions of the occupants of No 1 due to the loss of privacy greatly outweighs the very modest benefits arising from the provision of such space and so the appeal scheme is contrary policy ENV1 of the LP and the relevant expectations of the Framework, the requirements of which are set out above.

Other Matters

15. The appellants suggest that their neighbours have previously said they were happy with their plans, though this matter is disputed. Concerns have also been raised (by both the appellants and an interested party) about behaviour, and reference is made to a police investigation. However, the occupier of a particular property can change over time and so the fact that an individual has (or has not) objected does not, of itself, mean that a development is acceptable in planning terms. These matters are therefore not determinative to the appeal before me.
16. While the Council has not raised concern regarding the effect of the appeal scheme on the character and appearance of the area, flooding, wildlife, local services or highways, these are neutral factors in my consideration of the appeal.

Conclusion

17. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act (as amended).

M Savage

INSPECTOR