



Appeal Decision

Site visit made on 15 April 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 May 2025

Appeal Ref: APP/A1910/C/24/3347853

Land at Conifers, Rucklers Lane , Kings Langley WD4 9NE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Edward Harney against an enforcement notice issued by Dacorum Borough Council.
- The notice was issued on 3 June 2024.
- The breach of planning control as alleged in the notice is without planning permission, the installation of raised decking.
- The requirements of the notice are to:
 1. Removed [sic] the raised decked area.
 2. Remove all poles and supports for the raised decked area
 3. Remove all fencing from around the raised decked area
 4. Remove all materials arising from steps 1-3 above
- The periods for compliance with the requirements are:
Step 1, 2 and 3 within Four (4) months
Step 4 within Five (5) months
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - At section 5 of the notice, the deletion of the letter 'd' from the word 'removed' so that requirement 1. Says 'Remove the raised decked area.'
 - At section 5 of the notice, the deletion of the word 'around', so that requirement 3. Says 'Remove all fencing from the raised decked area'
 - At section 6 of the notice, the deletion of the words 'Step 1,2 and 3 within Four (4) months Step 4 within Five (5) months' and the insertion of 'Within Six (6) months' as the time period for compliance.
2. Subject to the variations above, the enforcement notice is upheld.

Preliminary Matters

3. Appellant initially lodged the appeal on grounds (a), (b), (c) and (f), however, the appellant has submitted a revised appeal form appealing under grounds (f) and (g) only. Notwithstanding this, the appellant has raised matters under their ground (f) appeal which should be considered under ground (c). Since the Council has addressed this through the appeal, I shall consider those arguments under ground (c) accordingly.
4. Requirement 1 of the notice uses the word 'removed'. This appears to be a typo and so I shall delete the 'd', so that it says 'Remove the raised decked area.'

Ground (c)

5. An appeal under ground (c) is made on the basis that the matters stated in the notice do not constitute a breach of planning control. Although the appellant appears to have withdrawn their appeal under ground (c), a number of the arguments that they have advanced in respect of ground (f) appear to be matters which should be considered under ground (c).
6. The appellant asks that I assess the extent to which the decked area meets the definition of development set out under section 55(1)(A)(d) of the Act. It is stated that the erection of the decking was undertaken by the appellant, who is not a builder and that the scheme is of basic composition, which did not require any specialist or engineering expertise.
7. Section 55 of the Act sets out the meaning of 'development' as the 'carrying out of building, engineering, mining or other operations in, on, or under land.....'. Section 336 of the Act defines "building" as 'includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building'.
8. At section 55 (1A) it is indicated that 'building operations', amongst other things, involve '(d) Other operations normally undertaken by a person carrying on business as a builder'. However, this does not mean that development can only constitute works which are carried out by a builder. If what has been done has resulted in the erection of a building, the erection of it is likely to have amounted to a building or other operation.
9. The main characteristics of a building, as a matter of fact and degree, are (a) physical attachment, (b) permanence and (c) of a size to be constructed on site, as opposed to being brought onto the site. No one test is conclusive. The raised decking comprises a platform supported by wooden posts which have been inserted into the ground. The structure is substantial in size and is likely to have been constructed on site. Although the posts are suggested to have been inserted into the ground to a minimal depth, their insertion means that the structure is fixed in place, providing a stable platform which is unlikely to move or be moved.
10. As a matter of fact and degree, therefore, I find that the raised decking is a building and its erection constituted a building operation for the purposes of the Act.
11. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) grants planning permission for certain types of development, including development within the curtilage of a dwellinghouse. Class E of Part 1 of Schedule 2 of the GPDO permits the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure.
12. However, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. The decking, including the fencing which is affixed to it, has been constructed between the principal elevation of the dwelling and the highway and would therefore not be permitted by the GPDO.

13. Thus, for the reasons given above, I find the raised decking is development and since it would not be permitted by the GPDO, planning permission is required. The hidden appeal under ground (c) therefore fails.

Ground (f)

14. An appeal under ground (f) is made on the basis 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 which may be constituted by the matters stated in the notice, or... to remedy any injury to amenity which has been caused by any such breach. It is clear from the wording of the notice that its purpose is to remedy the breach of planning control by removing the raised decking.
15. The appellant states that they have introduced several Yew trees to provide visual softening and mitigation and points out that neither the Parish Council, nor the neighbour objected to the scheme on the grounds of overlooking. However, the appellant has not appealed under ground (a) and so I cannot consider the planning merits of the scheme.
16. The appellant suggests under ground (f) that parts of the development could fall within the tolerances afforded by the Town and Country Planning (General Permitted Development)(England) Order 2015 (As amended). However, the GPDO does not grant retrospective planning permission. Furthermore, it is not clear how the development could be modified to bring it within the limitations of the GPDO, since, as set out above, it is forward of the principal elevation.
17. The appellant suggests the fencing is, in effect sleepers laid adjacent to the decking. However, the allegation is the erection of decking. During my visit I saw that there is fencing atop the decking and it is this fencing which the notice can require the removal of. The railway sleepers, although adjacent to the decking, do not form part of it and so the notice cannot (and in my view does not) require their removal.
18. In the interests of clarity, I shall delete the word 'around' from requirement 3, so that it is clear the appellant is required to remove the fencing from the raised decked area and not other fencing (or means of enclosure) which has been erected elsewhere within the appeal site. The appeal under ground (f) succeeds to this extent.

Ground (g)

19. An appeal under ground (g) is made on the basis that any period specified in the notice falls short of what should reasonably be allowed. The main thrust of the appellant's case under ground (g) is that, due to the extent of the works required by the notice and ongoing difficulty in obtaining contractors as a result of the lag associated with the Covid-19 pandemic, a compliance period of 12 months would be more appropriate in this instance.
20. The appellant suggests that, although the appeal scheme did not need any specialist tradespeople or equipment to construct it, its removal would require contractors to assist with collection and disposal of the materials at the site, and tradespeople would also be needed to carry out remediation works, taking account of highway safety and the living conditions of neighbouring properties.

21. I recognise that the appellant may wish to engage suitably qualified contractors to carry out the works required by the notice and that this may take time. However, the appellant has provided no substantive evidence, such as details of enquiries with contractors, to show that 12 months would be necessary. The Council states that it would not object to me amending the compliance period to a total of 6 months.
22. Given the modest scale of the works, I consider 6 months would be sufficient time for the appellant to appoint someone and for the works to be carried out. For simplicity, I shall vary the notice so that there is one period for compliance of 6 months, rather than different periods for different steps. The appeal under ground (g) succeeds to that extent.

Conclusion

23. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on grounds (f) and (g) succeed to that extent

M Savage

INSPECTOR