



Appeal Decision

Site visit made on 28 May 2025

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th June 2025

Appeal Ref: APP/T4210/C/24/3355428

Land at 530 Bury New Road, Prestwich, Manchester M25 3BD

- 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 Nikkil Binov against an enforcement notice issued by Bury Metropolitan Borough Council.
- The notice was issued on 22 October 2024.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the installation of raised steel decking (measuring above 30cm from natural ground level) with associated privacy screening and steps at the rear of the property.
- The requirement of the notice is to: remove the raised steel decking and associated screening and steps from the rear of the property.
- The period for compliance with the requirement is 90 days after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of 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.

Decision

1. It is directed that the enforcement notice is varied by:
 - the deletion of "90 days" and its substitution with "4 months" as the period for compliance.
2. Subject to the 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.

Reasons

The appeal on ground (a)

3. The main issue is the effect of the raised decking and privacy screen on the living conditions of the occupiers of 528 and 532 Bury New Road.
4. This split-level semi-detached property is part of a row of properties with rear gardens that adjoin one another. Tall boundary fences line the appeal property's side boundaries with Nos 528 and 532 who also have rear facing window openings that face in an easterly direction.
5. The justification to saved Policy H2/3 of the Bury Unitary Development Plan "(UDP)" explains about the effect that extensions and alterations can have on neighbouring occupiers. Supplementary Planning Document 6 ("SPD") goes on to say that domestic extensions will not normally be permitted if the proposal reduces privacy through direct overlooking from balconies or areas of raised decking. The SPD states that adequate privacy standards in neighbouring properties should be maintained from new areas of raised decking.
6. The raised decking provides level access off the appeal property's extended

ground floor, but owing to ground level differences, it is raised up above the rear garden. Therefore, it provides an elevated useable outdoor space for the occupants of the dwelling as part of their garden close to No 532, especially.

7. Mutual overlooking is common in residential areas with semi-detached properties such as this, chiefly from upper floor windows, but that does not mean that occupiers should not expect an adequate level of privacy in their own home, including their garden. The proposal does not achieve this, as the raised decking enables occupiers of the appeal property to directly overlook the tall boundary fences and into the rear gardens of Nos 528 and 532, which detrimentally affects their privacy. Vegetation along the boundaries does lessen the effect somewhat but it does not prevent the loss of privacy entirely. Nor can it be relied upon to be present in perpetuity.
8. The situation with No 532 is exacerbated by the privacy screen erected along this boundary, which extends far higher than the boundary fence that continues to the property's rear boundary. The privacy screen does stop persons using the raised decking from viewing the immediate rear garden and rear-facing windows of No 532, and likewise, the occupants of No 532 would not be able to see people using the raised area of decking directly at the rear of the dwelling. However, the privacy screen is of a considerable height and, on its own, is an oppressive boundary treatment that has created a solid barrier with No 532 that adversely affects the lounge and immediate rear garden.
9. I note the balcony in the rear elevation of No 532, but this does not benefit from planning permission as it differs from the Juliet balcony that was granted planning permission. I understand that the Council has an active enforcement investigation, and that is a matter for the Council in the first instance, and while the Juliet balcony would have likely introduced a degree of overlooking, it would have been set back from the extended appeal property. But, even if I took the balcony in situ into account, the raised decking and privacy screen would still have a harmful effect on the living conditions of No 532 for the reasons stated.
10. Although the proposal may have improved the living conditions of the occupants of the appeal property, and it has a pleasant finish, its design has caused a material harm to the living conditions of the occupiers of Nos 528 and 532 due to a direct loss of privacy. While a planning condition is suggested to secure a privacy screen along the flank of the raised decking nearest to No 528, there are no details before me, so I cannot be certain that it would overcome the identified harm and therefore pass the test of necessity. Hence, I conclude that the proposal conflicts with saved UDP Policy H2/3 and the SPD, which jointly seek, among other things, proposals for raised decking to not cause direct overlooking so that neighbouring properties maintain adequate privacy standards.

Other matters

11. Although concerns are raised by residents about noise and disturbance, I have found the proposal, which I have considered on its planning merits, to be unacceptable for other reasons, notwithstanding the application that the Council refused planning permission for.
12. The courts have taken the view that planning is concerned with land use in the public interest so that the protection of private interests, such as the impact of a proposal on the value of a neighbouring property, are not material considerations.

Conclusion on ground (a)

13. The proposal does not accord with the development plan, and there are no material considerations that indicate that a decision should be made other than in accordance with it. Therefore, the appeal on ground (a) does not succeed, and I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

The appeal on ground (g)

14. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed.
15. The appellant contends that 90 days is too short a time period to enable the appellant to engage a contractor and a structural engineer to undertake the required works. They also cite the financial implications of carrying out the notice's requirement. The appellant says that six months would provide a sufficient period of time. The Council disagrees with the suggested longer time period but does not explain why, bearing in mind the appellant's points.
16. There is no evidence outlining the unavailability of contractors or structural engineers to carry out the works in a 90-day time period. That said, in my experience, the former are usually busy at this time of year, so I consider a slightly longer time period would be reasonable. I do not consider six months to be reasonable due to the lack of substantive evidence provided by the appellant, but I do consider four months to strike a fair and proportionate balance between providing a reasonable time period and remedying the breach of planning control. The stated financial implications of carrying out the works do not influence my view, as there are no details of this before me, and the appellant has, in any event, known that planning permission was required for the raised decking and privacy screen. The appeal on ground (g) therefore succeeds.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation as 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 ground (g) succeeds to that extent, and I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Andrew McGlone

INSPECTOR