



## Appeal Decision

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by R H Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 11/08/2023

Appeal reference: CAS-01954-M8F5B7

Site address: Land at 132 Lon Enfys, Llansamlet, Swansea SA7 9XZ

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- 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 Melanie Ann Tucker and Michael John Tucker against an enforcement notice issued by the City and County of Swansea Council.
  - The enforcement notice, numbered ENF2020/0224, was issued on 11 May 2022.
  - The breach of planning control as alleged in the notice is '*without planning permission the erection of raised decking at the rear*'.
  - The requirements of the notice are *i. Cease the use of the decking. ii. Remove the decking, timber balustrade and steps. iii. Remove the resultant materials to an authorised waste disposal site*.
  - The period for compliance with the requirements is *3 months beginning with the day on which this notice takes effect*.
  - The appeal is proceeding on the grounds set out in section 174(2) a), b), d) and f) of the Town and Country Planning Act 1990 as amended.
  - A site visit was made on 31 July 2023.
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### Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

### Application for costs

2. An application for costs was made by Melanie Ann Tucker and Michael John Tucker against the City and County of Swansea Council. This application is the subject of a separate Decision.

### The Ground b) appeal

3. Under this ground of appeal the appellants need to show that: "...the breach of control alleged in the enforcement notice has not occurred as a matter of fact". The allegation in the notice is that raised decking has been constructed at the rear of 132 Lon Enfys. Therefore, under this ground, the onus lies with the appellants to demonstrate that this had not occurred when the notice was issued.

4. It is clear from the evidence before me, from both the appellants and the Council, that the raised decking was constructed prior to the issuing of the notice. This is acknowledged in the appellants submissions and is evidenced in the Council's statement and third part representations.
5. For this reason, the ground (b) fails.

### **The Ground d) appeal**

6. This ground of appeal reads: "that at the date the notice was issued no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters". Again, the burden lies with the appellants to prove their case on the balance of probabilities.
7. The appellants claim that to the best of their knowledge the decking has been in place since July 2018. No evidence has been submitted with the appeal to demonstrate that this is the case, and the appellants case is based upon assertion only. The appellant does not supply substantive evidence to show, on the balance of probabilities, that the construction of the decking occurred for a period of four years prior to the date of the notice.
8. Therefore, the appeal under ground (d) fails.

### **The ground (a) appeal and deemed planning application**

#### **Main Issues**

9. The main issues are the impact of the development on the living conditions of neighbouring residents with regard to loss of privacy and overlooking.

#### **Reasons**

10. The basis of an appeal on ground (a) against an enforcement notice is that planning permission should be granted for the development at which the notice is directed.
11. The appeal property is a semi-detached property located on a relatively modern housing estate, and the decking is built to the rear of the house raised above the sloping grassed area below. The rear of the appeal property is elevated above the dwellings to the rear at Clos Ysgallen due to the natural level of the rear garden at the appeal site sloping down towards the rear. The decking has been constructed out from the patio to provide a larger flat area to sit out, and this extended area covers approximately two-thirds of the garden area.
12. Properties in this part of the estate are spaced relatively closely together, as such, mutual overlooking of rear garden areas is common between neighbouring properties in the area. This is though generally limited to transient glances from upper floor rear windows, rather than any sustained opportunity for overlooking.
13. It was clear to me on my visit that the decking is a very prominent visual feature which has a dominating influence on the outlook of all the occupiers of the dwellings below. When standing on the deck there is significant overlooking of the properties below on Clos Ysgallen and especially their private gardens. Moreover, any significant use of the decking would result in an unacceptable loss of privacy for the occupiers of the houses below since clear views are possible into both the ground floor habitable rooms and the garden areas. While that would remain the case to some extent from the original patio area, the extended decking and its elevation significantly increases visibility into the houses below. In addition, the decking area is likely to encourage more frequent and more intensive use as an amenity space including, for example, the potential use of

significant items of garden furniture, patio heaters and the like. There is therefore the potential for significant overlooking of the neighbouring gardens below and to the side for more sustained periods than would be usual from the appeal property, such as to impede the reasonable enjoyment of the gardens by those occupants. The elevated position of the decking heightens the sense of invasive overlooking and so differs from mutual visibility over a boundary fence.

14. As such, the raised decking results in an imposing form of development that is visually over-dominant with consequence adverse effects on the living conditions of neighbouring residents through loss of privacy and overlooking. For these reasons the development conflicts with Policy PS2 of the Adopted City and County of Swansea Council Local Development Plan.
15. Having regard to the main issue identified above and the evidence before me, I conclude that the ground (a) appeal and the deemed application should not succeed.

### **The appeal on ground (f)**

16. This ground of appeal is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objection.
17. The appellants have appealed under ground (f). However, no lesser steps have been put forward in the evidence other than the option of purchasing a decorative screen, which in my opinion would not overcome the loss of privacy identified above. Notwithstanding this, as I have already found the development to be harmful under the ground a) appeal, in my opinion the objective of the notice can only be achieved in this case by the steps set out in the notice.
18. I conclude that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control and the injury to amenity which has been caused by the breach. It would not be disproportionate to require the appellants to carry out the steps required by the notice and, therefore, I uphold the requirements of the notice and the appeal fails on ground (f).

### **Conclusions**

19. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions that the appeal should be dismissed, and the enforcement notice should be upheld.
20. In coming to this conclusion, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objectives of building a stronger, greener economy as we make maximum progress towards decarbonisation, making our cities, towns and villages even better places in which to live and work and embedding our response to the climate and nature emergency in everything we do.

*R Duggan*

INSPECTOR