



Appeal Decision

By **A L McCooey BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Decision date: 22/08/2023

Appeal reference: CAS-02436-V9F7X8

Site address: Sycamores, School Road, Jersey Marine, Neath, SA10 6JE

- 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 Mr Andrew Tranter against an enforcement notice issued by Neath Port Talbot County Borough Council.
 - The enforcement notice, numbered E2021/0309], was issued on 9 December 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised construction of a first floor rear extension with roof terrace above and the erection of decking at the rear of the garden.
 - The requirements of the notice are to:
 1. Remove the raised rear decking and access stairs at the rear of the garden and all associated materials from the land.
 2. Remove the spiral staircase attached to the first floor rear extension.
 3. Remove the glass balustrade on the perimeter of the roof terrace.
 4. Remove the patio doors or replace the patio doors accessing the roof terrace from the second floor with a window or Juliet balcony.
 - The period for compliance with the requirements is 3 months after the Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) 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.
 - A site visit was made by the Inspector on 14 August 2023.
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Decision

1. The appeal succeeds in part and planning permission is granted, subject to conditions set out below, for the erection of decking at the rear of the garden only but otherwise the appeal fails, and the enforcement notice (EN) is upheld in the terms set out below in the formal decision.

Background and Procedural Matters

2. The appellant does not contest the extension and roof terrace elements of the breach. The requirements do not require the removal of the extension itself and for this reason the extension would therefore gain planning permission by virtue of section 173 (11) of the Town and Country Planning Act 1990 [the 1990 Act]. The Local Planning Authority's concerns related to the use of the flat roof of the extension as a terrace. The appellant

has complied with requirements 2, 3 and 4 of the notice to put the roof terrace out of use. The Council has confirmed this to be the case.

3. The property is a split-level detached house. The gardens of the properties slope up to the rear with woodland beyond. Generally there is a flatter area at the top near the rear boundaries of the properties. The decking has been constructed by the erection of a block wall and infilling with material behind. A new galvanised steel beam was provided at the rear with treated wooden beams from there to the block wall. It is stated that the stairs up to the decking are similar to those replaced.
4. During my site visit I viewed the decking from both neighbouring properties, internally and externally.
5. The appellant claims that he was advised to submit an application to regularise the development, which he did. He was then instructed to withdraw that application as it would be likely to be refused. Details of this application have not been supplied and I do not know if it was for all the development or just the decking.

The appeal on ground (a)

Main Issue

6. The effect on the living conditions of the adjoining residents by virtue of overlooking from the decking.

Reasons

7. The levels of the gardens do mean that some overlooking from the rear areas is inevitable. The Local Planning Authority indicate that the overlooking issue is most severe for the property to the east and having viewed the site and adjoining properties, I would concur with this assessment. The rear deck is better screened by fencing and existing buildings in views from the other property. I must give some weight to the fact that the previous deck (albeit smaller) was in situ for some years and there is no evidence of it causing any concerns. However, I conclude that the degree of overlooking from the extended deck leads to an unacceptable impact on the living conditions of the adjoining residents by virtue of overlooking contrary to Policy BE1 of the Neath Port Talbot Local Development Plan.
8. I must also consider if conditions could render the development acceptable. Importantly the evidence from the Local Planning Authority indicates that the decking could be rendered acceptable by the provision of screening along the eastern boundary and the steps. The appellant has also stated that he would provide screening at the deck frontage such that overlooking does not occur if this was considered necessary. I consider that both would be necessary and that appropriate screening measures would address the issue of overlooking from the decking that is the subject of this EN.
9. I consider that a condition requiring the submission of details of the screening measures for the approval of the Local Planning Authority and the implementation and retention of the screening for as long as the deck is in use would address this issue. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matter before the development takes place. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority, or if the details are approved but not implemented in accordance with an approved timetable.

10. The Local Planning Authority recommended that a condition be attached requiring the submission of a scheme detailing the retaining walls, including full structural calculations for any walls 1.5m high. The retaining walls have been constructed and are not specifically referred to in the breach of planning control. No concerns with the retaining wall have been raised in the evidence of Local Planning Authority. I do not consider that this inclusion of this condition is warranted in the absence of any proper justification for it or explanation for what it proposes to achieve.
11. The claimed overlooking of an adjoining property from the appellant's entrance and living room is not relevant to my consideration of the development that is the subject of this EN. Similarly allegations of damage caused by patio furniture being blown into the adjoining property or noise and disturbance from parties are not relevant to my consideration of the issues in this case.
12. I conclude that the development of the decking could be rendered acceptable by the imposition of conditions, and I conclude that it would therefore comply with Policy BE 1. The appeal on ground (a) succeeds for this part of the development only.

The appeal on grounds (f) and (g)

13. As the appeal is partially allowed on ground (a) and the remaining requirements of the EN have been complied with then there is no need to consider the appeals on grounds (f) and (g).

Other matter

14. The appellant points out that there was an area of decking to the rear of the property for some 15 years, which would have gained immunity from enforcement action. However, this decking was removed completely because the timber became rotten. The previous deck was smaller and at two levels whereas the new decking covers a larger area at the upper level only. A new wall with timber cladding was also constructed. As this decking is of a different scale and design and has been constructed within the last 4 years then there is no question of it being immune from enforcement action.

Conclusion

15. For the reasons given above, I conclude that the appeal succeeds in part only and I will grant planning permission for the decking at the rear of the garden on ground (a), but otherwise I will uphold the notice and refuse to grant planning permission for the remaining matters specified in the notice. This is set out in full in the formal decision below. The breach of planning control as alleged in the notice and the requirements of the notice relating to the above development will not be deleted or varied so as to avoid these works gaining an unconditional planning permission by virtue of s. 173 (11) of the 1990 Act. Section 180 of the 1990 Act provides that: "where after the service of an EN planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission". As the ground (a) appeal succeeds in part only then the above provision of s.180 would mean that the EN would not bite on those elements of the development carried out that have been granted planning permission.
16. In reaching my decision, 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 one or more of the Welsh Ministers' well-being objectives.

Formal Decision

17. The appeal is allowed insofar as it relates to the erection of decking at the rear of the garden and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the erection of decking at the rear of the garden subject to the conditions set out below.
18. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the unauthorised construction of a first floor rear extension with roof terrace above. Planning permission is refused for the unauthorised construction of a first floor rear extension with roof terrace above on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A L McCooey

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Unless within one month of the date of this decision a scheme for the screening of views of adjoining properties from the decking at the rear of the garden is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within two months of the local planning authority's approval, the use of the decking at the rear of the garden shall cease until such time as a scheme is approved and implemented.

Reason: In order to safeguard the privacy of neighbouring residents in accordance with Policy BE1 of the Neath Port Talbot Local Development Plan.

- 2) If no scheme in accordance with condition 1 above is approved within 3 months of the date of this decision, the use of the decking at the rear of the garden shall cease until such time as a scheme approved by the local planning authority is implemented.

Reason: In order to safeguard the privacy of neighbouring residents in accordance with Policy BE1 of the Neath Port Talbot Local Development Plan.

- 3) The approved screening measures shall be retained for as long as the decking at the rear of the garden exists.

Reason: In order to safeguard the privacy of neighbouring residents in accordance with Policy BE1 of the Neath Port Talbot Local Development Plan.

- 4) Within 3 months of the date of this decision a scheme for biodiversity enhancement and details of its implementation, shall be submitted in writing to the local planning authority for approval. The scheme shall be carried out in accordance with the approved details.

Reason: In the interests of maintaining and enhancing biodiversity, in accordance with Future Wales Policy 9.