
Appeal Decision

Site visit made on 26 June 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 July 2017

Appeal Ref: APP/J2373/C/16/3160153

Land at 212 Dickson Road, Blackpool FY1 2JS

- 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 Stephen Snelson against an enforcement notice issued by Blackpool Borough Council.
 - The notice was issued on 24 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of decking, a fence and a shed at first floor level on the flat roof of the outrigger.
 - The requirements of the notice are:
 - Remove all decking from the roof of the outrigger;
 - Remove all fencing from the roof of the outrigger;
 - Remove the shed from the roof of the outrigger.
 - The period for compliance with the requirements is three months after this 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.
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Summary of Decision

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

Preliminary matter

2. The appellant questions the expediency of taking enforcement action, alleging that he was not informed of what was wrong with the development in planning terms before the notice was issued or what was required to put it right. However the reasons why the Council considered it expedient to issue the notice are clearly given in the notice itself, as required by Regulation 4(a) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002. Whether it was in fact expedient is a matter for the Council and not something I can consider in relation to this appeal.¹

The appeal on ground (a) and the deemed planning application

Main issues and reasons

3. The main issues are the effects of the development on: firstly, the character and appearance of the area; and secondly, on living conditions of occupiers of neighbouring properties with reference to any loss of outlook or loss of privacy.

¹ Planning Practice Guidance: 008 Reference ID: 13-008-20140306 advises that if a person is unhappy with the local planning authority's approach to an existing development, they may consider going through the Council's complaints procedure. If the issue is unresolved, complaint may be made to the Local Government Ombudsman.

Character and appearance

4. The appeal property is a mid-terraced single family dwelling with a cream coloured render on front and rear elevations, including the rear outrigger. Properties in the surrounding area are mainly in commercial use on the ground floors with residential use on the upper floors.
5. The roof of the rear outrigger is about 2.79m high. It has been adapted as a roof terrace, having an unstained wooden decking area of some 53m², and fencing about 1.33m high, around the perimeter. There is a 2m tall timber shed, stained blue, on the decking, with glazed openings to the front and sides.
6. The shed, fence and decking are seen within the relatively wide service road between the rear elevations of Dickson Road and Gynn Avenue, which latter street contains several guest houses. On both sides of the service road back additions have been erected that vary in their design, materials and render used, and number of storeys. Generally, there is a lack of uniformity in their appearance, especially at the edge of the road where there are disparate forms of one or two-storey extensions, including garages with timber constructed double doors and parking areas. Some of the blockwork and rendered elevations at this location are of poor environmental quality.
7. The shed is on decking at first floor level among a group of two-storey back projections of Dickson Road properties that, in views from the north at least, have a degree of uniformity. However the shed is located towards the rear of the boundary and its modest size, massing and unobtrusive roof form make it a fairly unremarkable feature in this scene. It is not as prominent as several of the built additions in the vicinity. The blue stain used on the timber of the shed has a muted tone and in my view complements the cream render of its host.
8. During my visit I saw a small white-rendered timber-built, first floor rear extension, further along the service road on the Gynn Avenue side, with a door opening onto a flat roof. Although this was an isolated example of the use of timber at first floor level, it illustrates the variety of styles and built forms that exist within this backland location.
9. I have not been made aware of any specific policy or guidance that precludes the use of timber at upper floor levels and given the particular design and siting of the shed I do not find its use inappropriate. The materials used in the development are of sound quality and give it a contemporary appearance. In my view they make a modest contribution towards lifting the appearance of the street scene. Overall the development does not unacceptably disrupt the character or appearance of the host building or the wider area.
10. I note that the appellant enjoys a front garden larger than those nearby which tend to belong to commercial units on the ground floor, although it is not private. It does not give a compelling reason to refuse permission for other amenity related development where that would be otherwise acceptable.
11. I conclude on this issue that the scale, massing and height of the development is appropriate to neighbouring buildings and to its use, considering the width and importance of the street in which it is located. In this respect it complies with Policy CS7 of the Blackpool Local Plan Part 1: Core Strategy 2016 (CS) and LP Policy LQ4 of the Blackpool Local Plan 2006 (LP). Its design including use of materials is of an acceptably high quality in accordance with the

requirements of LP Policy LQ1 and section 7 of the National Planning Policy Framework.

Living Conditions

12. The decking extends to an area above the return space at the rear of the property between the outrigger and the boundary of 210 Dickson Road. Use of this area is likely to give rise to complaints of overlooking the rear yard area of No 210 and is too close to the first floor windows of that property to avoid a significant degree of loss of privacy to its occupiers. A condition could require that the area is gated to limit access, save for planting and maintenance. However its retention would still give rise to an unacceptable sense of overlooking and loss of privacy. In addition the 1.33m high fence close to the boundary would adversely affect the outlook from these upper floor windows.
13. Since the notice was issued all the perimeter fencing has been increased in height by adding artificial foliage, fixed to timber and wire supports. Whilst this may mitigate the loss of privacy, the extra height has caused an unacceptable loss of outlook from the first floor windows at No 210. The height of the foliage causes similar adverse impacts at the first floor rear window of the property on the other side, No 214-216. In addition the position of the shed, fairly close to the boundary, further detracts from the outlook from that particular window.
14. Furthermore the extent of the decking area is likely to result in a number of persons congregating on it at times that would be impracticable to control by condition. This raises the strong possibility of increased noise and disturbance being caused to surrounding occupiers and adds to my concerns.
15. The owners of the hotel on Gynn Avenue that backs onto No 212 raise no objection; however I must consider the interests of future and present occupiers of all properties near the appeal site who may be adversely affected.
16. I therefore find on this issue that the development provides a poor outlook to neighbouring properties and has a detrimental effect on the privacy enjoyed by their occupants. The harm caused is substantial and contrary to LP Policy BH3 which states that development will not be permitted which would, among other matters adversely affect those occupying residential and visitor accommodation by its effect on privacy or outlook or activity associated with its use. It would also be contrary to CS Policy CS7 which would not permit development that causes unacceptable effects by reason of visual intrusion or overlooking.

Conclusion on ground (a)

17. The development fails in a fundamental respect to comply with key development plan policies that seek to ensure that development safeguards the living conditions of occupiers of property surrounding it. The harm caused by the overlooking and loss of privacy to nearby neighbours is significant and not overcome by other considerations.
18. For these reasons and considering all other matters raised, the appeal fails on ground (a) and planning permission will be refused on the deemed application.

Ground (f)

19. The issue under this ground is whether the steps required by the notice exceed what is necessary to remedy the breach of planning control, or, as the case

may be, to remedy any injury to amenity caused by the development. The notice indicates that its purpose is to remedy the breach of planning control in accordance with s173(4)(a) of the Act by requiring the complete removal of the unauthorised development.

20. The appellant suggests that a lesser requirement to erect perimeter screening to the roof terrace, such as obscure glazing or landscaping, would overcome the need for the complete removal of the development. He also suggests that access to part of the decking area could be restricted but this is a matter that I have dealt with in ground (a) and there is no alternative step proposed for its removal. Also under ground (a) I have referred to the adverse impacts of any increase in height of the fencing so as to provide screening.
21. Under ground (f) the appellant also emphasises that the notice does not restrict the use of the roof itself or require the removal of the opening in the rear elevation that provides access to it. However the scope of the notice is confined to operational development on the roof itself, and does not extend to the use to which the roof may or may not be put. There is no evidence before me to conclude as to the lawfulness of the use or the opening. That being so, neither the existing use of the roof nor the existence of the access to it, can be a factor to weigh positively for or against retention of the development.
22. No specific alternative lesser steps are put forward that would provide a satisfactory remedy to the breach of planning control. In the circumstances it is necessary and not excessive to require the removal of the decking, fencing and shed.
23. Consequently the appeal on ground (f) does not succeed.

Ground (g) - that the time given to comply with the notice is too short

24. The appellant requests the period for compliance is extended to 12 months. There would not be any complex building operations required to dismantle the development. I therefore consider that the three month compliance period is adequate within which to arrange for the removal of the decking, fencing and shed.
25. The appeal on ground (g) therefore fails.

Overall Conclusion

26. For the reasons given above I conclude that the appeal does not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

27. The appeal is dismissed and the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Grahame Kean

INSPECTOR