



Appeal Decisions

Site visit made on 19 February 2024

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2024

Appeal A: APP/T4210/C/23/3324652

35 Bankside Avenue, Radcliffe, Manchester M26 2QH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Paul McDonald against an enforcement notice issued by Bury Metropolitan Borough Council.
 - The notice, numbered 23/0039, was issued on 21 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of decking on a raised platform, with steps, balustrade and fencing in rear garden of the property.
 - The requirements of the notice are:
 - a) Permanently remove the decking, raised platform, steps, balustrade and unauthorised fencing from the land.
 - b) Return the land to its former condition prior to the decking, raised platform, steps, balustrade and unauthorised fencing being constructed.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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.
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Appeal B: APP/T4210/W/23/3324651

35 Bankside Avenue, Radcliffe, Manchester M26 2QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Paul McDonald against the decision of Bury Metropolitan Borough Council.
 - The application Ref 69467, dated 16 March 2023, was refused by notice dated 1 June 2023.
 - The development proposed is described as a raised deck to rear of the garden.
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Decisions

1. Appeal A: 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 1990 Act as amended.
2. Appeal B: The appeal is dismissed.

Preliminary Matters

3. During my site visit I viewed the development from Nos 31 and 33 Bankside Avenue, as well as from the appeal property itself.

4. The description of the Appeal B proposal in the heading to this decision is taken from the planning application form. However, the description on the Council's decision notice is 'Erection of decking on raised platform with steps, balustrade and fencing, garden room pod and covered spa area'. The garden room pod and covered spa have been built and are shown on the submitted plans. However, I have no evidence of any agreed change to the description of the development and the appellant states that the decision did not relate to the spa and pod. I have therefore approached the decision on the basis that permission was not sought for the spa and pod. Although the steps, balustrade and fencing are not referred to in the description on the planning application form either, it seems to me that they are actually part and parcel of the raised deck and I therefore regard them as part of the development before me.
5. The foregoing means that both appeals relate to the same development, and I consider them together below.

Main Issues

6. The main issue is the effect of the development on the living conditions of neighbouring residents, with particular regard to any loss of privacy and harm to outlook.

Reasons

7. The appeal property is a house with a modest rear garden. The garden is flat near the house but rises steeply at the far end, as does the garden of the neighbouring No 33. The decking has been formed on this raised land. It is reached via a set of steps placed next to the boundary to No 33. Very tall fencing has been added to the side of the balcony and steps, to provide screening. There is also high fencing to the rear. A balustrade with glazed panelling, at about waist height, has been built along the front edge of the decking (the edge facing the house).
8. The fencing to the side and rear do much to restrict views from the raised decking. However, the waist-height balustrade does not prevent views back towards the housing. The result of this is that there are elevated, close-range views of much of the rear garden of No 33. Moreover, when standing on the decking I was able to see clearly into the conservatory at No 33. In my judgement the views are intrusive. Given the closeness and elevation of the decking, people in the garden or conservatory of No 33 will be very aware of people using the decking, to the extent that the enjoyment of those parts of the property will be seriously impaired.
9. Moreover, I am concerned by the height of the fencing adjacent to No 33. The impact of this is limited to an extent by the fact that it only extends along part of the boundary, stopping well-short of the houses. Additionally, the part of the garden of No 33 next to the fencing rises, so that, at the rear of the garden, the new fencing is only marginally higher than the boundary fencing that was already in place. However, nearer to the houses, as the ground drops away, the new fencing towers above the pre-existing fencing. Indeed, the submitted drawings suggest that it may be 5m above ground level at the maximum point. I did not verify that figure on site but, in any event, the height and positioning of the fencing is such that it is overbearing when viewed from the garden of No 33, adding to the harm to living conditions there.

10. The effect on other properties is far more limited, due to their distance from the appeal site and, in the case of No 37, the screening afforded by a garage. Various other concerns have been raised by neighbours, but my decision is based on the matters outlined above.
11. An element of overlooking may be common in suburban areas such as this. Here, the decking makes use of the pre-existing rising land level, which is also present at No 33, and there may already have been an element of intervisibility between the properties as a result. I saw that terracing with seating had been created in the rear garden of No 33. However, the unauthorised decking provides a large, elevated area for people to gather on and the evidence before me does not show that the pre-existing terracing was comparable to this development in terms of the opportunities it created for overlooking.
12. I do not consider that planning conditions could make the development acceptable. While a reduction in the height of the fence would reduce its visual impact, that would not improve (and might worsen) harm due to overlooking.
13. For the reasons given above, I conclude that the living conditions of neighbouring occupiers, specifically the occupiers of No 33, have been unacceptably harmed by the development. This places the development at odds with Policy H2/3 of the *Bury Unitary Development Plan*, which seeks to protect the amenity of adjacent properties. Although the policy is titled 'Extensions and Alterations', the supporting text indicates that it applies to other relevant domestic development. This is also clear from the Council's *Alterations and Extensions to Residential Properties* supplementary planning document (SPD), which was prepared to support the policy. Amongst other things, the SPD advises that areas of decking should not result in undue direct overlooking into neighbouring property. My findings above mean that there is conflict with the SPD in that regard.

Other Matter

14. I am told that the appellant feels victimised regarding this matter and considers that his human rights have been affected. However, any effect on the appellant or occupiers of the appeal property must be weighed against the public interest of ensuring the proper planning of the locality. In my judgement, dismissal of the appeals is a necessary and proportionate response to the harm arising from the development, and would not result in any violation of the rights of the individuals concerned.

Conclusion

15. For the reasons given above, I conclude that the appeals should not succeed. With regard to Appeal A I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. Appeal B is dismissed.

Peter Willows

INSPECTOR