Appeal Decisions

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by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 22-11-2024

Appeal references: CAS-02311-Z4L0N4 and CAS-02310-J7Y5T0

Site address: Land at and to the rear of Underhill, Hawthorn Road, Ebbw Vale NP23 5HS

Appeal A Ref: CAS-02311-Z4L0N4

- 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 Paul Cuthbertson against an enforcement notice issued by the Blaenau Gwent County Borough Council.
- The enforcement notice, numbered C21/082 was issued on 7 October 2022.
- The breach of planning control as alleged in the notice is without planning permission, unauthorised enclosure and change of use of land outside of the settlement boundary and within a Special Landscape Area (SLA) for use as garden curtilage.
- The requirements of the notice are to:
  - Cease the use of the land outside of the settlement boundary and within the SLA and reinstate the original boundary.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (g) of the Town and Country Planning Act 1990 as amended.
- A site visit was made on 24 September 2024.

Appeal B Ref: CAS-02310-J7Y5T0

- 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 Paul Cuthbertson against an enforcement notice issued by the Blaenau Gwent County Borough Council.
- The enforcement notice, numbered C21/082 was issued on 7 October 2022.
- The breach of planning control as alleged in the notice is without planning permission, unauthorised construction of raised timber decking; and raising of ground levels and construction of timber building.
- The requirements of the notice are to:
  - Remove the raised timber decking in its entirety

- Remove the timber building and reinstate natural ground levels.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (e) 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 on 24 September 2024.

Decisions

Appeal A Ref: CAS-02311-Z4L0N4

1. It is directed that the enforcement notice is corrected and varied by:
    - Deleting paragraph 3 of the notice and substituting: Without the benefit of planning permission, the making of a material change of use of the Land to residential use.
2. Deleting paragraph 5 of the notice and substituting the following:
    - Cease the use of the Land for residential use and reinstate the original boundary.
3. The appeal on ground (g) succeeds and the enforcement notice is varied by the deletion of “3 months”, and the substitution of “6 months" as the period for compliance.
4. Subject to these corrections and variations the appeal is dismissed, and the enforcement notice is upheld.

Appeal B Ref: CAS-02310-J7Y5T0

5. It is directed that the enforcement notice is corrected and varied by:
6. Deleting paragraph 3 of the notice and substituting: Without the benefit of planning permission, the construction of raised timber decking, raising of ground levels and construction of timber building.
7. The appeal on ground (g) succeeds and the enforcement notice is varied by the deletion of “3 months”, and the substitution of “6 months" as the period for compliance.
8. Subject to these corrections and variations 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.

Procedural issues

9. There are two enforcement notices (ENs), one for material change of use (Appeal A), the other operational development (Appeal B).
10. The plan accompanying the EN for appeal A, relates to a rectangular area at the rear of the appeal property denoted in red. The remainder of the property is denoted in green and is intended to demonstrate the original boundaries of the property.
11. The plan accompanying the EN for appeal B, encompasses the whole area of the property and that included for appeal A. The timber building as alleged is located on the area denoted in red on the plan. The raised timber decking is located within the area denoted in green on the plan within the original boundary of the property.
12. Appeal A is proceeding under grounds (b) and (g). No ground (a) and deemed application is pleaded under this appeal.

13. Appeal B is proceeding under grounds (a), (e) and (g). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made for the operational works.

14. Both appeals are proceeding under one name as noted in the headings for these appeals. I have dealt with the two appeals together, except where otherwise indicated, to avoid duplication. Separate decisions are made on each appeal.

Hidden grounds of appeal

15. The appellant has raised matters that are not within the pleaded grounds of appeal. For example, in Appeal B under the ground (a) it is muted that the appellant considers that the garden land the subject of the ENs 'went all the way back to the culvert'. This is a hidden ground (c) appeal that would need to be considered, regardless of the point that it has not been pleaded. Where these claims and others have been raised, they are dealt with in the body of this decision and labelled accordingly.

16. The appellant also raises under-ground (a) for Appeal B that the raised decking is permitted development.

The Notices for Appeals A and B

17. In Appeal A the term 'curtilage' is not a use of land. The allegation does not express the material change of use which relates to a residential use of land. There are also superfluous terms and phrases included which do not describe the development of land, such as the word 'unauthorised', 'the SLA' and 'outside of the settlement boundary'.

18. I shall correct the EN in appeal A to reflect the material change of use, which has been made clear from the submissions made by both parties. Appropriate revisions are made to the requirements to reflect the change to the allegation. In my view, the EN can be corrected under Section 176(1)(a) as to do so would not cause injustice to the parties of this appeal.

19. In Appeal B, the word 'unauthorised' does not add any more to understanding the breach of planning control and is unnecessary. I shall correct the EN in appeal B accordingly. In my view, the EN can be corrected under Section 176(1)(a) as to do so would not cause injustice to the parties of this appeal.

Appeal B – Ground e

20. Appeal B considers the operational development (OD) EN, as corrected. The EN comprises the raised timber decking, the raising of ground levels and the construction of a timber building. A ground (e) appeal is that copies of the EN were not served as required by Section 172 of the Act as amended.

21. The appellant indicates that his neighbours who have also extended their gardens without planning permission have not been served ENs. The appellant questions the legitimacy of the SLA and that it has not been designated correctly following a recognised process. The appellant contends that he obtained permission for the 'fenced boundary' from a neighbouring property owner who indicated that the land was owned by him.

22. The EN was served on the appellant and Ms Evans of the appeal site address. There is no evidence presented that the Council has not served the notice in accordance with Sections 172 and 329 of the Act as amended.

23. It is not within the remit of this ground of appeal whether the Council has served ENs in respect of neighbouring properties. This would be a matter for the Council to decide and this has no bearing on this ground (e) appeal. The onus on this legal ground of appeal is for the appellant to demonstrate that the lack of proper service of the EN has prejudiced

his case. The appellant has appealed both ENs and there is no evidence of improper service.

24. The status of the SLA is not material to the issue of this ground (e) appeal. As the corrections to the EN on Appeal A notes the fact that the land maybe within the SLA and outside the settlement boundary have limited bearing on identifying the correct breach of planning control.

25. Whether or not the appellant obtained permission from a neighbouring property owner to extend the garden is not material to a submission under-ground (e). It transpired that the land was not owned by the neighbouring property owner, and it would have been prudent for the appellant to check the status of the land and its ownership before undertaking the development as alleged and as now corrected.

26. The appeal on ground (e) therefore fails.

Appeal A - Ground b and the hidden ground (c)

27. Appeal A considers the material change of use (MCU) EN and the ground of appeal is that those matters as corrected in the allegation have not occurred. I have dealt separately with whether there has been some misdescription of the development under the ‘Notice’ heading.

28. In this ground the appellant reiterates that he was advised that his neighbour owned the land and had given permission for it be developed. However, at that time the appellant was unaware that the land was SLA, although he had written to the Council, who clarified that land ownership was not a matter it would be involved in. The appellant indicates that following a complaint, he investigated the status with the Land Registry. The Land Registry revealed that the land was apparently not registered.

29. Furthermore, under the ground (a) for the OD appeal B, the appellant indicates that the land ‘went all the way back to the culvert’. In final comments the appellant indicates that he was ‘led to believe the land was original curtilage’ and ‘assumed the land was all garden as did the Estate Agent’.

30. The implication that this land was always part and parcel of the garden of the property is challenged by the Council. The Council indicates that the Estate Agents images show the extent of the garden land.

31. The onus of proof would be on the appellant to demonstrate as a matter of fact and degree that the land in question was part of the original garden for the property. The Council has searched the Land Registry records revealing that the status of the land was unregistered.

32. As the matter of the unregistered land is not in dispute, as a matter of fact and degree it cannot be ascertained on the balance of probability that the land in question is garden land encompassed as part of the original garden of the property.

33. The onus of proof is with the appellant that the alleged development of the MCU has not occurred at all and was not a breach of planning control. On the balance of probability these matters have not been demonstrated.

34. The ground (b) appeal therefore fails. The hidden ground (c) also fails.

Appeal B – hidden ground (c)

35. Appeal B considers the OD. Although not declared the planning merits submission under-ground (a) for this appeal included commentary that the raised decking was permitted development. The appellant indicates that having searched the Welsh Government (WG) website that where raised decking is sited on a slope the height is taken from the highest

point of the construction and not the lowest point. As a result, the appellant claims that the development does not require planning permission. At the top of the bank the appellant asserts that the decking is less than 30 centimetres from natural ground level.

36. There is no dispute raised between the parties that the raised decking constitutes 'development' as defined in Section 55(1) of the 1990 Act as amended. That is 'development' by the carrying out of a building or other operation, in, on, over or under land. Its size comprises several timber components, likely to have been assembled on site. Its permanence suggests that it has not been moved once it was assembled and is anchored in place by virtue of vertical posts and by its weight. As a matter of fact, and degree, the raised platform due to its size, permanent rather than fleeting character, and the nature of anchorage, is a structure which is considered as a building having regard to Section 55(1) of the Act as amended.

37. Section 57 of the 1990 Act as amended states that planning permission is required for development. Planning permission may be granted by development order by section 57(3).

38. Development is permitted by Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 as amended (GPDO) by the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2013. Its effect is that the provision within the curtilage of a dwellinghouse of 'any building or enclosure, raised platform, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building, enclosure, platform or pool' does not require express planning permission.

39. In this regard there is no dispute that the raised platform is within the original garden of the property. The GPDO limitation E.1(j) in Class E states that development is not permitted if 'it would include the construction or provision of a veranda, balcony or raised platform of which any part is more than 30 centimetres above the surface of the ground directly below it'.

40. I consider that having viewed and measured parts of the raised platform 'some parts' are over the 30-centimetre limitation. If 'any part' of the raised platform is over this height limitation it cannot be permitted development since it is above the surface of the ground directly below it. From my visit one part was over 70 centimetres above the surface of the ground directly below it. There is no exceedance tolerance in relation to the express permission given by the GPDO, if the development exceeds by any margin, it is not regarded as permitted development, and planning permission is required for it.

41. The technical guide, (the Welsh Government Guidance document entitled Planning: a guide for householders Version 3 May 2020 section C, and section 11 of the Welsh Government Technical Guidance: Permitted development for householders, Version 2, April 2014), to householder development, refers to the same restriction on pages 52 and 53. The guide for householders is a simpler guide and is not an authoritative interpretation of the law as is set out in the introduction on page 1 of this document.

42. Planning permission is required for the raised platform development enforced against and this constitutes a breach of planning control, because there is no record of a planning permission for it. The hidden ground (c) therefore fails.

43. Given the conclusions in relation to the MCU notice permitted development rights do not exist for the timber building and the raising of ground levels OD as these are conclusively presumed to be outside the curtilage of the dwellinghouse. Planning permission would be

required for this component of the OD and is a breach of planning control. There is no record of a planning permission for it.

Appeal B - the ground (a) appeal, the deemed application

44. The main issues in this appeal are as follows:

- In relation to the construction of the timber building whether this is justified in this location having regard to its effect on the character and appearance of the area and the policy of rural restraint of building outside settlement boundaries, and
- In relation to the raised timber decking, raising of ground levels and construction of timber building, the effect of this development on the living conditions of occupiers of nearby residents in relation to privacy and outlook.

First issue

45. The Council contends that the timber building which is positioned on land outside the domestic garden of the property is inappropriate development. This is because it is regarded as land outside the development boundary as defined by the Blaenau Gwent County Borough Council Local Development Plan up to 2021 (LDP). It is also regarded as land within the SLA.

46. No ground (a) deemed application was pleaded for the MCU notice and as I have concluded on the balance of probability that the land in question is not within the original garden of the domestic property, it is difficult to conceive of a situation whereby planning permission could be granted for the timber building on land which is not authorised and is unlawful.

47. I therefore consider that it cannot be appropriate to allow the timber building on this land. I note the Council's assertion that the LDP's objective is to prevent inappropriate development outside settlement limits, and this is endorsed by national guidance in Planning Policy Wales (Edition 12) (PPW). I therefore consider that the development of the timber building is contrary to the LDP objective of managing spatial growth, contrary to Policy SB1, and national policy in PPW (paragraph 3.60).

48. The LDP demonstrates that the area of the extended garden is within the SLA. This is a matter of fact that cannot be disputed. The legitimacy of the designation, whether it has gone through the correct process, and that the land should not have been designated an SLA is not a matter for me to preside over in these appeals. The LDP has gone through an examination process for it to be adopted and it is sufficient that the boundaries of the SLA have been accepted within that process.

49. LDP Policy ENV2 requires development to conform to the highest standards of design, siting, layout and materials appropriate to the character of the area. I disagree with the Council that the land is open in character, I consider it has an enclosed character due to the levels of the site and the dense established landscaping.

50. However, I do agree that the timber building is not of the highest standard of design in terms of its location, position and appearance. In this regard, the timber building is not appropriate in terms of scale and position. Other domestic buildings do not intrude into the landscaped slope to the extent the timber building does, and this adversely effects the character and appearance of the area. Although in a broadly enclosed part of the settlement's fringe, the position and siting of the timber building with its timber balcony has an imposing effect that appears incongruous, thereby conflicting with LDP Policy ENV2.

51. The appellant has painted the timber building to make it less obvious, however, this does not serve to overcome the objection in relation to its design, appearance, siting and elevated position.

52. I conclude in relation to the construction of the timber building that this is unjustified in this location because it is harmful to the character and appearance of the area and conflicts with the policy of rural restraint of building outside settlement boundaries.

Second issue

53. Having stood on the balcony of the timber building, viewed from inside, out of its windows, and stood on the raised timber decking, I am persuaded that the Council's objections and those raised by interested parties that overlooking is a significant and legitimate objection. The raised decking permits unhindered views of adjoining properties rear gardens. Similarly, the views from inside and outside the timber building allows unhindered views back towards the rear of the neighbouring properties.

54. The appellant refutes that there has been any raising of ground levels in connection with the timber building. However, whilst it may have been cut into the slope, I am not convinced that no material has been laid down to raise the lower level of the land to form and facilitate a flat area for the timber building.

55. I consider that both the timber building and the raised decking diminishes the privacy and outlook of occupiers of neighbouring properties to an unacceptable extent, such that they make these places less enjoyable places to reside. No amount of existing landscaping or bamboo planting (already planted in places) would ameliorate this adverse impact.

56. Prior to the construction of the raised decking, it is argued that the elevated path resulted in overlooking. Whilst this may be the case, the raised decking is a construction that requires planning permission, and the consequences of this development must be considered in the light of planning policy and other material considerations. The raised decking and the timber building facilitates the provision for occupiers to sit or stand for a period, and it is these facilities which must be considered, not what may have been situated there, before the development took place.

57. I conclude that in relation to the raised timber decking, raising of ground levels and construction of timber building, the development is harmful on the living conditions of occupiers of nearby residents in relation to privacy and outlook, contrary to LDP Policy DM1(2c).

Conclusion on Appeal B - the ground (a) appeal, the deemed application

58. I have considered the planning permission reference C/2022/0332 granted for the retention of change of use of land to incorporate it as residential curtilage including boundary treatments at Brookfield. However, I note that this permission is controlled by planning conditions which take away permitted development rights for outbuildings and boundary enclosures. The owner/occupier would have to apply for planning permission should they seek to construct buildings/structures in the future. This differentiates from the planning considerations before me in these appeals and are therefore not directly comparable.

59. 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 the Welsh Ministers' well-being objective to make our cities, towns, and villages even better places in which to live and work.

60. Appeal B on ground (a) and the deemed application is therefore dismissed, and the enforcement notice is upheld.

Appeals A and B – the ground g appeals

61. These grounds of appeal are that any period specified in the notices in accordance with Section 173(9) falls short of what should reasonably be allowed.

62. The appellant's grounds of appeal are that 3 months is too short a period to remove the timber building, and the appellant would need to find new suitable office premises for his office equipment. The appellant would be doing the work himself, because of cost. The appellant considers that 6 months would be needed to remove the timber building.

63. The Council maintains that 3 months is long enough to remove both breaches of planning control.

64. To comply with Appeal A the timber building would have to be cleared and removed. To undertake the removal of both buildings in Appeal B, appears to me to be too short a period to achieve. Appeal B also requires the reinstatement of natural ground levels in connection with the timber building. In my view the work required to comply with both ENs demand more time to accomplish.

65. I consider that 6 months for the period of compliance for the steps in the ENs are proportionate given the need for storage, and the works required to comply with the requirements when considering the conflicting matters of the public interest against the private interests of the appellant.

66. To this extent the appeals on ground (g) succeed.

Conclusions

67. For the reasons given, Appeal A is corrected and varied accordingly, but otherwise the appeal is dismissed, and the enforcement notice is upheld.

68. For the reasons given, Appeal B is corrected and varied accordingly. Subject to these corrections and variations 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.

Iwan Lloyd

INSPECTOR