



Appeal Decision

Site visit made on 24 November 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2020

Appeal Ref: APP/Z4718/X/20/3256327

Salter House, 10 Old Turnpike, Honley, Holmfirth HD9 6PD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Christopher Chambers against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2020/CL/91444/W, dated 18 May 2020, was refused by notice dated 17 July 2020.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is construction of a decked area.

Summary of Decision: The appeal is allowed and a certificate of lawful development is issued, in the terms set out in the Formal Decision

Procedural Matter

1. I have used a shortened description of the development from the application form rather than using the Council's description of "raised decking area" since it more accurately describes the operation for which the LDC is sought.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. This turns on whether the deck area constitutes permitted development by virtue of the provisions of Class E of Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO). There is no dispute between the main parties that Class E – *buildings etc incidental to the enjoyment of a dwellinghouse* is of direct relevance.

Reasons

3. The appeal site is a detached three storey residential property with a garden area to the rear. The rear garden area has been landscaped and has a flagged area, lawn and new decking. Owing to the topography of the garden, the decking has been built on different levels, the lowest part of which is adjacent to the rear of the house. At my site visit I noted that garden slopes upwards away from the rear elevation and to the immediate east the land slopes steeply downwards towards Honley Bridge.
4. The appellant has stated that the decking area has been constructed over sloping land and the dimensions of the decked area identified on the application

- form. As a consequence of the changing levels, the new decking closest to the house is on a lower level to the areas alongside the eastern boundary of the site which are in a more elevated position.
5. Class E of Part 1 of Schedule 2 of the GPDO permits the provision within the curtilage of a dwellinghouse any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse. This is subject to restrictions, including E.1(h) which states that development is not permitted by Class E if it would include the construction of a verandah; balcony or raised platform. For the purposes of Part 1 "raised" in relation to a platform means a platform with a height greater than 0.3 metres. Consequently, this case turns on whether the decked area is "raised" for the purposes of Class E.
 6. Permitted development rights for householders – Technical Guidance September 2019 defines "height" and states that references to height is the height measured from ground level. Furthermore, guidance clarifies that ground level is the surface of the ground immediately adjacent to the building in question and would not include any addition laid on top of the ground such as decking. Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building. For the avoidance of doubt, the decked area falls within the definition of a building because it is a structure or erection.
 7. In this case, the evidence before me and my own detailed observations on site show that the height of the decked area measured from ground level – being the level of the highest part of the surface of the ground adjacent to it – at no point exceeds 0.3 metres. The Council acknowledges that the land is not uniform and as such the actual height of the decking above the existing ground level varies from zero to approximately 1.5 metres. However, it appears to me that those measurements have been taken from the uneven ground levels, rather than by taking the correct level, being the highest part of the surface of the ground adjacent to the new decking.
 8. I recognise that the purpose of a raised platform is to raise the level of the ground and the context in which the criterion for restricting raised platforms is to avoid potential overlooking. Therefore, where the height of a platform is in excess of 0.3 metres there is a potential loss in levels of privacy to neighbouring properties. However, in this case the evidence before me is that the proposal does not form a raised platform within the definition provided in the GPDO. Furthermore, in a case such as this the planning merits of the decked area do not fall to be considered.
 9. Therefore, the new decked area constitutes permitted development by virtue of the provisions of Class E of Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO).

Conclusion

10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful development in respect of the construction of a decked area was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

11. The appeal is allowed and attached to this decision is a certificate of lawful development describing the existing operation which is considered to be lawful.

A A Phillips

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 18 May 2020 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The new decked area constitutes permitted development by virtue of the provisions of Class E of Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO).

Signed

A A Phillips
INSPECTOR

Date: 18 December 2020
Reference: APP/Z4718/X/20/3256327

First Schedule

Decked area.

Second Schedule

Land at Salter House, 10 Old Turnpike, Honley, Holmfirth HD9 6PD

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operation described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operation described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 18 December 2020

by **A A Phillips BA(Hons) DipTP MTP MRTPI**

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Scale: Do not scale

