

Enforcement Appeal Decision

Planning Appeals Commission
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Appeal Reference:	2022/E0056
Appeal by:	Mr. Steven McMillen
Appeal against:	An enforcement notice dated 2 nd March 2023
Alleged Breach of Planning Control:	Construction of a car-port with upper floor decking and screen fence
Location:	Premises at 8 Robbs Road, Dundonald
Planning Authority:	Lisburn and Castlereagh City Council
Authority's Reference:	EN/LA05/2021/0269/CA
Procedure:	Informal Hearing on 31 st January 2024
Decision by:	Commissioner Trudy Harbinson, dated 19 th April 2024

Grounds of Appeal

1. The appeal was brought on Grounds (a) and (d) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011 (the Act). Ground (f) was cited within the Statement of fact. At the hearing the Appellant confirmed that Grounds (a) and (f) were being pursued but not Ground (d). There was an implicit ground (c) pleaded within the Appellant's evidence. At the hearing the Appellant also raised matters that fall to be considered under Ground (g). There is a deemed planning application by virtue of Section 145(5).

Ground (c) - that those matters (if they occurred) do not constitute a breach of planning control.

2. Ground (c) relates to whether the alleged breach of control constitutes 'development' and if so, is planning permission required. The Appellant considered that the car port itself falls under the Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO) in that planning permission is not required subject to meeting stipulated requirements. They stated that the car port is not more than half the total area of the property, the car port is proposed to be set back from the front of the dwelling, the maximum height does not exceed 4m and the maximum eaves height is 2.5m. However these statements in part relate to an application currently before the Council (LA05/2023/0053/F). I must consider the structure that is subject of the breach.
3. Part 1 of the Schedule to the GPDO sets out development permitted within the curtilage of a dwelling house. The Council stated that the breach was one structure of which the car port was incidental. They considered the structure under Class D, the provision within the curtilage of a dwelling house of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the

dwelling house, or the maintenance, improvement or other alteration to such a building. The structure fails criteria (f) of Class D in that it involves the construction or provision of a deck, balcony, veranda or other raised platform. The Council also considered the structure against Part 1 Class I, the erection, construction or alteration of a deck or other raised platform within the curtilage of a dwelling house, with the structure failing criteria (a) that any part of the deck or other raised platform would exceed 0.3m above ground level.

4. The Appellant referenced Part 1 Class A of the GPDO which permits the enlargement, improvement or other alteration of a dwellinghouse. The Council however consider that the structure taken as a whole fails Part 1 Class A A1 (i) (ii) as it includes the construction or provision of a deck, balcony, veranda or other raised platform. They did not agree that works to make the car port good would be permitted development and stated that they would require planning permission. They also referenced the Conditions set out at A.3.(a) the materials used in any exterior work (other than materials used in the construction of a conservatory) shall be of similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
5. Class A.1 sets out circumstances where development is not permitted by Class A at (a) to (j). Taking measurements of the car port, without the upper deck and screen, from the 'As Existing' drawing included within background papers, it complies with criteria (a), (b), (c), (d), (e), (f), (g), (i) and (j). Development is not permitted by criterion (h) where the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would (i) exceed 4 metres in height; or (ii) have a width greater than half the width of the original dwellinghouse. Given my observations on site and assessment of the drawing the width of the enlarged part of the dwelling slightly exceeds half the width of the original house failing criterion (h) of Class A1.
6. The Appellant stated that the timber car port is a common feature of the surrounding area. Having considered the character of the area under ground (a) later in this report I did not find this to be a prevalent occurrence. In any event the condition at A.3.(a) requires the material used to be of similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The dwelling house is constructed in red brick and pebble dash render. To be of a similar appearance does not require the materials used to be identical to those existing, they must however have a resemblance. The smooth lightly coloured timber used in the construction of the structure is not similar in colour or texture to the brick or rough cast render on the existing dwelling. Even if I were to accept that the car port could be severed from the overall structure and remain in isolation it would not meet criteria A1(h) or condition A3(a) under which development is permitted by Class A. Planning permission would be required. Accordingly the arguments put forward on this basis are not successful and therefore the appeal under Ground (c) fails.

Ground (a) and the Deemed Planning Application – that planning permission ought to be granted for the matters stated in the Notice

7. The Appellant referenced a planning application currently before the Council (LA05/2023/0053/F) for the 'retention of car port with raised decking (with amendments)'. The deemed planning application however is defined by the breach

as stated on the Enforcement Notice (EN) and relates to ‘the construction of a car port with upper floor decking and screen fence’. Two representations to the deemed application were received by the Commission.

8. The Council advanced two deemed reasons for refusal. The main issues in respect of the deemed planning application and Ground (a) appeal are whether or not the development would: -
 - be sympathetic to the built form and appearance of the existing property and detract from the appearance and character of the surrounding area; and
 - unduly affect the privacy or amenity of neighbouring residents.
9. Section 45(1) of the Act requires the Commission in dealing with an appeal, to have regard to the local development plan, so far as material to the application, and to any other material considerations’. Where regard is to be had to the LDP, Section 6 (4) of the Act requires that the determination must be made in accordance with the plan unless material considerations indicate otherwise.
10. On 26th September 2023, the Council adopted the Plan Strategy entitled ‘Lisburn and Castlereagh Local Development Plan 2032’ (PS). In line with the transitional arrangements set out in the Schedule to the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 (as amended), the LDP now becomes a combination of the Departmental Development Plan (DDP) and the PS read together. In this appeal, the Belfast Urban Area Plan (BUAP) is the relevant DDP. In it the site is located in the development limit. In accordance with the subject legislation, any conflict between a policy contained in the BUAP and those of the PS must be resolved in favour of the latter. There are no policies in the DDP that are pertinent to the appeal.
11. The draft Belfast Metropolitan Area Plan (2004) is not a DDP as it was never adopted. While it could still be a potential material consideration in certain cases, it is not pertinent to this appeal. In accordance with paragraph 1.9 of the Strategic Planning Policy Statement for Northern Ireland (SPPS), as the Council has now adopted the PS, previously retained policies set out in the suite of regional Planning Policy Statements (PPSs) have now ceased to have effect within this Council area.
12. The Council consider that the appeal development is contrary to the SPPS and Policy HOU7 Residential Extensions and Alterations of the PS. Policy HOU7 states that planning permission will be granted to extend or alter a residential property where four criteria are met. The Council consider the appeal development offends criterion (a) in that the design is not sympathetic with the built form and appearance of the existing property and that it would detract from the appearance and character of the surrounding area. They also consider that it unduly impacts on the privacy and residential amenity of neighbouring residents through overlooking offending criterion (b). The policy headnote further indicates that supplementary planning guidance, Part A: Guidance for Residential Extensions and Alterations will be taken into account when assessing proposals against the criteria.

13. The appeal site at no. 8 Robbs Road comprises a two storey semi-detached dwelling with pitched roof. The dwelling is red brick on the ground floor with a cream pebble dash finish to the first floor. It has been extended over two stories to its rear. It has a driveway to its side with rear and side gardens beyond. There is a garage in the rear garden. The front boundary is defined by a red brick wall with black iron gates to the driveway. The boundary with the neighbouring semi-detached dwelling's front garden is defined by a hedge. The boundary with the property at no. 10 to the northeast is defined by a wooden fence.
14. Robbs Road runs from the northeast to the southwest. The appeal site is located to the south western end of Robbs Road where it gently sweeps on to Church Road. The pair of semi-detached dwellings, of which no.8 is one, are orientated to face onto Robbs Road. The gable of no. 8 is at angle to the neighbouring property at 10 Robbs Road.
15. The appeal development comprises a wooden structure attached to the side gable of no. 8, which functions as a car port with a deck area above it. It extends from the front of the dwelling, along the majority of its length to the fence and gate which define the entrance to the rear garden. It comprises wooden posts bolted to the gable wall on one side and a series of wooden posts set into the soil within the side garden on the opposite side. These posts support rafters and corrugated sheets above which are overlaid with decking. There is a wooden horizontal slated timber balustrade on three sides of the upper deck. The upper deck is accessed via a bedroom window on the side gable of the dwelling.
16. There is a Northern Ireland Housing Executive Office to the west of the appeal site, however Robbs Road is primarily residential in character. It comprises a mix of dwelling types including semi-detached, detached, single and two storey dwellings with three storey apartments opposite in Bailey Manor. In the main the dwellings are two storey with pitched roofs. Whilst two properties on this road have a car port to their side, these are mono pitch single storey structures. One of the car ports has a timber faced overhang, however the materials used in the area mostly comprise red brick, roughcast and smooth render. The property boundaries along Robbs Road are defined by walls and hedging.
17. Criterion (a) of Policy HOU7 has two elements, requiring a visual assessment of the subject property and of the surrounding area. The appeal structure is flush with the dwelling's front façade, protrudes outwards to its side and extends along most of its length. It has a flat roof with the balustrade above rising midway in height between the first floor and the eaves of the dwelling. It is constructed in timber. Its position, form and size, combined with the materials used cause it to be visually jarring when viewed against the host property. It reads as an obtrusive and unsympathetic addition and one which dominates and detracts from the overall character of no. 8. It is not sympathetic with the built form and appearance of the existing property, failing the first element of criterion (a) of Policy HOU7.
18. The front part of the upper deck of the structure is clearly visible travelling eastwards from the corner of Church Road and Robbs Road. The front and part of the side of the upper deck are visible when travelling from the opposite direction along Robbs Road. Its position, flush with the dwelling's frontage and along its side gable, combined with the choice of material draw the eye to the timber balustrades of the upper deck. It is a discordant feature, visually intrusive in the street scene.

The Appellant's offer to treat the timber would not negate the visual impact of the overall structure. Whilst I acknowledge that neighbouring planting provides some intermittent screening of the structure, I do not consider it sufficient to offset the overall visual intrusion. Even if further planting to the boundaries of the appeal site were undertaken, I am not convinced it would result in an acceptable solution, and in any event it would take some time to mature to a height that offered a degree of screening. The structure detracts from the appearance and character of the surrounding area failing the second element of criterion (a) of Policy HOU7.

19. Criterion (b) of Policy HOU7 requires that the proposal does not unduly affect the privacy or amenity of neighbouring residents. The side garden of the appeal site is triangular narrowing to its rear where the deck is closest to the rear garden of no. 10 Robbs Road. Where the deck runs along the boundary with no. 10's rear garden that includes the first few metres closest to the rear of no. 10, which the Part A guidance to Policy HOU7 indicates, as a general rule of thumb, is the most private area of the garden. I have assessed the impact from the deck and in the rear garden of no. 10 Robbs Road. Given the position, height, proximity and orientation of the deck there was direct intervisibility between the two. Even with the conifers planted along part of the boundary within no.10s garden, the elevated nature of the deck remains apparent, permitting views.
20. While I accept that there may already be a certain degree of overlooking given the backland position of the dwellings at 10a and 10b Robbs Road, it is the extent and significance of the overlooking that must be assessed. I do not accept that views from the front facing bedroom windows of No 10a and 10b are comparable to the views from the deck, as views from the deck would be more accessible given its closer proximity and open nature. In this case overlooking would be intrusive to an unacceptable degree and adversely impact upon the residential amenity of no. 10 Robbs Road. At the hearing, it was suggested that provision of a 1.8m screen around the perimeter of the deck could be erected to protect residential amenity in the event of an approval. However, whilst such an addition could potentially address residential amenity issues, the position of the structure, flush with the dwelling's frontage and along the majority of the side gable, coupled with its overall size, is such that a higher screen could increase its visual impact and consequent harm.
21. Third party concerns were raised with respect to noise. The deck offers a sizeable extension to the dwelling's outdoor amenity provision. Notwithstanding the Appellant's assertion that there have been no complaints from Environmental Health or the Police, and their arguments with respect to the nature of the access to the deck, and to the nature of the people using it, it would nonetheless be capable of accommodating gatherings. Given its position on the first floor side gable of the property and its proximity to the neighbouring properties, noise and general disturbance from its use is likely to be more obtrusive than that caused by a gathering in a typical ground level garden.
22. Light pollution was also raised as a concern. Whilst I did note the presence of an outdoor lantern post on the corner of the deck, I was not presented with any specific or persuasive evidence of the extent of light pollution associated with the deck and whether its effect would be disproportionate to that associated with outdoor lighting typical within a dwelling's curtilage. Notwithstanding the lack of objection to the car port element at ground level, general disturbance from the use

of the deck taken together with overlooking would result in an unacceptable impact upon residential amenity of the immediate neighbours. Accordingly, I find that the development fails to comply with criterion (b) of Policy HOU7 of the PS.

23. Medical arguments were presented with respect to a person temporarily residing at the property and another who permanently resides at the property. The third party highlighted that health issues had not previously been raised during the processing of a, now withdrawn, retrospective application for the structure (LA04/2022/0133/F). They questioned the assertion that ill health was the reason for the structure having had been built and as such the relevance of its consideration. Regardless of whether such matters had been cited under a previous application, it is a material consideration before me now.
24. I was told by the Appellant that there were no alternatives available as the ground floor of the dwelling is open plan with no opportunity for a ground floor bedroom. However, no persuasive evidence has been submitted by the Appellant regarding the specific needs of the individuals in question. Medical documentation relating to the individual who temporarily resides at the property was made out to a different address and did not specify that the patient in that case would be confined to one floor or require the provision of an outdoor space at the appeal property in response to their medical circumstances. Whilst I have no reason to doubt the medical circumstances of the individuals, within the evidential context before me I am not persuaded that the stated personal circumstances taken in isolation would necessarily require the retention of the first floor deck, nor that all other alternatives have been adequately investigated. Accordingly, the circumstances presented in this deemed application are not considered sufficient to outweigh the visual and amenity concerns with the development that have been considered above.
25. The third party raised additional concerns with the appeal development. With respect to impact on marketability of the neighbouring dwelling at no. 10 Robbs Road I have already concluded above that the proposal would impact on the amenity of the property. In respect to the concern that outdoor garden furniture placed on the deck could be dislodged in inclement weather and cause injury or damage, I was presented with no persuasive evidence that this has happened, or that the structures present on the deck would give rise to health and safety issues.
26. The Council's deemed reasons for refusal are sustained. Third party concerns are sustained insofar as stated. The appeal on ground (a) fails and the deemed planning application is refused.

Ground (f) That the steps required by the notice, or the activities required to cease, exceed what is necessary to remedy the breach of planning control or to remedy any injury to amenity caused by any such breach.

27. Section 140 of the Act requires an enforcement notice to specify the steps required to be taken, or the activities required to cease, in order to achieve, wholly or partly, certain stated purposes. These purposes include remedying the breach of planning control by restoring the land to its condition before the breach took place or remedying any injury to amenity which has been caused by the breach. The EN requires removal of the complete structure.

28. The Appellant's argument under Ground (f) is that the requirements of an EN must not purport to prevent an Appellant from doing something which they are entitled to do without planning permission. They considered that the car port itself was permitted development under the GPDO. They stated that, unaware of the need for planning permission, considerable money had been spent in erecting the structure. They requested that in the event the decking was found to be unacceptable that the car port could remain and be made good.
29. I have already considered above whether the car port on its own would amount to development permitted under Article 3 of the GPDO and have found that it fails to satisfy Part 1, Class A1 criteria (h) (ii) and the condition under A.3 (a). The steps suggested by the Appellant would not be permitted development and would not remedy the breach of planning control. The breach of planning control can only be remedied by removal of the unauthorised structure. The appeal on Ground (f) fails.

Ground (g) - that any period for compliance specified in the notice falls short of what should reasonably be allowed.

30. The EN requires the removal of the complete structure within 28 days of the date the EN takes effect.
31. It was stated that the Appellant had constructed the structure themselves, however now have ongoing medical circumstances that preclude them from carrying out the work to remove the structure themselves. They will therefore have to seek the services of someone else to carry out the removal of the structure on their behalf, which they stated may not be possible to secure within the 28 day period specified. The Appellant seeks to extend the period for compliance to three months. The third party stated that the structure had been erected in a matter of weeks.
32. I am cognisant of the continuation of harm to the amenity of the adjacent residents and the desire for expediency to remedy the breach. Notwithstanding, given the medical circumstances of the Appellant and their reliance on securing the services of others to remove the structure, it is reasonable to extend the period for compliance with the EN. I consider that a period of three months is reasonable in the circumstances. The Ground (g) appeal therefore succeeds and the EN is amended accordingly.

Decision

The decision is as follows:-

- The appeal on Ground (c) fails;
- The appeal on Ground (a) fails;
- The appeal on Ground (f) fails;
- The appeal on Ground (g) succeeds and the period for compliance is amended to three months from the date of this decision; and

The enforcement notice as varied is upheld.

COMMISSIONER TRUDY HARBINSON

List of Appearances

Planning Authority:- Patrick Savage, Lisburn and Castlereagh City Council
Greg McComb, Lisburn and Castlereagh City Council

Appellant:- Claire Millar, Agent

Third Party: - Catherine Scott

Observing: - Lois Jackson, Lisburn and Castlereagh City Council
Laura McCausland, Lisburn and Castlereagh City Council

List of Documents

Planning Authority:- Statement of Case
Lisburn and Castlereagh City Council

Appellant:- Statement of Case
Claire Millar

Third Party: - Statement of Case
Cathy & Steven Scott