



Appeal Decisions

Inquiry Held on 3 October 2017

Site visit made on 3 October 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 25 October 2017

Appeal Refs: APP/R3325/C/16/3158942 & 3158944 Land at East West House, Milborne Wick, Sherborne DT9 4PW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr and Mrs Dickson against an enforcement notice issued by South Somerset District Council.
 - The enforcement notice was issued on 23 February 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the installation of a decking platform and erection of a tented structure in the approximate position marked with an oblong hatched red on the plan attached to the notice.
 - The requirements of the notice are:
 - (i) Remove the decking platform and tented structure
 - (ii) Remove from the land all building materials arising from compliance with requirement (i) above.
 - The period for compliance with the requirements is 6 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeals are dismissed and the enforcement notice is upheld.

Application for costs

1. At the Inquiry an application for costs was made by South Somerset District Council against Mr and Mrs Dickson. This application is the subject of a separate Decision.

Procedural matters and background

2. Evidence at the Inquiry was given under oath by way of affirmation.
3. Because it is relevant to both the grounds on which these appeals are made, it is helpful to describe the decking platform (decking) and the tented structure (tent) that are subject to the enforcement notice here at the outset.
4. East West House sits in a large plot at the edge of Milborne Wick. The house sits in a slightly elevated position in relation to the highway and the land continues to rise quite steeply to the south and west. The decking and the tent are located in the far south-west corner of the plot, at the furthest point possible from East West House itself and on the highest point in the plot. It is common ground that the decking and the tent are placed on domestic land, for which I shall substitute the more generic term of 'garden'.

5. The installation of the decking required changes to the ground levels of the garden. Nevertheless, the decking stands considerably above surrounding ground level and is accessed via steps. The decking has two levels, albeit the upper level is raised only slightly above the lower level. The tent, including the overhanging section at the front, occupies a significant proportion of the upper level of the decking. The tent is affixed to the decking by a combination of solid metal poles, straps and ropes. The solid metal poles are bolted to the decking. The straps and ropes are attached to the decking through metal eyelets screwed into the decking itself, and have tightening brackets.
6. In addition to the tent itself, there is a hot tub located on the lower level of the decking. I understand that this hot tub is fully functional. A series of flush-fitting lights are set within the decking, but which I understand are not presently functional, and there are also some free-standing lights. The latter are powered from a plug socket within a rain-proof covered box affixed to the decking, and I noted that there was an additional unused plug socket in the same box. I was advised that there is no running water to the tent, although water is provided to a number of sprinkler units in this part of the garden.
7. Before turning to the grounds of appeal, it is convenient to consider at this point whether the decking and tent are a single building operation. The test in this respect is whether the installation of the decking was a separate activity of substance to the subsequent erection of the tent upon it¹.
8. It is axiomatic, and Mrs Dickson accepted in cross-examination, that the installation of the decking was necessary to provide a level surface on which to erect the tent. To that extent, the decking is both necessary for and ancillary to the erection of the tent. I am also mindful that the tent is firmly and permanently affixed to the decking and, as such, is part and parcel of one structure that comprises the decking and the tent. In this context, it is to my mind unlikely to be a coincidence that the tent fits very precisely on the upper level of the decking.
9. In giving her evidence, Mrs Dickson sought to explain that the decking was used for recreational purposes by her family before the tent was erected. However, there is no documentary evidence before me to substantiate that. It is evident that there was a period of time between the decking being installed in or around January 2011 and the tent being erected on it in mid-2013, but there is no judicial authority to indicate that a period of time between elements or phases of construction precludes the construction of the whole from being a single building operation. I therefore conclude that, as a matter of fact and degree, the installation of the decking was not a separate activity of substance in its own right but was the first phase of construction as a part of single building operation comprising the decking and the tent.

The appeals on ground (c)

10. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control.
11. The appellants initially argued that the decking and the tent did not constitute development for the purposes of section 55(1) of the Town and Country

¹ *Eatherley v LB of Camden* [2016] EWHC 3108 (Admin)

Planning Act 1990 as amended. However, through the Statement of Common Ground submitted shortly before the Inquiry opened, the appellants now concede that planning permission is required for the decking and the tent. Following that concession, the essence of the appellant's case under this ground of appeal is now that the decking and the tent structure constitute permitted development.

12. It is common ground between the main parties that the decking and tent were substantially complete in mid-2013 and therefore before 15 April 2015, that being the date on which the Town and Country Planning (General Permitted Development) (England) Order 2015 came into force. The question as to whether the decking and tent constitute permitted development therefore falls to be considered against the provisions set out within the Town and Country Planning (General Permitted Development) Order 1995 (the "GPDO"), as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008.
13. The provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted by Class E, Part 1, Schedule 2, Article 3 of the GPDO, subject to the limitations at Class E.1 and Class E.2. Having regard to the provisions within Class E of the GPDO, the main issues arising from this ground of appeal are:
 - whether the decking and tent are within the curtilage of the dwellinghouse known as East West House
 - whether the decking and tent is or is intended to be for purposes incidental to the enjoyment of the dwellinghouse as such
 - whether the decking is a raised platform for the purposes of Class E.1 (g)
 - whether the overhanging section at the front of the tent constitutes a veranda for the purposes of Class E.1(g), and
 - whether parts of the tent, specifically some of the supporting poles, exceeded 2.5 metres in height and were within 2 metres of the boundary, such that they would not accord with limitations at Class E.1(d)(ii).
14. I will consider these issues in turn below. It is convenient to consider first the provisions within Class E itself before, if necessary, moving onto the limitations at Class E.1 and Class E.2.

Curtilage

15. There is no authoritative definition of the term curtilage. The determination of the curtilage of a dwellinghouse is therefore a matter of fact and degree in each case. However, the High Court judgment in *Burford v SoSCLG*² provides a useful summary of judicial authority on this point to date, including judgments referred to by the appellants. I shall therefore approach this main issue having regard to the principles summarised in *Burford* and set out in the earlier judgments to which *Burford* makes reference.

² *Burford v SoSCLG* [2017] EWHC 1493 (Admin)

16. The garden to East West House rises quite steeply from the main house, but is essentially on two levels. What I shall call the lower level is a relatively flat area mostly laid to grass, immediately to the rear of the main house. There is a mature tree in the middle of this grassed area, with further trees around the perimeter. The impression gained is of a secluded usable garden space with an intimate relationship to the main house.
17. From this lower level, a grass slope leads upwards between trees and other vegetation to the upper level. This area is also relatively flat and laid to grass, and it is within this upper level that the decking and tent are situated. To the north of this upper level, on land that slopes to down towards the stream at the base of the valley, is an area of tree and shrub planting. To the south and west, the upper level adjoins agricultural land, views of which are possible over and through vegetation on the boundary, affording long-distance views over the surrounding countryside.
18. There is no clear view of East West House and associated structures from this upper area. The impression is therefore of being within a separate space, which has more affinity with the adjoining area of trees and shrubs and the surrounding countryside than East West House.
19. Applying these findings to the principles established in relevant judicial authority, as summarised in *Burford*, I firstly note that both the upper and lower levels of the garden serve a useful purpose for the appellants and their family. It is also clearly advantageous and convenient for the family to use both spaces together. However, that in itself is not sufficient³. In this context, I am also mindful of the approach adopted in *Attorney General ex rel Sutcliffe v Calderdale BC*⁴, in which it was held that, where they are in common ownership and one is used in connection with the other, there is little difficulty in putting a structure into the curtilage of a building, even if it is some distance from it.
20. Nevertheless, it was held in *Dyer v Dorset CC*⁵ that the expression curtilage connotes a piece of land attached to a dwellinghouse and forming one enclosure with it. In my opinion, it is only the lower level of the garden to East West House that may be properly described as forming one enclosure with that dwelling. By reason of the intervening trees and shrubs, the upper level has no visual connection with East West House and plays no role in enclosing that dwelling. Moreover, the upper level is more associated with the surrounding countryside and in that sense is divorced from the main dwellinghouse. Taking these factors into account, I find as a matter of fact and degree that the upper garden level does not form part of the curtilage of the dwellinghouse known as East West House. It follows that the decking and tent, which are located on that upper level, are not within the curtilage of that dwellinghouse.

Incidental to the enjoyment of the dwellinghouse

21. I have found that the decking and tent fall outside of the curtilage of the dwellinghouse and, as such, the issue of whether they are incidental to the enjoyment of the dwellinghouse does not strictly need to be considered. Nevertheless, for the sake of completeness I shall consider it here. Consideration of this issue raises two separate questions: is the purpose of the

³ *Methuen-Campbell v Walters* [1979] 1 QB 525

⁴ *Attorney General ex rel Sutcliffe v Calderdale BC* [1982] 46 P&CR 399

⁵ *Dyer v Dorset CC* [1989] 1 QB 346

- decking and tent are incidental to the enjoyment of the dwellinghouse as such and, if so, are the decking and tent reasonably required for that purpose.
22. In giving her evidence, Mrs Dickson steadfastly maintained that the decking and tent are used by her family as part of their enjoyment of the garden. I find that position difficult to reconcile with the documentary evidence referred to by the Council, and having regard to the contents of the tent at the time of site visit and as shown in photographs provided by the Council.
23. The first of these documents is a planning application dated 4 April 2014 submitted by the appellant, Mr Andrew Dickson (Council Ref: 14/01644/FUL). That application sought permission for a development described on the application form as a decking platform and change of use and retention of a one storey safari tent and the change of use being for luxury holiday let accommodation. The use applied for, specifically the change of use being for luxury holiday let accommodation, is clearly not a use that can be considered incidental or conducive to the very condition of living in the dwellinghouse.
24. That planning application was supported by a document produced by the appellant entitled "THE Home Escape", which I understand is a brochure outlining the appellants home let business. Within that document is a detailed description of the "THE Tent" and, although this is clearly a brand name for the purpose of the brochure, it is nonetheless evident that this is the same tent to which the enforcement notice relates. This description makes reference to THE Tent having a bath, a sink and a loo, with hot water generated by a wood burner and sewerage connected to an existing septic tank. The description makes it clear that there are no cooking facilities in THE Tent but does confirm that an electricity supply is available to support a kettle and small fridge. The description goes on to indicate that parking is available at the appellants' own property, and that THE Tent will employ another housekeeper, gardener and a chef.
25. The Council also produced a copy of web page entitled "Availability and bookings for THE TENT". The page showed dates in March and April 2015 on which THE TENT was either available or booked, with instructions as to how to view prices and to book the accommodation. The latter is described as including a bedroom, an en-suite bathroom with hot and cold running water, a biomass boiler fuelled by a wood burner, a wine fridge, a hot tub, a hammock, a telescope and, I particularly note, a TV. Attached to the web page are photographs showing the interior of THE TENT, and again indisputably the same as that subject to the enforcement notice. Also attached to the brochure are two testimonials from clients that had stayed in THE TENT.
26. At the time of my site visit, the facilities within the tent were essentially the same as those identified in the brochure/web page and in photographs provided by the Council, although I did not observe an en-suite bathroom. Mrs Dickson maintained that the bath and wood burner were both not functional, despite these features being clearly advertised in the brochure/web page. There was a model truck on the floor of the tent at the time of my site visit, which would support the appellant's case that the tent is used by the family as part of their garden. However, that aside, all the other facilities that I observed (for example the double-bed, bath, hot tub, stereo, telescope mount, flush-fitting lights and fixtures for a hammock) to my mind suggest use as a high-end holiday let along the lines advertised in the brochure/web page.

27. The appellants seek to explain this, both in the written evidence and the oral evidence given by Mrs Dickson, by asserting that the description used for the planning application arose from advice given by Council officers during a site visit on 2 April 2014. According to Mrs Dickson, the planning officers present at that meeting advised that there would be a good prospect of obtaining planning permission if the appellants "played the tourism card". In answer to my direct question at the Inquiry, Mrs Dickson confirmed that the brochure and the booking form had been produced solely for the purpose of supporting the planning application (Council Ref: 14/01644/FUL) pursuant to the advice given by the Council officers to play the tourism card.
28. I am not convinced by this explanation. In the first instance, one of the planning officers present at the meeting on 2 April 2014, Ms Fox, explained in her evidence to the Inquiry that the advice given to the appellants on that occasion was not to play the tourism card. According to Ms Fox, the advice given on that occasion was that tourism was something that the Council supported in principle but that no assurances could be given. Given that Ms Fox is a local Government planning officer with extensive experience, I attach considerable weight to her evidence in this respect. Moreover, Ms Fox recalled that this advice had been in response to the appellants' admission at the meeting that the tent was part of their portfolio of holiday let properties. The latter is, to my mind, further evidence of the likely true purpose behind the erection of the tent.
29. The brochure "THE Home Escape" that accompanied planning application Council Ref: 14/01644/FUL is not itself dated. However, the meeting with the Council planning officers took place on 2 April 2014. The planning application Council Ref: 14/01644/FUL is dated 4 April 2014. The implication, therefore, is that the brochure was produced, on the appellant's case, solely for the purpose of supporting that application in somewhat under two days.
30. I acknowledge that there are several incomplete sections in the brochure and the whole document has the feel of a work in progress. This might indicate that it was put together in a hurry, commensurate with the tight deadline of less than two days. Nevertheless, the brochure is quite detailed and covers more than just the tent, such that it must have taken some time to put together. Taking all these factors into account, I have difficulty in accepting that this brochure was produced solely for the purposes of supporting the planning application. Rather, in my view, it is more likely that this brochure was prepared and intended for use in connection with the appellants' holiday let business, but was pressed into service to support the planning application.
31. There is no such question over the web page entitled "Availability and bookings for THE TENT". This page was clearly active in March 2015, when the Council accessed it, and therefore long after the planning application was submitted. Consequently, there is no credence to the suggestion that this web page was produced solely in support of the planning application.
32. In his oral evidence to the Inquiry, Mr Maxwell, who resides at "The Dairy House" in Milborne Wick, recalled the excitement in the village when certain film and television celebrities were spotted visiting the appeal property. However, whilst I have no reason to doubt Mr Maxwell's observations, I have no evidence to show that their presence was in any way connected to the tent and for that reason I attach only minimal weight to this evidence.

33. Nevertheless, I conclude that, on the balance of probability, the evidence available to me points towards the use of the decking and tent for purposes of a holiday let. It follows that the decking and tent are not used for a purpose incidental to the enjoyment of the dwellinghouse as such, and for that reason also do not constitute permitted development under Class E of the GPDO. Having reached that conclusion, I do not then need to go on consider whether the decking and tent are reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.

Conclusion on the appeals on ground (c)

34. Having regard to above, I find that the decking and the tent are not within the curtilage of the dwellinghouse known as East West House and are not used for a purpose incidental to the enjoyment of the dwellinghouse as such. It follows that decking and the tent are not permitted development under Class E of the GPDO, such that express planning permission is required for them for these reasons alone. It is therefore not necessary for me consider whether the decking and tent accord with the limitations at Class E.1 and Class E.2 in terms of whether the decking is a raised platform as referred to in Class E.1 (g); whether the overhanging section at the front of the tent constitutes a veranda for the purposes of Class E.1(g); or whether parts of the tent exceed 2.5 metres in height within 2 metres of the boundary, such that they would not accord with limitations at Class E.1(d)(ii).

35. Accordingly, the appeals on ground (c) fail.

The appeals on ground (d)

36. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the structure had been substantially complete for a period of at least four years prior to the date on which the notice was issued. The test in this regard is the balance of probability and the burden of proof is on the appellant.

37. The appellants explain that construction on the decking commenced in January 2011. In support of that, Mr Sprake, owner and farmer of much of the land surrounding the appeal site, gave evidence recalling that construction materials for the decking were brought onto the site in or around January 2011. This evidence was not seriously challenged by the Council, and I have no reason to doubt the version of events described by Mr Sprake.

38. The appellants also provided an aerial photograph said to be taken in February 2012 showing the decking in situ but without the tent in place. The photograph itself is not dated, but the 'properties box' states a date of 25 February 2012 and a time of 23:25. Based upon the colours of the foliage, the photograph appears to have been taken in daylight during the autumn or early winter, such that the date of 25 February and the time of 23:25 are unlikely to relate to the time on which the photograph was actually taken. Furthermore, the properties box also indicates that Adobe Photoshop had been used in the production of the image. I therefore cannot discount the possibility that the photograph has been altered or enhanced in some way. For these reasons, I consider that this photograph cannot be relied upon, either in support of the appellants' case or against it.

39. However, there is no need for me to place any reliance on that photograph one way or the other. I have found that the decking and the tent comprise a single building operation. The relevant time period therefore begins not when the decking was complete, but when the tent was erected on the decking. By the appellants' own admission, the tent was erected in mid-2013. This would be consistent with the receipt by the Council of the initial complaint that triggered the enforcement investigation on 2 January 2014.
40. The corollary is that the decking and tent were not completed as a single building operation until mid-2013. This is less than four years before the date on which the enforcement notice was issued on 23 February 2016. It follows that, on the balance of probability, the decking and tent were not immune from enforcement action on the date in which the enforcement notice was issued.
41. Accordingly, the appeals on ground (d) fail.

Conclusion

42. For the reasons given above, I conclude that the appeals should not succeed and I shall uphold the enforcement notice.

Formal Decisions

43. The appeals are dismissed and the enforcement notice is upheld.

Paul Freer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Edward Romaine

Solicitor, Lyon Bowe Solicitors,
instructed by Mr & Mrs Dickson

He called:

Mrs Cleo Dickson

Appellant

Mr John Sprake

Owner and occupier, Bradley
Head Farm, Milborne Wick

FOR THE LOCAL PLANNING AUTHORITY:

Mr Philip Robson

Of Counsel, instructed by the
Solicitor, South Somerset
District Council

He called:

Ms Sam Fox

Planning/Enforcement Assistant

Mr Dominic Heath-Coleman BSc (Hons) MA

Planning Officer

INTERESTED PERSONS

Mr Douglas Maxwell

Occupier, The Dairy House,
Milborne Wick

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1/ Opening Submissions on behalf of South Somerset District Council.
- 2/ Aerial photograph of the appeal site.

- 3/ Extract from the application for a Certificate of Lawful Use or Development submitted by the appellants in 2015 (Council Ref:15/01981/COL) .
- 4/ Application form for planning application 14/01644/FUL.
- 5/ Brochure entitled "THE Home Escape"
- 6/ Extract from web page showing availability/booking for THE TENT.
- 7/ Aerial photograph of the appeal site with properties box shown.
- 8/ Closing submissions on behalf of the appellants.
- 9/ Application for Costs on behalf of South Somerset District Council.