
Appeal Decision

Site visit made on 10 November 2016

by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA

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

Decision date: 24 November 2016

Appeal Ref: APP/E2001/C/16/3147589

Land at Horseshoe Drive, Sewerby, East Riding of Yorkshire, YO15 1EN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mervyn Ellis against an enforcement notice issued by East Riding of Yorkshire Council.
 - The enforcement notice, numbered EN/14/00948/UNWORK, was issued on 25 February 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the construction of a raised patio area to the front of the dwelling.
 - The requirements of the notice are: Reduce the height of the patio to its former height as shown on attached photograph Appendix 1.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a) – *That planning permission should be granted for what is alleged in the notice*

Main Issue

2. The effect of the development on living conditions.

Reasons

3. The raised patio, as installed, allows views over the timber trellis fence between the front gardens of the semi-detached properties, directly down into the neighbours' living room. Privacy is harmed to an unacceptable extent, conflicting with Policy ENV1 (Integrating high quality design) of the East Riding Local Plan Strategy Document (ERLP SD) adopted 6 April 2016. Point B4 of the Policy requires regard to be paid to the amenity of existing or proposed properties.
4. Drawings showing proposed modifications to the raised patio were submitted with the appeal. Drawing 1505U/2/B shows a chamfer taken out of the front corner of the patio next to the neighbouring house which would be reduced in height from some 770mm above ground level to some 300mm above ground level, leaving the rest of the patio at the higher level. Overlooking would then

- only be possible from the higher, back corner of the patio, where a brick pier, 780mm deep and 1.8m high, would further restrict overlooking.
5. S177(1)(a) of the 1990 Act notes that on determination of an appeal, the Secretary of State may grant planning permission in respect of matters stated in the enforcement notice as constituting a breach of planning control in relation to the whole or any part of those matters. Whilst the patio remaining after removal of the chamfer satisfies s177(1)(a) as part of the matters referred to in the notice, the brick pier does not, since it would be a new element of development beyond that referred to in the notice. Therefore I cannot take it into account in determining this appeal.
 6. Neither the raised patio as installed, nor the patio with the lower level chamfer, would be acceptable in terms of overlooking. Furthermore, the fence between the gardens could be removed at any time, greatly exacerbating overlooking.
 7. I note that overlooking would have been possible from the low level planting platform in place before the raised patio was installed. However, the neighbour's window cill would have been quite high in relation to the platform, and the opportunity to peer down into the adjacent living room would not have existed to the extent it does now.
 8. The patio as constructed, in whole or in part, fails to accord with the development plan overall and is unacceptable. The appeal fails on ground (a).

Alan Novitzky

Inspector