

## Appeal Decisions

**by P N Jarratt BA DipTP MRTPI**

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

**Decision date: 1 December 2016**

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### **Appeal Refs: APP/Z1775/C/16/3151218 and 3152785 6 Blake Road, Portsmouth, PO6 1ET**

- 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 Damien Shawyer against an enforcement notice issued by Portsmouth City Council.
  - The enforcement notice, numbered 13/00056/ENF, was issued on 11 May 2016.
  - The breach of planning control as alleged in the notice is the construction of a raised patio to the rear of the dwelling which is unauthorised and requires the benefit of planning permission due to the height of the patio above natural ground level.
  - The requirements of the notice are
    - 1) Remove from the land the raised patio in its entirety or modify it to comply with the dimensions set out in requirement 2;
    - 2) Construct a landing of no more than 1 metre in depth measured from the folding doors in the rear elevation of the single storey rear extension and steps down to allow safe access and egress from the extension to the dwelling to the rear garden;
    - 3) Remove from the land all building materials and rubble arising from compliance with requirements 1 and 2.
  - The period for compliance with the requirements is 3 months.
  - The appeals are proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
  - **Summary of Decisions: appeals dismissed and notice upheld.**
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### **Preliminary matter**

1. As the appeals have been made on ground (g), a site visit was not required.

### **Planning History**

2. Permission was refused in October 2013 for the retention of a raised patio and an amended application in 2014 to include glazed screening was also refused.

### **Appeal on ground (g)**

3. The appellants consider that a period of 6 months is necessary for the Council to determine a planning application to modify the patio and for the appellants either to comply with the requirements of the notice or to alter the patio in accordance with any planning permission issued.
  4. In early August the Council indicated that it was considering a revised planning application for a modified raised patio, steps, balustrading and privacy screens
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to replace the unlawful structure (ref 16/00824/HOU). This application has yet to be determined although I note that the application was submitted about 6 months ago. The Council indicates that if the application is approved, it would impose a condition requiring the permitted scheme to be carried out within three months in line with the requirements of the notice.

5. The Council draws attention to s173A(1)(b) which allows them to waive or relax any requirement of the notice and extend any period for compliance and they have assured the appellants that the Council would not enforce the notice whilst the planning application remains undetermined.
6. In my view a period of 3 months as specified in the notice is an adequate period within which to comply with its requirements. The Council appears to be providing sufficient time for a scheme to come forward that would overcome amenity impact on the neighbour. It also intends to use its powers constructively.
7. The parties should also be aware that s180 states that the notice shall cease to have effect so far as inconsistent with a planning permission granted for any development carried before the grant of that permission.
8. Against this background, in the event that the planning application is unsuccessful, it would not be in the public interest to allow an unauthorised development to remain any longer than a minimum period in view of the harm to residential amenity that is caused by it.
9. The appeals on this ground fail.

### **Decision**

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

*P N Jarratt*

Inspector