
Appeal Decision

Site visit made on 19 November 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 January 2020

Appeal Ref: APP/A2280/C/19/3229381

3 Cobtree Close, Wayfield, Chatham, Kent ME5 0AS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Afton Dilks against an enforcement notice issued by The Medway Council.
- The enforcement notice was issued on 25 April 2019.
- The breach of planning control as alleged in the notice is without the benefit of planning permission the unauthorised operational development being the raising of land levels to the rear garden of the Property to facilitate the construction of a patio.
- The requirements of the notice are:
 - (i) Remove the patio
 - (ii) Reinstatement of the land level to its original height prior to the unauthorised works taking place
 - (iii) Remove all debris and associated materials from the Property.
- The period for compliance with the requirements is two calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

The Appeal on Ground (c)

1. An appeal on this ground is that “those matters” (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
2. There is no dispute that the patio constitutes development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for the patio.
3. The appellant suggests that the patio benefits from the planning permission available within Class F, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). That enables the provision of hard surfaces incidental to the enjoyment of a dwellinghouse.
4. The patio is located approximately in the position of a previous outbuilding. The appellant acknowledges that the ground on which it was constructed was not level prior to construction of the patio and at least part of it had to be raised in order to provide flat ground on which to lay the patio. Consequently, the main issue is whether raising the level of the ground as part of the works to construct the patio was permitted by Class F, Part 1, Schedule 2 of the GPDO.

5. The appellant relies on technical guidance relating to permitted development rights for householders that refers to changes in height. This suggests that height should be measured from ground level adjacent to a building. On sloping ground, the level is measured from the highest part of the surface of the ground next to the building. However, a hard surface such as the patio is not a building. Therefore, raising the level of the ground is not permitted under Class F, Part 1, Schedule 2 of the GPDO. Since no planning permission has been granted for the development it thereby constitutes a breach of planning control.
6. For these reasons, I conclude that the appeal under ground (c) should fail.

The Appeal on Ground (f)

7. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to remove the patio and reinstate the ground level to its height prior to construction of the patio, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
8. I have concluded above that the patio does not benefit from planning permission granted by the GPDO. In the absence of an appeal under ground (a) I am not able to consider whether other measures, such as taller fence, would mitigate the effect of the development on the living conditions of occupiers of neighbouring properties. As such, the requirements of the notice are necessary to remedy the breach of planning control.
9. For these reasons, I conclude that the appeal under ground (f) should fail.

The Appeal on Ground (g)

10. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
11. The appellant suggests that the time given to comply with the notice should be extended if the work was deemed to comply with the GPDO. As I have concluded above that the works did not comply with the GPDO, I must also conclude that the period specified in the notice is sufficient to carry out the works required.
12. For these reasons, I conclude that the appeal under ground (g) should fail.

Formal Decision

13. The appeal is dismissed and the enforcement notice is upheld.

AJ Steen

INSPECTOR