



---

## Appeal Decision

Site visits made on 22 September 2020 and 8 December 2020

**by S A Hanson BA (Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 January 2021**

---

**Appeal Ref: APP/U3935/C/20/3244298**

**34A Stapleton Close, Highworth, Swindon SN6 7DR**

- 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 Mr Alan Hall against an enforcement notice issued by Swindon Borough Council.
  - The enforcement notice was issued on 9 December 2019.
  - The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey rear extension with raised paving area to the rear of the property.
  - The requirements of the notice are 1. Remove the extension from the land and return it to its former use and 2. Remove all resultant materials and debris as a result of the above works from the land.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
- 

### Decision

1. It is directed that the enforcement notice be corrected by
  - i. deleting the reference to s171A(1)(b); and
  - ii. deleting the requirements at section 5 and substituting them with '1. Demolish the extension in its entirety. 2. Remove all resultant materials and debris from the land.'
2. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

### Preliminary matters

3. Following differing measurements of the height of the extension, an accompanied site visit was undertaken where measurements were taken and agreed by both parties.
4. The notice refers to both s171A(1)(a) development without planning permission and s171A(1)(b) a breach of condition or limitation as the reason for issuing the notice. As the notice refers to development without planning permission, the notice should be corrected to refer to only s171A(1)(a). This can be corrected without any injustice to either party.

### **The appeal on Ground (c)**

5. The ground of appeal is that the matters alleged do not constitute a breach of planning control. The onus of proof in ground (c) is upon the appellant, and the test of the evidence is on the balance of probability.

#### *Whether permitted development*

6. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), by way of Article 3, grants planning permission for certain types of development set out within the schedules and classes it contains.
7. For an enlargement, improvement or other alteration of a dwellinghouse, as is the case here, the only possible permission available within the GPDO would be within its Schedule 2, Part 1, and Class A. In order to benefit from this, the development in question must meet **all** the conditions and limitations within Class A.
8. The GPDO states that development is not permitted by Class A.1 (i) if –  
*the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres.*

And by Class A.1 (k)

*it would consist of or include—*

*(i) the construction or provision of a veranda, balcony or raised platform*

9. Given that the extension is within 2 metres of the boundary fence and the height of the eaves<sup>1</sup> is 3.09 metres, it thereby fails to meet the limitations at Class A.1 (i) above. Furthermore, the patio area which incorporates steps to access the garden from the extension forms a raised platform<sup>2</sup>. The appellant has confirmed that the 'raised paving' replaced 'decked steps previously in place for many years'. However, the GPDO does not grant permission for replacement structures/buildings and consequently, the development fails to meet the limitations at Class A.1 (k)(i).
10. To conclude on this ground of appeal, the extension is not permitted development and it does not benefit from planning permission granted by the GPDO. Since no planning permission exists for the development it constitutes a breach of planning control.
11. The appeal on ground (c) therefore fails.

### **The appeal on Ground (f)**

12. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control or to remedy any harm to amenity resulting from the breach. In this regard the notice requires the removal of the extension.

---

<sup>1</sup> Page 12 Technical Guidance for permitted development rights for householders (September 2019) published by the Ministry of Housing, Communities and Local Government

<sup>2</sup> The Town and Country Planning (General Permitted Development) (England) Order 2015. Interpretation of Part 1 – For the purposes of Part 1 "raised" in relation to a platform means a platform with a height greater than 0.3 metres.

13. The main reason for issuing the notice is to remedy the injury to amenity which is the harm to the living conditions of the occupants of the neighbouring property, 338 Windrush, through overlooking. I acknowledge the appellants offers of alternate options to placate the concerns of the Council. However, as the purpose of the notice is to remedy the breach of planning control, which is 'the erection of a single storey rear extension with raised paving area', any lesser step that would not remedy the breach cannot be accepted through ground (f).
14. Furthermore, while a slightly lower extension could be considered PD<sup>3</sup>, I am not able to consider the planning merits of such a scheme under ground (f). This would be a matter that would be a material consideration under ground (a).
15. Therefore, for the reasons set out above, the appeal on ground (f) must fail.

*S A Hanson*

INSPECTOR

---

<sup>3</sup> Subject to the limitations of The Town and Country Planning (General Permitted Development) (England) Order 2015