The Planning Inspectorate

Appeal Decision

Site visit made on 19 May 2021

by Simon Hand MA

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

Decision date: 01 June 2021

Appeal Ref: APP/X0360/C/20/3263298
Land at 16 Arthur Road, Wokingham, RG41 2SY

- 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 Deborah Dunks against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice was issued on 21 October 2020.
- The breach of planning control as alleged in the notice is without planning permission the erection of a raised patio at the rear of the dwelling in the approximate position shown cross hatched black on the attached plan and as shown in the attached photographs.
- The requirements of the notice are 1. Demolish the raised patio in its entirety at the rear of the dwelling. 2. Remove all resultant material and debris resulting from step 1 from the Land and restore that land to the condition prior to the breach taking place.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- An identical appeal minus the ground (a) has been made by Mr Andrew Dunks reference 3263299

Decisions

3263299

1. The appeal is dismissed.

3263298

2. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a raised patio on land at 16 Arthur Road, Wokingham, RG41 2SY referred to in the notice, subject to the following condition:

    1) The building operations hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

        i) Within 3 months of the date of this decision a scheme to reduce the size of the patio by creating a side path at ground level on the boundary with No18, erecting a privacy screen of 1.8 in height at least 1.2m from the boundary (as shown in option 2 submitted with

this appeal) and turning over to planting the ½ circle and section of patio between that circle and the central steps (as shown in the orange section of option 5 submitted with this appeal) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation and retention.

ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

The Appeal on Ground (a)

3. No16 is one of a row of bungalows that stand on the west side of Arthur Road, which runs more or less due north-south. The land slopes away to the west, so the bungalows are set up higher than the back gardens, but also from north to south so that No16 is set lower than its northern neighbour, No14, but higher up than its southern neighbour No18.

4. Originally, No16 had a large rear patio that at the garden end closest to No18 was just under 1m tall. The appellant has extended the rear of their house with a 4.3m deep extension. The old patio has been extended further out into the garden and raised so that it is level with the new back of the house. The effect is that it is some 1.25m tall where it is adjacent to the boundary with No18. In addition it seems the old patio did not go right up to the boundary fence with No18, but started level with the side of the bungalow – as there is still a 1m wide side passage connecting the front and back gardens. So the new patio is taller and closer to the boundary. An application[1] for planning permission to regularise the situation was refused in October 2020.

5. No14 lies uphill and overlooks the back of No16. A 2m fence provides privacy between the two. Although the relationship to No14 is mentioned in the reasons for issuing the enforcement notice the Council accept there is no overlooking so the main issue is the impact on No18.

6. It is obvious from the photographs provided as well as from my site visit that the new patio does enable an intrusive level of overlooking directly into the back garden and the windows of the rooms on the back of the house at No18. This is not in dispute and the appellant accepts that something needs to be

[1] Application reference 202206

done. To that end she has provided a whole series of options designed to avoid removing the entire patio, but all have been rejected by the Council.

7. The view from the back garden of No18 is instructive. The side wall of the new extension is prominent but is set back from the boundary by the 1m wide path. A tall hedge rises almost to the eaves of that extension where it begins to extend beyond the rear wall of No18, but the hedge then slopes down with the land to below the height of a fence that has been erected on the boundary. The top of this fence is about waist height on the appellant's side but is roughly level with the middle of the windows in the rear of No18. To raise this fence by a further 80cm or so to prevent any overlooking would add considerably to its apparent height when seen from the garden of No18. However, at the moment it does not appear to be overbearing. Its impact is also reduced as it lies to the north of No18 and so has no impact on daylight or sunlight to the garden. It also merges with the tall bush and hedge that runs down the rest of the boundary, so the only area of overlooking is directly opposite the new patio

8. The existing path down the side of No16 has not been altered and if that level was continued down the boundary and into the garden there would be no overlooking with the existing fence in place. A further privacy screen of 1.8m could be erected, level with the side wall of the new extension to No16, on top of the new patio and this would prevent overlooking from the patio to No18. The impact of this screen on No18 would be reduced as it would be setback from the boundary by over a metre. If the new patio were reduced in length, the extent of the privacy screen would also not need to be significant, as obviously, the further down the garden it goes the higher it will seem from No18 due to the slope in the ground. Of the various options provided none achieve this but an amalgamation of option 2 and option 5 comes close. Option 5 retains a short length of patio next to the boundary to enable access from the side path to the back of the house, screened by a 2m wall. I think a 2m wall on the boundary would be overbearing, but if access from the side path to the patio was sacrificed (other than by going into the garden and back up the steps in the middle of the patio), adding the 1.8 privacy screen as proposed from option 2, plus turning the ½ circle and short section of patio adjoining it to the steps into planting so it would not be available for sitting (as in option 5), this would solve the problem and retain most of the patio as built. The current boundary fence could be left as it is or even lowered if the side path were to follow the natural ground level.

9. In my view this could be achieved by attaching a condition to the planning permission requiring a scheme along the lines described above to be submitted to the Council to be agreed. The appellant has already shown a willingness to consider alternatives so this should present no problems. Subject to that condition I shall quash the notice and grant planning permission for the patio.

Other Matters

10. Various other issues have been raised by the appellant. I note the other planning permission granted by the Council for a patio was in quite different circumstances and had significantly fewer effects. The appellant also argues as the new patio is less than 30cm higher than the old patio, the old patio could have been raised to that height using permitted development rights. I presume this is a reference to Class I of the General Permitted Development (England) Order 2015 which taken with Classes A and E means that a raised

platform should not have a height greater than 0.3m. However, the measurement of 0.3m is taken from the ground level, not the top of an existing patio, otherwise the patio could be endlessly extended upwards in increments of 0.3m.

11. There is also some dispute about the size of the previous patio. I agree the new patio is only about 1m longer than the old, but the old patio appeared to have planting all along its leading edge, so the usable area was much shorter. In any event this does not represent a viable fallback position as the old patio has been lost and if the notice were upheld then planning permission would be required to add a further new patio of more than 0.3m in height, even if it were no higher than the original old one. Nevertheless, in my view a suitable compromise solution can be found as described above.

12. I do not need to consider the appeal on grounds (f) and (g). I shall dismiss Mr Dunks' appeal but allow this one and grant planning permission for the patio subject to the condition discussed above.

Simon Hand

Inspector