



Appeal Decision

Site visit made on 30 January 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2024

Appeal Ref: APP/P0119/C/23/3331332

28 Rockland Road, Downend, South Gloucestershire BS16 2SW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Faryad Jafar against an enforcement notice issued by South Gloucestershire Council.
 - The notice was issued on 20 September 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a raised patio.
 - The requirements of the notice are to demolish the raised patio and remove all the constituent materials from the land.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) & (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be varied by in paragraph 6 (time for compliance) substituting '2 months' with '4 months.' Subject to this variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177 (5) of the 1990 Act as amended.

Preliminary Matter

2. The revised National Planning Policy Framework (the Framework) published on 19 December 2023 has been taken into account in my Decision.

Ground (a) appeal

Main Issue

3. The main issue in this ground of appeal is the effect of the raised patio on the living conditions of existing and future occupiers of neighbouring residential property, having regard to privacy.

Reasons

Living conditions

4. The appeal property contains an extended semi-detached dwelling. The dwelling occupies a rectilinear plot and has a lengthy back garden. The back gardens of neighbouring residential properties, 26 and 30 Rockland Road, flank the back garden of the property. Beyond the rear boundary of the property are the back gardens of dwellings in a neighbouring street.
5. The notice attacks a raised patio constructed at the rear of the dwelling. The patio protrudes about 4 m beyond the rear elevation of the extended dwelling,

the latter being perhaps up to 6 m in depth in relation to the original rear elevation. The patio surface is raised around 0.7 m above the level of the ground in the back garden. Some steps lead from the patio down to the back garden level. Spanning almost the whole width of the property, the patio is in proximity to the boundaries with Nos 26 and 30. The patio surface is at an appreciably higher level in relation to the neighbouring back gardens, the ground levels of which are not dissimilar to the ground level in the back garden of the property.

6. Having regard to the suburban setting, neighbouring occupiers might well experience some overlooking in their back gardens, particularly from first floor windows in the rear elevations of adjoining dwellings. Nevertheless, it is not unreasonable for such occupiers to expect to enjoy good levels of privacy at the back of their properties, especially in habitable rooms and where the back garden is closer to the dwelling. The Council's Householder Design Guide Supplementary Planning Document (SPD) seeks to resist balconies or external raised platforms, which I interpret as including raised patios, where overlooking of neighbouring properties is unacceptably extended.
7. A tall, solid screen wall constructed in rendered masonry runs alongside and beyond the far end of the patio, adjacent to the boundary with No 30. The screen wall assists in restricting opportunities for persons using the patio to experience direct close-up views towards windows in the rear elevation of No 30 or over the back garden of that property. As a result, the patio has had little significant adverse effect on the level of privacy enjoyed by occupiers of No 30.
8. On the boundary with No 26 however is a timber fence no more than around 1.5 m above the patio surface level. As a result, users of the patio are able to experience close-up views towards a three-light window serving a habitable room in the ground floor rear elevation of No 26. They are also able to experience close-up views over a significant part of the back garden of that property. This is especially the case when stood on the part of the patio closer to the boundary with No 26. Although there is tall maturing planting in No 26's back garden adjacent to the boundary, this does not appreciably offset the sense of being overlooked by persons using the patio that is experienced by the occupiers of No 26. Moreover, in the case of the planting closest to the patio limited foliage is present during the winter months. Also, the planting could become diseased or damaged or be removed in future.
9. I have considered whether a planning condition could be imposed to require the patio to be suitably screened on the boundary with No 26. However, since this is likely to mean erecting a tall, solid structure similar to that adjacent to the boundary with No 30, significant additional works not part of the breach of planning control would be involved. The Act at s177(1)(a) does not provide for the granting of planning permission for works which do not form part of the matters alleged in the notice. Moreover, the visual impact of such screening on neighbouring property could be considerable. Requiring the erection of screening as a condition of planning permission would deprive the neighbouring occupiers of an opportunity to comment and would not meet the test of reasonableness applied to conditions in paragraph 56 of the Framework.
10. Therefore, the patio contributes to a significant and harmful erosion in the level of privacy enjoyed by the existing and future occupiers of neighbouring residential property. This is in conflict with criterion in Policy PSP8 of the South Gloucestershire Local Plan: Policies Sites and Places Plan, which restricts development with unacceptable impacts on the residential amenity of occupiers of nearby properties, including through loss of privacy and overlooking, as well as being inconsistent with the SPD. Furthermore, the patio is inconsistent with the Framework which amongst other things at paragraph 135 (f) advises that

development should create places with a high standard of amenity for existing and future users.

Conclusion-Ground (a) appeal

11. The unacceptable harm to the living conditions of the existing and future occupiers of neighbouring residential property caused by the patio is in conflict with Development Plan policy and the Development Plan taken as a whole. There are no material considerations which outweigh the conflict with the Development Plan. Therefore, the ground (a) appeal does not succeed.

Ground (g) appeal

12. The ground of appeal is that the time for complying with the notice requirements falls short of what should reasonably be allowed.
13. Since the remedial works are relatively small-scale and straightforward, it would not be unreasonable to anticipate that a suitably skilled and experienced small building contractor would be able to complete them within the two-month period specified. There are likely to be a significant number of contractors with the necessary skills and experience to undertake the required works. Such contractors should be available given a relatively limited period of advanced notice. There is little firm evidence before me of a shortage of such contractors or of lengthy waiting times before building works can be carried out. Consequently, extending the compliance period to eight months would achieve little beyond perpetuating the planning harm identified above.
14. Nevertheless, the compliance period also currently affords limited scope for any unforeseen delays that might occur prior to or during the works. For example, it is entirely possible that given the time of year a prolonged period of adverse weather conditions could be experienced, making undertaking groundworks more difficult. Alternatively, even when arrangements are made in all good faith the appellant's appointed contractor might be delayed or become unavailable at short notice for some hitherto unforeseen reason, forcing alternative arrangements to be made. Extending the compliance period by a couple of months would minimise, if not entirely eradicate, the risks identified above. This would ensure that an appropriate balance is struck between remedying the planning harm as soon as is practicable, whilst also minimising the disruption on the appellant as far as is reasonably possible to avoid imposing a disproportionate burden on them.
15. As a result, I shall vary the notice to extend the period for compliance to four months. The ground (g) appeal succeeds to that extent.

Conclusion

16. For the above reasons, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR