



Appeal Decision

Site visit made on 3 December 2024

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 4 December 2024

Appeal Ref: APP/G2245/C/23/3331204

28 Victoria Hill Road, Hextable, Swanley, Kent BR8 7LL

- 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 Paul Hilier against an enforcement notice issued by Sevenoaks District Council.
- The enforcement notice was issued on 28 September 2023.
- The breach of planning control as alleged in the notice is without planning permission, unauthorized development with the erection of an extended raised platform and steps.
- The requirements of the notice are to: Reduce the length of the patio to 3m as specified by approved plan: HD/BR8 7LL/EXTENSION/PROP-ELEVATION & HD/BR8 7LL/EXTENSION/SITE as per planning permission: 22/02809/HOUSE; Remove the current steps centermost of the raised platform to the rear of the property leading to the lower garden and reinstate them bordering the western boundary to the scale and position specified by approved plans: HD/BR8 7LL/EXTENSION/PROP-ELEVATION & HD/BR8 7LL/EXTENSION/SITE as per planning permission: 22/02809/HOUSE; Restore the land to its condition before the breach took place; Removal of any resultant materials.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended (the Act) falls to be considered.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.
2. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. While the notice has within it a number of words with Americanised spellings ('unauthorized', 'centermost', 'neighboring'), I consider it is clear to the reader what is meant by those words. Therefore, it is not necessary to use my powers of correction.
4. The deemed planning application (DPA) made under ground (a) can only be concerned with development forming whole of part of the breach of planning control alleged in the notice. Therefore, the 1.8m high timber fencing proposed under refused planning application 23/01866/HOUSE (on top of the raised platform on the side adjoining 26 Victoria Hill Road (No 26)) does not feature within the appeal development for which permission is sought through the DPA. Indeed, I saw on my site visit that no such fencing had been erected.

'Hidden' Ground (b)

5. I have a duty to be alert to grounds of appeal which have not been explicitly made, and to deal with them as far as possible. Such a 'hidden' ground of appeal appears to exist under ground (b) of Section 174(2) of the Act since it is argued by the appellant that the matters stated in the notice said to constitute a breach of planning control have not occurred. Specifically, that an extended raised platform has not been erected. As the Council and third parties have had an opportunity to address that argument, and have done so, there is no prejudice caused to any party in proceeding to make a finding on the ground.
6. The appellant says that the existing patio has been extended, but that no works have been done to increase the height of the ground upon which the newly created hard surface sits. For that reason, the development is not said to feature an extended raised platform.
7. I have carefully considered the matter, including scrutiny of plans¹ and photographs submitted by the Council, appellant and a planning consultant (GSP) instructed by the owners and occupiers of No 26. I have of course also conducted a site visit and read all submissions. It seems readily apparent that there has been an extension of the patio rearwards into the garden, and that its height from the ground – by means of the construction of a concrete/blockwork/hardcore supporting structure² – is 2m or so.
8. The appellant, on whom the burden of proof sits, suggests that the surface of the extended patio is no more than 0.3m from the highest adjacent ground level (which is pertinent to the definition of 'raised platform' in The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) and which is considered in the appeal decision I have been asked to note³). However, the appellant has not identified with any degree of sufficient precision where such an area of ground exists and, accordingly, has not met that burden of proof.
9. For these reasons, I find that an extended raised platform has been erected as a matter of fact. Accordingly, ground (b) does not succeed.

Ground (c)

10. For an appeal under this ground to be successful, the burden of proof is upon the appellant to demonstrate on the balance of probabilities that the matters alleged in the notice do not constitute a breach of planning control.
11. The appellant says that the development is permitted by way of general planning permission afforded by Article 3(1) of the GPDO. Specifically, the appellant asserts permitted development rights under Classes F and E (of Schedule 2, Part 1) of the GPDO. However, development which includes the construction or provision of a raised platform is expressly not permitted under Class E. Further, Class F permits the provision or replacement of hard surfaces incidental to the enjoyment of a dwellinghouse. It does not permit the raised platform upon which the hard surface in this case sits. Accordingly, the appeal development does not have general planning permission under the GPDO and ground (c) fails.

¹ 22/02809/HOUSE; 23/01866/HOUSE.

² Photograph 7 of Appendix GSP2 of GSP's letter of 17 January 2024 is particularly instructive in this regard.

³ APP/T5720/C/18/3204768.

Ground (a)

Main Issues

12. The main issues in the deemed planning application are the effect of the development upon:
- the character and appearance of the area; and
 - the living conditions of neighbours (particularly as regards overlooking, outlook and light).

Reasons

Character and appearance

13. Notwithstanding the pre-existing raised patio and planning permission granted under 22/02809/HOUSE, the substantial scale, height and bulk of the appeal development results in an inappropriate, disproportionate addition to the rear of the host dwelling. It also incongruously fails to respect the relationship of the appeal site with the surrounding properties and gardens, with the extended patio surface being broadly the same height as the top of the boundary fence with No 26. There is also a poor choice of external materials with concrete blocks being visible on the side facing the occupiers of No 26.
14. For these reasons, and notwithstanding very limited public views, the appeal development causes significant harm to the character and appearance of the area. As such it is in conflict with Policy SP1 of the Council's Core Strategy⁴ (CS) and Policy EN1 of the Council's Allocations and Development Management Plan⁵ (ADMP), which together seek to protect character and appearance. For the same reasons, the development does not accord with the design principles of the National Planning Policy Framework (the Framework).

Living conditions

15. The increased length of the raised patio down the garden, and its floor height slightly above that of the top of the boundary fence with No 26, creates considerable potential of overlooking from people using the patio into the gardens and homes of neighbours – and particularly into the kitchen of No 26. This causes a considerable reduction in privacy afforded to the neighbouring occupiers, even taking into account the degree of natural vegetative screening between the properties and a normal acceptance of an element of intervisibility.
16. While the development (without the fence which was proposed under 23/01866/HOUSE) would not have a significant effect on neighbouring outlook and light, because it is largely behind existing boundary fences, I consider that placing a further fence or screen on top of the very high raised platform would certainly do so given the relationship in levels. Therefore a condition requiring such a fence or screen to tackle the overlooking harm would cause harm to living conditions in other respects, and would not make the development acceptable.

⁴ LOCAL DEVELOPMENT FRAMEWORK CORE STRATEGY - DEVELOPMENT PLAN DOCUMENT - ADOPTED 22 FEBRUARY 2011.

⁵ ADOPTED FEBRUARY 2015.

17. For these reasons, the appeal development causes significant harm to the living conditions of neighbouring occupiers. As such it is in conflict with Policy EN2 of the ADMP, as supported by the Council's Residential Extensions Supplementary Planning Document (SPD), which seeks to protect the amenities of existing and future occupiers of nearby properties. For the same reasons, it is not in accord with the design principles of the Framework.

Conclusion on Ground (a) and the DPA

18. The appeal development does not accord with the development plan as a whole, and there are no other considerations which outweigh that finding. Accordingly, I will not grant planning permission and ground (a) fails.

Conclusion

19. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Andrew Walker

INSPECTOR