



Appeal Decisions

Site visit made on 27 January 2026

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 February 2026

Appeal A Ref: APP/C3620/D/25/3360838

78 Stag Leys, Ashted KT21 2TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the 1990 Act) as amended against a refusal to grant planning permission.
- The appeal is made by Mr Anuj Gupta against the decision of Mole Valley District Council.
- The application Ref is MO/2024/1957/PLAH.
- The development proposed is erection of raised garden decking.

Appeal B Ref: APP/C3620/C/25/3360839

78 Stag Leys, Ashted KT21 2TL

- The appeal is made under section 174 of the 1990 Act (as amended).
- The appeal is made by Mr Anuj Gupta against an enforcement notice issued by Mole Valley District Council.
- The notice was issued on 27 January 2025.
- The breach of planning control as alleged in the notice is *without planning permission, the creation of raised decking area in the approximate position marked blue on the attached plan.*
- The requirement of the notice is:
 - (i) *Reduce the decking area indicated in blue on the attached plan to that previously approved in planning approval MO2009/0950, as depicted in approved drawing RF3679-PP*
- The period for compliance with the requirement: *6 months after the date the Notice takes effect.*
- The appeal is proceeding on the ground set out in section 174(2)(f) of the 1990 Act (as amended).

Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

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

Preliminary Matters

3. It is prudent to detail the background in regard to these appeals. Planning permission¹ was granted at the appeal site in 2009 for the erection of a rear orangery. The permission included the provision of a decked area to the rear of the orangery and a set of stairs down to the garden. The permission also granted a separate modest decked area outside the French doors on the northern side of the property, adjoining No 77 Stag Leys.
4. Both parties agree the development was not constructed in accordance with the approved drawings. Specifically in that the decked area was larger and deeper than that approved and encompassed the entire width of the property.
5. In 2024 the decking was replaced without planning permission. The decked area was further increased in size, by extending it deeper from the rear elevation. The

¹ Mole Valley Planning Ref: MO2009/0950

appellants submitted a planning application² retrospectively, however this was refused by the Council as Local Planning Authority and is now the subject of Appeal A. The Council also served an enforcement notice, which is the subject of Appeal B.

6. The requirements of the enforcement notice provide the appellant the opportunity to adhere to the granted planning permission ref: MO2009/0950, which the Council had found to be acceptable. Compliance with the requirement would provide the appellant with two separate modest raised decks and set of steps leading to the garden level.
7. To minimise duplication and repetition, I have dealt with Appeals A and B together in one decision letter.

Appeal A – Main Issue

8. The main issue in Appeal A is the effect of the proposal on the living conditions for the occupiers of the adjoining property at No 77 Stag Leys, with specific reference to overlooking and privacy.

Reasons

Living conditions – overlooking and privacy

9. The appeal site is a detached dwellinghouse located on the south side of Stag Leys in Ashted, which consists mainly of detached properties located on spacious plots. The topography is undulating with the rear gardens sloping down and away from the properties.
10. The development is for the retention of the raised decked area as built. The elevated deck projects out into the rear garden by approximately 4 metres. Due to the slope of the land, it is approximately 1.2 metres high at the point closest to No 77, not including the finished safety balustrade around the perimeter. The previously approved scheme (ref: MO2009/0950) had a significantly smaller raised footprint and was set further away from the boundary with No 77.
11. The development is wider, deeper and higher than the approved. Despite being set off the boundary with No 77, the decking provides a significant elevated vantage point, at close quarters enabling views of the rear elevation and garden area of this property. Given this elevated position, the decking leads to a loss of privacy through actual and perceived overlooking experienced from the appeal site. Whilst a degree of mutual overlooking is to be expected in a suburban setting, it is the height and the close relationship with No 77 which creates harm, to the detriment of the neighbours' living conditions through unacceptable overlooking into private areas.
12. The appellant has sought to mitigate these issues through the provision of bamboo screening and pleached planting above the existing closed board fencing. I acknowledge the screening does limit views into and out of the appeal site, however the additional height and visual presence creates additional unneighbourly treatment in close proximity to the neighbouring windows and garden.

² Mole Valley Planning Ref: MO/2024/1957/PLAH

13. The appellant is prepared to accept a condition in respect to alternative screening options. I have carefully considered whether a screening condition could be attached to any permission to ensure that overlooking is mitigated. However, it is unclear whether a treatment could be provided that would not be visually dominant over the existing boundary fence, and/or whether it would require separate planning permission.
14. The appellant refers to a potential fallback position, specifically that the previous enlarged decked area would be a material consideration in the assessment of the proposal. The appellant highlights the development had been in place since 2009 and could have been lawful through passage of time. However, I have not been presented with a Lawful Development Certificate (LDC) for such a development. Furthermore, this structure has now been replaced by the development before me, thus represents a new planning chapter at the appeal site.
15. Whilst I accept that a fallback position is available, this is in respect to the extant scheme (ref: MO2009/0950) and forms the requirements of the enforcement notice linked to this appeal. Compliance with the requirements of the notice, would ensure that the development is undertaken in accordance with the extant scheme which was found acceptable.
16. Overall, the development has an unacceptably harmful effect upon the living conditions of the occupiers of No 77 due to an increased level of actual and perceived overlooking from the appeal site resulting in an unacceptable loss of privacy. As such, the proposal conflicts with Policy EN4 of the Mole Valley Local Plan 2020-2039, adopted October 2024 which seeks, among other things, to ensure the amenity of residents occupying properties in the surrounding area is not significantly affected by overlooking causing a loss of privacy. It is also contrary to the National Planning Policy Framework which, amongst other things, seeks a good standard of amenity for all existing and future occupants of buildings.

Appeal B – Appeal under ground (f)

17. The appeal on ground (f) whether the requirement is excessive to achieve the purpose of the notice. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or b) remedying any injury to amenity which has been caused by the breach.
18. The requirement of the enforcement notice is clear, as it requires the reduction of the decking to that approved under the 2009 permission. This provides an obvious alternative to its complete removal. Consequently, I am satisfied, that the purpose of the notice is to remedy the injury to amenity which has been caused by the breach as set out under section 173(4)(b) of the 1990 Act.
19. The appellant considers lesser steps would remedy the breach of planning control, namely restoring the decked area which existed prior to the current scheme. The appellant contends that this development was immune from enforcement action and lawful. However, there is no ground (d) appeal before me. I would acknowledge from the photographic evidence submitted, that a decked structure was in situ at the appeal site since at least 2010. Be that as it may, I have not been

presented with an LDC or similar that clarifies its lawful position. Even if I was to accept the previous decking was lawful, neither party disputes that it has been replaced by the current development. As such, the only lawful position for a decked area to be constructed, would be in accordance with the extant permission. Consequently, there are no lesser steps that could be taken here, as the injury to amenity would not be remedied.

20. Therefore, the steps set out in the notice are not excessive; they are proportionate and commensurate to the breach of planning control. The provision of a decked area as detailed in the extant and lawful permission would be the minimum that is required to restore the property to its condition prior to the breach taking place. The ground (f) appeal fails for Appeal B.

Overall conclusions

Appeal A

21. For the reasons given above, I conclude that the appeal should be dismissed.

Appeal B

22. For the reasons given above, I conclude that the appeal should not succeed and I shall uphold the enforcement notice.

Robert Naylor

INSPECTOR