



Appeal Decision

Site visit made on 18 April 2026

by **A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 18th May 2026

Appeal Ref: APP/E2001/C/23/3329575

Sylvan House, Main Road, Scalby, East Riding of Yorkshire HU15 2UU

- 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 "Act").
- The appeal is made by Mr Gary John Wainman¹ against an enforcement notice issued by East Riding of Yorkshire Council.
- The enforcement notice was issued on 8 August 2023.
- An extract of the breach of planning control as alleged in the notice is at Annexe A attached below.
- An extract of the requirements of the enforcement notice is at Annexe A attached below.
- The period for compliance with the requirement is 90 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Act.
- An application for costs is made by the appellants against the Council, and the costs decision is at the end of this Decision.

Summary of Decision: The enforcement notice is quashed, and planning permission is granted in the terms set out below in the formal decision.

Background information

1. The site has an extensive planning history, and the appeal parties are aware of the most relevant aspect of that history: I will not repeat it here. From all the written representations it is apparent the Council objects to the as-built development because the dwelling has not been built in accordance with the approved plans, due to several material departures. They have referred to these in the notice at section 3 and 4. However, the notice only requires the raised patio to be reduced to a set height due to its effect on living conditions of the neighbours. The Council is under-enforcing, and this is their prerogative. I will proceed on that basis.

Ground (a)

2. The terms of the deemed application are directly derived from the allegation, but the reasons for issuing the notice focus on the effect of the raised patio on the occupiers of properties known as Bramley Lodge and Thiepval, due to potential overlooking when occupiers of the host dwelling are using the raised patio area. For reasons given elsewhere, the notice is under-enforcing, and I will focus on the raised patio and determine the deemed application on this basis.
3. The **main issue** is effect of the raised patio on the living conditions of the occupiers of Bramley Lodge and Thiepval regarding loss of privacy.
4. Thiepval and Bramley Lodge are situated to the west of the appeal dwelling, which is known as Sylvan and is a two-story dwelling with detached garage. The site is not within any settlement limit although built development is located along the highway. The surrounding area is rural in character.

¹ The appellants are referred to as Mr & Mrs Gary John & Kerry Michelle Wainman in the appeal form. The appeal administration correspondence refers to as Mr Gary John Wainman. I have adopted the latter.

5. The appeal site sits at a higher level than the properties to the west. Irrespective of the exact measurements of the raised patio and given the close-knit arrangement, layout and juxtaposition of the dwellings, people using the raised platform are likely to have direct views of adjoining properties and vice versa. The perception of being overlooked is likely to be greater for adjoining occupiers, due to the difference in ground levels. That said, the fence combined with the hedgerow forms an effective screen along the western boundary. The concern is that during winter people using the patio are likely to be noticeable thus increasing the perception of being overlooked, but the patio is likely to be infrequently used during the winter. During the summer months, direct views of dwellings to the west and their amenity spaces is likely to be severely restricted by dense foliage, which forms an effective screen. Direct views in and out of the appeal property are significantly reduced by the landscaped boundary.
6. The Council say the boundary treatment is unsuitable because the planting could be removed or the height of the foliage would need to be considerable thus causing other issues. Provided the western boundary remains suitably landscaped, the use of the raised patio in connection with the residential use of Sylvan is unlikely to result in material loss in privacy of adjoining dwellings, due to overlooking. Subject to the imposition of suitably worded conditions, in my assessment, the raised patio does not, and would not, have a materially harmful effect on neighbours' living conditions.
7. The dwelling's finished floor level has been raised above that approved as part of the original approval and the Council allege this further exacerbates the situation regarding amenity impacts. The list of suggested conditions also seeks to control the as-built development. However, at risk of repetition, the notice only requires alterations to the raised patio. The Council cannot have it both ways: on the one hand under-enforce and on the other hand control the development via imposition of new and different conditions.
8. A pragmatic outcome requires consideration of whether suitably worded conditions can be imposed in such circumstances where the development is retrospective. If it cannot, planning permission would have to be refused. In situations where the development has already taken place, it is not feasible to impose a condition precedent or to require that outstanding details be agreed prior to the commencement regardless of the importance of those details. Nonetheless, when a condition is imposed that requires the submission and approval of details or a scheme for development which already exists, it is essential that the condition incorporates a sanction or enforcement mechanism. This is necessary to ensure compliance if the required details are not submitted or approved as stipulated.
9. The key feature of the retrospective condition is that the operational development permitted must be removed if the required detail or scheme is not implemented in accordance with the submitted details within the prescribed timescale. This would, effectively, address the Council's concerns about removal of the boundary treatment. In my assessment, it is reasonable to require details of the boundary treatment. I consider that the proposed condition meets the six tests and will be imposed with an appropriate sanction if there is a failure. Contrary to the Council's arguments, conditions can be imposed to make the development acceptable in planning terms at less disruption and is a proportionate outcome, and, accordingly, the development meets with the Council's relevant policy ENV1 as well as guidance found in national policy Framework at paragraph 134 and 135.

Overall conclusions

10. In my planning judgment and having regard to all other matters raised, I conclude that planning permission can be granted for the development subject to conditions. The appeal should be allowed on ground (a) and there is no need to consider ground (f).

Formal decision

11. 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 Act, for the development already carried out, namely, the erection of a raised patio contrary to condition 22 imposed on planning permission ref 19/02398/VAR, subject to the following conditions:
- 1) The raised patio to the rear and western sides of the dwelling shall be reduced in overall height so that the raised patio does not exceed the level indicated by the red line shown on the attached photographs at Annexe B to this Decision respectively and all materials removed from the land within 90 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 90 days of the date of this decision, the following details and specifications, which are hereinafter called “the Scheme”, shall have been submitted for the written approval of the local planning authority and the Scheme shall include a timetable for its implementation:
 - a) Details, including height and scaled plans, of the fence and planting, including species, along the boundaries with properties known as Bramley Lodge and Thiepval.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the Scheme or any element of 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 implemented and the development completed in accordance with the approved timetable. Upon implementation of the approved Scheme specified in this condition, that Scheme, in its entirety, shall thereafter be maintained and retained unless otherwise agreed with the local planning authority.

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.

A U Ghafoor

INSPECTOR

Annexe A

Extract copy of section 3 to the issued notice - the matters which appear to constitute the breach of planning control

Planning permission was granted in 2010 under planning application 10/02704/PLF for the 'Erection of 1 no dwelling and garage'.

In 2019 planning application 19/02398/VAR was approved for the 'Variation of Condition 22 (Approved Plans - Garage only) of planning permission 10/02704/PLF'.

It appears to the Council that the following conditions have not been complied with:

Non-compliance with approved plans under planning permission 19/02398/VAR, being as follows:

- increase in the overall height of the garage and dwellinghouse;
 - roof lights have been constructed into dwellinghouse's rear roof slope;
 - the dwellinghouse's ground floor western fenestration has been altered;
 - a raised patio (with a height in excess of Permitted Development rights) has been constructed to the rear and western sides of the dwellinghouse; and,
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- the surface water drainage scheme discharges to an adjacent ditch located at the rear boundary rather than to the required soakaway within the site.

The following conditions have not been complied with:

Failure to comply with Condition 6 of 19/02398/VAR, which conditions states:-

"The details of the works for the disposal of foul and surface water drainage, including details of any balancing works and off-site works, shall be those approved for the discharge of condition 7 of planning permission 10/02704/PLF under application 13/30178/CONDET. The development shall not be first occupied until these works have been carried out in accordance with those approved details. This condition is imposed to ensure that the development can be properly drained."

Failure to comply with Condition 8 of 19/02398/VAR, which conditions states:-

"Notwithstanding the provisions of Classes A, B or C of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows, dormer windows or other openings (other than those expressly authorised by this permission) shall be constructed or formed in the western and eastern elevations of the dwelling. This condition is imposed in the interests of the visual amenities of the area and the residential amenities of neighbouring occupiers."

Failure to comply with Condition 21 of 19/02398/VAR, which conditions states:-

"The development hereby permitted shall be carried out in accordance with the following approved plans:

Proposed site plan - received 08.08.2019

Proposed elevations, floor plan and sections 3628/P4 (Garage) - received 01.08.2019

Proposed elevations and floor plans (dwelling only) 2010-11-176/R - received 5th July 2013

This condition is imposed in accordance with policies ENV1 of the East Riding Local Plan and for the avoidance of doubt and to ensure that the development hereby permitted is carried out in accordance with the approved details in the interests of the character and amenity of the area and the provisions of the development plan."

Extract copy of section 5 to the issued notice – what you are required to do

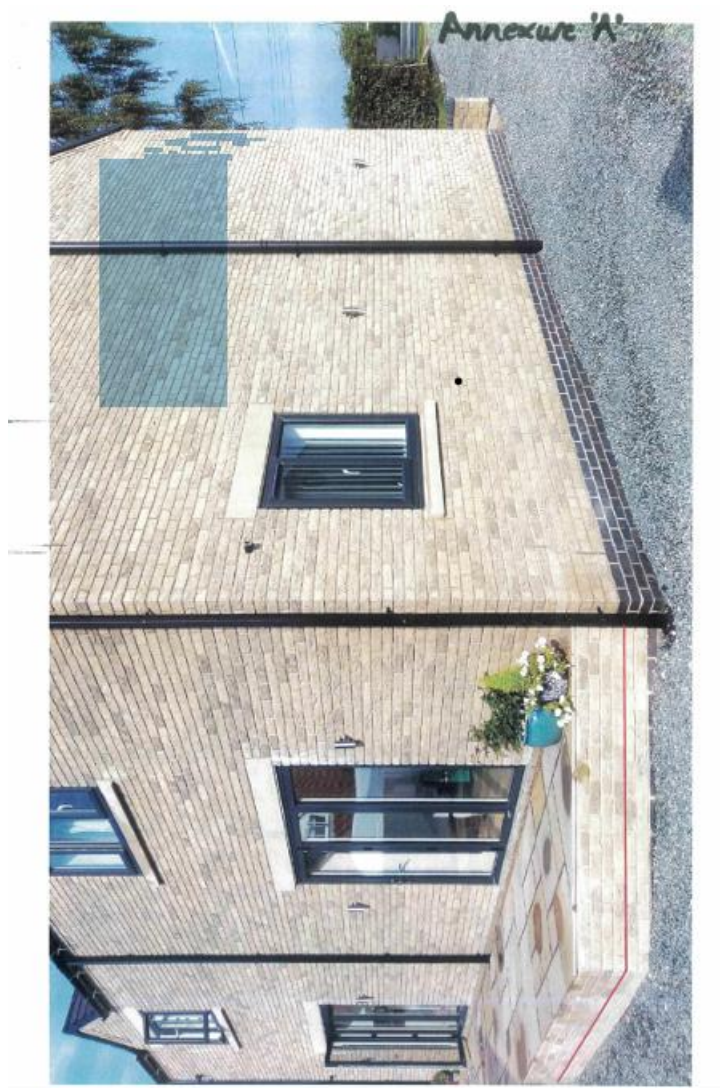
5. WHAT YOU ARE REQUIRED TO DO

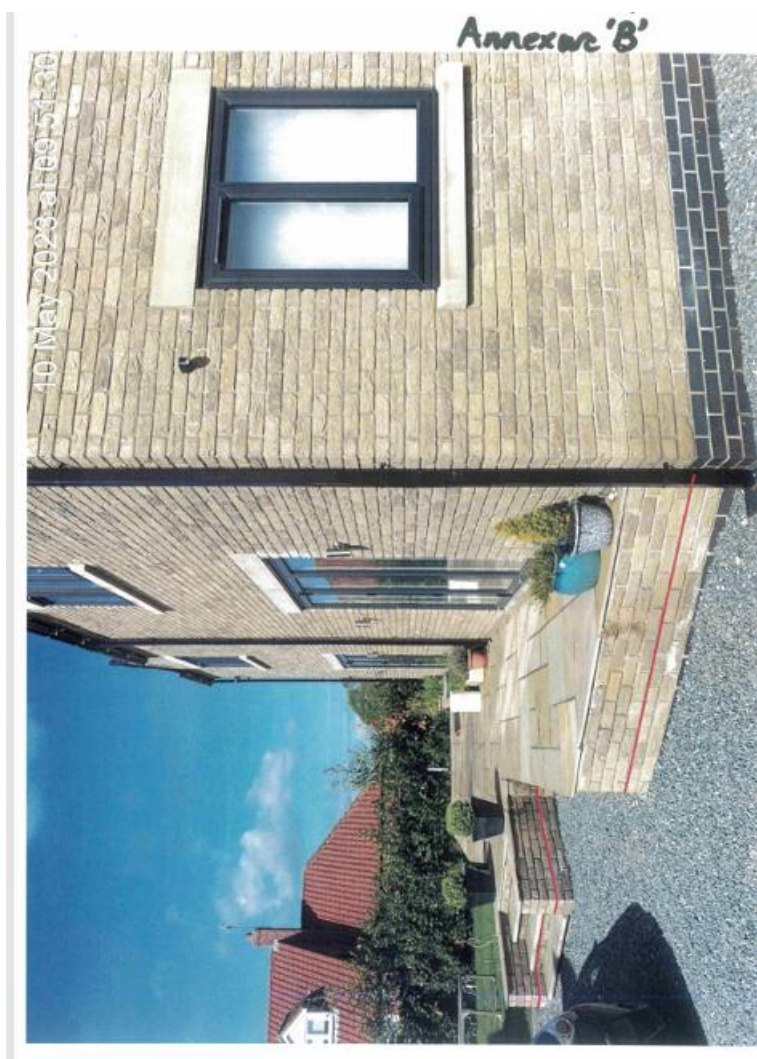
As a person responsible for the breaches of conditions specified within this notice, you are required to ensure compliance with the stated conditions by carrying out the following steps:-

1. Reduce the overall height of the raised patio, as found to the western side and rear of the dwelling, so that the raised patio does not exceed the level indicated by the red line shown on the attached photographs marked Annexures 'A' through 'E' respectively; and
2. Upon compliance with Step 1 above, remove all resulting debris from the land.

End of Annex A

Annex B









End of Annex B

Costs application

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Gary John Wainman for a full award of costs against the East Riding of Yorkshire Council.
 - The appeal was made against the decision of the Council to issue an enforcement notice.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The notice refers to several breaches of the approved plans, but the notice under-enforces because of the harm caused by the raised patio. The applicant explains the respondent should have taken account of the screening feature. However, the respondent took a different approach and identified harm caused by the raised patio's height. The reasons for issuing the notice clearly explain the alleged harm to living conditions. the issue is a classic planning matter and requires an exercise of judgment by the decision maker: they did not need technical evidence. The respondent was entitled to conclude it was expedient to issue the notice and any disagreement with the applicant's agent does not amount to unreasonable behaviour.
4. On the merits of the development alleged, I have come to a different conclusion, and my Decision explains why I have attached greater weight to the landscaped boundary. Nonetheless, at appeal stage, sufficient evidence was produced to substantiate the reasons for taking enforcement action and I do not agree that the respondent's evidence contained unsupported arguments.
5. I have carefully considered this application but come to an inescapable conclusion. The applicant has not demonstrated that the respondent's behaviour before or after the taking of enforcement action amounts to unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG. It has not been demonstrated that an award of costs, full or partial, is justified in the circumstances.

A U Ghafoor

INSPECTOR