



Appeal Decision

Site visit made on 1 June 2026

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date 18 June 2026

Appeal Ref: APP/Z3825/C/24/3343866

Pengarth, 11 Nightingales, West Chiltington, Pulborough, West Sussex RH20 2QT

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended (the Act).
- The appeal is made by Miss Anamaria Chiuзан against an enforcement notice issued by Horsham District Council.
- The notice was issued on 3 April 2024.
- The breach of planning control as alleged in the notice is *'Without planning permission, the erection of a raised platform in the form of timber decking'*.
- The requirements of the notice are to:
 - (1) Remove the decking from the land (hatched blue on the attached Plan).
 - (2) Remove from the land all materials and debris resulting from the taking of the above step 1.
- The period for compliance with the requirements is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (f) of the Act. 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.

Summary Decision: The appeal is dismissed, the enforcement notice is upheld and planning permission is refused.

Ground (d)

1. For ground (d) to succeed, the onus is firmly on the appellant to demonstrate, on the balance of probability, that when the notice was issued it was too late to take enforcement action against the erection of a raised platform in the form of timber decking (the decking). The latest date for substantial completion of the decking is four years beforehand, thus by 3 April 2020 (the relevant date).
2. The decking is mainly narrow and long and runs across all of the main rear elevation of Pengarth, with a wider section towards one end. It is raised to give level access from rooms in this dwelling, with steps down to the sloping back garden ground level. In essence, the appellant claims that old, rotten raised timber decking and a sunroom at the back of Pengarth (also described collectively as the existing structure) was improved or modernised by the decking.
3. Some of the appellant's photographs appear to show decking inside the sunroom, which had the same level access from a room in Pengarth, roughly where the wider section of the decking is now. However, there is little objective evidence of raised external decking elsewhere on the rear elevation of Pengarth, whether derelict or not. In any event, the sunroom and internal decking was demolished and replaced by the wider section of the decking, supplemented by the narrow, long section. On this basis, while the sunroom and internal decking may have existed well before the relevant date, the starting point was a cleared site. The decking was a new structure, despite the sunroom and even if there was previous external decking.

4. The appellant refers to work on the decking said to have been completed by a contractor before the end of March 2020, including work shown in the appellant's photograph. This photograph is not date stamped and no electronic file details were provided. There is no quote or estimate for the decking work or any invoice for payment which might assist with corroborating dates. Nor is there a sworn statutory declaration by the appellant or the contractor that I might give greater weight to.
5. Notwithstanding this, although notable construction work on the decking is shown in the photograph, this is not the same as the decking being substantially completed, which the contractor also otherwise claims¹. The photograph shows much of the surface of the narrow section of the decking was in situ, with two chairs and a small table visible. However, the guard rail of this part is incomplete and a substantial component of the decking – the wider section – is just framing with no upper surface, elevations, guard rail or steps.
6. Consequently, even if the appellant's photograph is from March 2020, the nature and extent of outstanding works went beyond 'final finishes', said by the contractor to have been delayed until after March 2020 because of Covid-19 national lockdown. The contractor refers to 'full job completion' having occurred later than this, which is not inconsistent with the lockdown being lifted with effect from early May 2020 (a matter of fact) or the recollection of the owner of Rosecroft (the dwelling next to Pengarth on one side) who believes the decking was constructed in June/ the summer of 2020. I have not been informed that the decking was phased or intended to be carried out other than as a single composite act of development and there is little evidence to suggest it was not designed to be constructed as such.
7. The sunroom (roof) is still in situ in an April 2020 Google Earth aerial image provided by the Council. Although immediately behind Pengarth is partly in shadow, when this image is enlarged on screen no decking can be seen next to the sunroom, just the rough texture of the grass back garden up to the rear elevation of the dwelling. On this basis, the decking had not been started, let alone substantially completed by April 2020.
8. A precise April date for this aerial image is not provided by the Council. But given the circumstances outlined above, even if works on the ground were as advanced by March 2020, as the appellant suggests, I have not been informed precisely when in March the appellant's photograph was taken. There is little evidence that the significant outstanding works to the decking could have been, or were, finished shortly after the appellant's photograph was taken and the decking substantially completed by the relevant date.
9. I accept that the Council's aerial images are not date stamped and also without electronic file details. However, the relevant test in this appeal is not beyond a reasonable doubt and the onus is on the appellant. Google Earth aerial images, regardless of origin, are generally accepted at face value for planning purposes. The appellant has not established a precise date for the April aerial image or when it was actually uploaded to Google Earth. There is thus little evidence to support the appellant's contention that it was not taken in April 2020, after the relevant date. Nor is there evidence to suggest the image is not authentic without alteration or manipulation, including using Artificial Intelligence.

¹ 3 May 2024 letter from Brasier Garden & Tree Care.

Conclusion on ground (d)

10. Taking into account all the above, as a matter of fact and degree, the appellant's evidence is not sufficiently precise or unambiguous and there is evidence of substance to contradict it or render it less than probable. The appellant has not, therefore, demonstrated on the balance of probability that the erection of a raised platform in the form of timber decking was substantially completed by the relevant date, so it is not immune from enforcement action due to the passage of time. Consequently, when the notice was issued enforcement action could have been taken in respect of this breach of planning control. Accordingly, ground (d) fails.

Ground (a)

11. Ground (a) is that planning permission ought to be granted for the breach of planning control set out in the notice, namely the erection of a raised platform in the form of timber decking. The main issue is:
- the effect of the decking on the living conditions of the occupants of Rosecroft, having regard to privacy.

Reasons

12. Though mostly narrow, all of the decking is suitable for normal outside domestic use and activity along its entire length, such as relaxing or entertaining. It also provides a means of passage and access to the back garden from several rooms in Pengarth. As such, it is likely well used. The decking surface is about 0.7m above back garden ground level and one end abuts the approximately 2m high boundary fence dividing Pengarth from Rosecroft, which owns the fence. There was a taller, 3m or more boundary hedge between these properties which was removed by the owner of Rosecroft and replaced by the fence. This opened a line of sight between these properties but this predated the decking.
13. The visible upper part of the fence is only low on the Pengarth side because much of the rest of it is obscured by the decking structure raised above back garden ground level. I saw that this part of the fence is not tall enough to prevent unrestricted, panoramic standing views from the decking across virtually all of the back garden of Rosecroft and into or towards side or rear facing habitable room windows. Albeit that such views are progressively more limited further from the boundary fence, any part of the decking can be used by the appellant or could be used by future occupants of Pengarth, including near or next to the fence where such views are most pronounced. As well as significant actual direct overlooking, the obvious presence of a person or people and activity on the decking would give a strong, uncomfortable perception of being surveyed from an unexpected close, elevated vantage point².
14. These circumstances therefore significantly diminish the living environment of Rosecroft and unduly erode normal expectations for the enjoyment of this property by those who live in it.
15. I saw that a raised planter across one end of the decking, next to the fence, contains tall planting but this does not prevent some views through this foliage. Even though the planter is connected to an irrigation system, I have not been informed that it cannot be easily disconnected and this structure is wheeled,

² As informed by photographs provided by the owner of Rosecroft.

so easily moved. In these circumstances a planning condition to retain the planter in situ, next to the fence, could not be easily or reasonably enforced by the Council. In any event, planting should not be used to screen or justify fundamentally unacceptable development to begin with, including because landscaping cannot be guaranteed or relied upon indefinitely.

16. Nor should the occupants of adjoining residential property have to install or maintain measures to protect their living conditions in response to development on adjoining land. For example, to maintain or undertake their own planting, erect taller fencing or extend the height of existing fencing with trellis and no matter that in this case the appellant does not object to such measures.
17. Planning decisions are made in the public interest in respect of matters of acknowledged planning importance – such as the living conditions of occupants of residential properties – not for the private interest or benefit of any particular individual (though these outcomes may coincide).
18. I appreciate that the internal floor of the sunroom was about the same height as the decking. But the sunroom was much further from the boundary with Rosecroft and albeit mainly glazed, it was an enclosed not an open structure so views from it were more restricted, as was appreciation of people or activity inside it. I saw that views from rooms in Pengarth (without purposefully leaning out of windows or doors) are at an angle and not so obvious or intrusive or invasive as from the decking (which includes perpendicular views); in the main, more towards the middle or end of the back garden of Rosecroft and not into or towards all habitable room windows.
19. The Council does not dispute it has granted planning permission for an extension and raised wooden decking/platform at Cerne Cottage, on the other side of Pengarth. But the appellant has provided no details of this approved development. Even if it has a floor level at the same height as the decking at Pengarth, there is little evidence that it results in the same or similar impacts on the occupants of any other dwelling, including Pengarth which has a different juxtaposition and orientation with Cerne Cottage than it does with Rosecroft and there is a tall intervening hedge.
20. Not at my invitation, I understand I was informed at the site visit about an alleged 'orangery extension' said to have been granted planning permission at Rosecroft, with no facing French doors (unlike the existing situation at Rosecroft). I do not have any details and even if planning permission has been granted for such development, there is no guarantee that it would be built. There is also little to suggest that these circumstances would materially change views from the decking into the back garden or other habitable room windows of Rosecroft.
21. Consequently, the raised platform in the form of timber decking causes significant harm to the living conditions of the occupants of Rosecroft, having regard to privacy. It is therefore contrary to Policy 33 of the Horsham District Planning Framework, November 2015. This policy includes that development should avoid unacceptable harm to the amenity of occupiers of nearby property through overlooking.

Other Matters

22. The appellant is aggrieved by the manner of the Council's conduct in its investigation of the alleged breach of planning control and how it progressed the

appeal, including it is said that the Council did not have regard to Article 6 of the Human Rights Act 1998, as amended. However, the appellant's complaints in these regards are not relevant to my appeal decision. Amongst other things, it has been made with due regard to Article 6(1) which includes that everyone is entitled to a fair and public hearing by an independent and impartial tribunal, in this case by the written representations procedure including a site visit.

23. There is otherwise little to suggest that the Council did not properly exercise its development management responsibilities, including that it is for the Council to decide if it was expedient to take enforcement action. Whether there is dialogue between the appellant and the Council after the outcome of this appeal is a matter for the respective parties.
24. The alleged personal circumstances, behaviours or motives of the owner of Rosecroft are not relevant to my decision and a breakdown in neighbour relations is a private matter for the respective parties. Alleged breaches of planning control at Rosecroft or other actions by the owner of that property, such as to remove the taller boundary hedge and alleged impacts on the appellant as a result, or due to other actions of the owner, are not within my remit.
25. I appreciate that the appellant was initially unaware that the decking required planning permission. However, ground (a) provides a mechanism for planning permission to potentially be granted retrospectively and the appellant has had a reasonable opportunity to present a case throughout the appeal process. I have had regard to the relevant circumstances and planning merits of this case, including that I am satisfied no other conditions could overcome the harm identified above.

Planning balance and conclusion on ground (a)

26. The decking provides a valued outdoor amenity area for the appellant, in addition to or different in experience to what existed before. This personal preference is a private benefit so it carries limited weight in support of the appeal. The effect of the decking on the character and appearance of the area was not a reason for issuing the notice, so the absence of harm in this regard is a neutral factor in my decision. Set against this, there is significant harm to living conditions. This is an important consideration and as such it carries significant weight against the appeal. The benefits of the development do not, therefore, outweigh the harm.
27. There are no other considerations to indicate that ground (a) should be determined otherwise than in accordance with the development plan taken as a whole³. Consequently, for the reasons given above, the erection of a raised platform in the form of timber decking is unacceptable and planning permission should not be granted. Accordingly, ground (a) fails.

Ground (f)

28. For ground (f) to succeed, the appellant must demonstrate that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control.
29. I acknowledge that planning enforcement should be remedial, not punitive and that what the appellant advocates would be at less cost and disruption than complying with the requirements of the notice. However, the appellant does not own the

³ Section 38(6) – Planning and Compulsory Purchase Act 2004, as amended

boundary fence, so I am not able to impose conditions to make the fence taller than 2m. It would anyway require a separate grant of planning permission that is not within the scope of this appeal. I have already explained in ground (a) why planting is not satisfactory mitigation in this case and why views from windows in rooms in Pengarth (or the sunroom when it existed) are materially different to views from the open decking.

30. It is clear from the requirements of the notice – to remove the decking – that the purpose of the notice is to remedy the breach of planning control under section 171A(1) of the Act. Sections 173(3), (4)(a) and (5) provide that steps required to be taken can include restoring the land to its condition before the breach took place by the removal of any building or works. The requirements in the notice are integral to achieving this outcome and the Council does not seek to under-enforce. No other lesser steps were suggested, including any obvious alternative scheme for modification of the decking.
31. In these circumstances, the steps required by the enforcement notice to be taken are consistent with remedying the breach of planning control so are necessary, proportionate and not excessive. For these reasons ground (f) fails.

Overall Conclusion

32. Grounds (d), (a) and (f) all fail, so the appeal does not succeed.

Formal Decision

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

Robin Buchanan
INSPECTOR