



APPEAL STATEMENT

Planning appeal under section 78 of the Town and Country Planning Act 1990

Site:	32 Bradshaw Close, Fair Oak, Eastleigh SO50 7BS
Appellants:	Mr S Cole
Proposal:	Retention of a new boundary fence and raising of new patio (Amended H/22/93556)
LPA ref.	H /23/94919
Decision date	05 October 2023

1.0 Introduction

- 1.1 This appeal statement responds to the reason for refusal from Eastleigh Borough Council. It is supported by the original application, the planning history for the property and copies of various exchanges with the planning officer during the consideration of this and the previous application for a similar proposal.
- 1.2 A planning application dated 22 March 2023 was submitted to Eastleigh Borough Council for “replacement patio and fencing, new boundary fence facing Mortimers Lane” (same description as previously used. This was a revised application following the earlier withdrawal of H/22/93556.
- 1.3 The LPA unilaterally changed the description of development to “retention of new boundary fence and raising of new patio (amended H/22/93556)”.
- 1.4 A copy of the previous application (H/22/93556) also accompanies this appeal as this is particularly relevant to consideration of these proposals.

2.0 Proposal

- 2.1 The description of development on the decision notice is not entirely accurate.
- 2.2 The application and this appeal relate to the retention of the boundary fence fronting Mortimers Lane, retention of the raised patio and a proposed increase in height to three fence panels on the southern boundary.
- 2.3 All works were undertaken prior to the submission of a planning application on the assumption that planning permission was not required. The only element of this proposal that has not yet been implemented is the height increase to the fence panels.

3.0 The appeal site and immediate surroundings

- 3.1 32 Bradshaw Close is a detached two-storey house situated at the northern end of Bradshaw Close, a small cul de sac of 32 houses. It situated at the entrance of the cul de sac with Mortimers Lane (B3037) extending east-west along the property’s northern boundary.
- 3.2 All the properties on Bradshaw close are detached, they include a mixture of bungalows and two-storey houses.
- 3.3 The northern end of the cul de sac where the appeal site is situated is at higher ground level than the southern. The appeal site is on ground that slopes down from north to south and down from east to west. The rear garden is at lower ground level that the house, as is that of the neighbour to the south no.31.
- 3.4 The northern boundary adjoins Mortimers Lane, a busy road connecting Fair Oak with Lower Upham and Bishops Waltham beyond. There is a bus stop on the southern side of Mortimers Lane immediately adjacent to the northern boundary of 32 Bradshaw Close.

4.0 Background and planning history

- 4.1 The appellant purchased 32 Bradshaw Close in 2021. It was in poor repair, in need of updating and an extension to make it into a comfortable family home.
- 4.2 H/21/91552 – Planning permission was granted 15 November 2021 for demolition of the garage to create a single storey side extension. This extension was to provide an enlarged kitchen with patio doors leading into the garden adjacent to the boundary with no. 31 to the south.
- 4.3 Upon completing the extension to the kitchen, the appellant re-laid and enlarged the patio. With young children in the house the intention was to avoid a series of steps immediately adjacent to the patio doors and the patio was extended across the rear of the property to the kitchen doors with only one step down from the internal floor level to the patio level.
- 4.4 The works at the time also included the replacement of the fences on the northern and western boundaries of the property to improve security, privacy and noise levels from the adjacent road and bus shelter. The fences replaced a concrete block screen wall.
- 4.5 At the time of the patio being laid, no alterations were made to the southern fence on the boundary with no.31 and none have been made since.
- 4.6 The appellant was completely unaware at the time that planning permission could be required for a patio at a dwellinghouse or the replacement of the original boundary treatment.
- 4.7 Following a complaint to the Council, the appellant received a visit from the Council's Local Response Officer, Matthew Parr, who confirmed on 09 June 2022 that the patio matches the approved plans H/21/91552, and no further action will be taken (Appendix 1).
- 4.8 However, a further contact was received from the Council's Enforcement officer on 26 July 2022 saying permission is required and a planning application should be submitted.
- 4.9 In response, an application was quickly prepared and dated 03 August 2022 for the retention of the patio and fences - H/22/93556.
- 4.10 This application was withdrawn on the advice of the Planning Officer who recommended submitting revised plans with an additional screen 2.4m – 2.5m from the patio level to mitigate potential harm to the neighbours from overlooking (Appendix 2).
- 4.11 In the absence of any professional planning advice at the time, the appellant took the advice of the planning officer. A revised application was submitted without delay, dated 22 March 2023, for replacement patio and fencing, new boundary fence facing Mortimers Lane, replacing part of the southern boundary that runs alongside the raised patio with 2.4m fence panels.
- 4.12 This application was presented to the Local Area Committee on 12 July 2023 with a recommendation for planning permission subject to conditions (Appendix 3).
- 4.13 On 12 July Members resolved to defer the application pending further details and clarifications on dimensions of the raised patio (Appendix 4).

- 4.14 In response to the members' request for clarification of dimensions the planning officer visited 32 Bradshaw Close again and concluded that planning permission was in fact not required for the patio.
- 4.15 Following a "thorough investigation and on-site measurements" the planning officer confirmed on 29 August 2023 "that the raised patio falls under permitted development.....therefore the raised patio itself does not require planning permission" (Appendix 5).
- 4.16 On 15 September the appellant received an email from the planning officer (Appendix 6) retracting the previous conclusion that the patio constituted Permitted Development and saying planning is in fact required for its retention. This email also sought amendments to the annotation on the application drawings which Mr Cole immediately obliged to.
- 4.17 This application returned to Committee on 27 September. The officer's report (Appendix 7a) was accompanied by detailed dimensions (Appendix 7b) and a recommendation for planning permission be approved subject to conditions.
- 4.18 Members resolved to overturn the recommendation and refuse planning permission for the following reasons (Appendix 8):
- 1. The proposed increase in height of the first 3 panels from the rear of the dwelling, by reason of their height and close proximity to the neighbouring property, would create an unacceptable impact upon the visual amenity and outlook of the occupiers of 31 Bradshaw Close. The proposal is therefore contrary to Policy DM1 of the Eastleigh Borough Local Plan (2016-2036), Quality Places SPD (2011), and the contents of the National Planning Policy Framework (2023).*
 - 2. The raised patio, by reason of its size and scale, combined with its height and close proximity to the southern boundary, result in an excessive addition, adversely impacting the amenity of the neighbour. The proposal is therefore contrary to Policy DM1 of the Eastleigh Borough Local Plan (2016-2036), Quality Places SPD (2011), and the contents of the National Planning Policy Framework (2023).*

5.0 Policy Context

- 5.1 The application site is a residential dwellinghouse (Class C3) located within the established residential area within the built-up area boundary.
- 5.2 Section 38(6) of the Planning and Compulsory Purchases Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.
- 5.3 The Eastleigh Borough Local Plan 2016-2036 was adopted on 25 April 2022 and contains the most relevant policies to the consideration of these proposals.

S1 Sustainable development – This policy details a number of criteria which new development should achieve in order to deliver sustainable development. Of particular note this policy seeks to reduce the need to travel. Point 3 notes "When considering development proposals

the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area”.

S2 Promotion of New Development – This policy notes that the urban edge as set out on the policies map defines the main built-up areas within which there is a presumption in favour of new development, subject to the policies of this plan.

DM1 General Development Criteria – This policy details a number of criteria relevant to all new development. Of particular relevance 1(a) seeks to avoid an unacceptable impact on residential amenities of both new and existing residents; the character and appearance of urban area, the countryside and the coast. 1(c) requires new development to take full and proper account of the context of the site including the character, appearance and land uses of the locality or neighbourhood and be compatible with adjoining uses and be well integrated with these in terms of mass, scale, materials, layout, density and siting, both in itself and in relation to adjoining buildings, spaces and views.

- 5.4 In addition the Quality Places SPD (2011) and the National Planning Policy Framework (NPPF) are also relevant.
- 5.5 The Quality Places SPD (2011) considers residential amenity. In respect to private residential amenity page 29 notes “External private amenity spaces need to be sunny and well connected to interior spaces to encourage use and to allow for supervision of young children”. In respect to rear garden privacy page 32 notes “a high standard of privacy is required for the windows of living rooms and outdoor private garden space (particularly near the house). Some overlooking of gardens from the upper storeys of adjoining dwellings will be unavoidable in most urban and suburban housing layouts”.
- 5.6 Section 12, The NPPF (19 December 2023) discusses ‘Achieving well-designed places’. Para. 135 (f) encourages developments that “create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users⁴⁹; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience”.

6.0 Appellants’ case

- 6.1 There are three distinct elements to this proposal which will be considered separately for clarity (1) retention of the boundary fence facing Mortimer Lane, (2) retention of the raised patio, and (3) the proposed increase to the height of the southern boundary fence (first three panels adjacent to the patio) to 1.8m above the height of the adjacent patio.

(1) Retention of the boundary fence facing Mortimer Lane

- 6.2 Prior to the current boundary fence being erected, the northern boundary treatment facing onto Mortimers Lane comprised a brick and open blockwork wall of a similar height (Appendix 9). This structure did little to protect the occupiers’ amenities, privacy or security. The gaps in the blockwork allowed passers-by to look straight into the private rear garden of the

property and made it easy for criminals to climb the wall if they chose to. Additionally, the gaps in the wall did little to block out noise and pollution from the adjoin road and buses. In addition, passengers waiting at the bus stop were often intrusive on the occupiers' amenities.

- 6.3 The appellant was originally of the view that replacing one boundary treatment with one in the same position of a similar height, did not require planning permission. When the requirement for permission as brought to his attention an application was quickly submitted.
- 6.4 It is only reasonable for the occupiers of the property to have the opportunity to enjoy their rear garden safely and in privacy, in the same way others do, even if their property immediately adjoins a busy road. The fence has considerable benefits for the occupiers while not adversely affecting the character and appearance of the area. In respect to the fence the planning officer's report to committee accurately notes:

Due to the corner location of the application property and there are busstops located along this stretch of Mortimers Lane, the new fencing in this location is visible from public vantage points. However, the boundary treatment in the area is varied and it is accepted that there is sufficient spacing between the replacement fencing and the highway to soften its visual impact, offering a more open aspect to the road. In addition to this, the new boundary treatment is considered a typical form of boundary and therefore it does not draw attention and can blend in well with the surroundings, whilst providing a robust level of security to the property.

- 6.5 This element of these proposals meets the requirements of policy DM1 of the Eastleigh Borough Local Plan (2016-2036) which stipulates that all new development should respect the character and appearance of urban areas, take full and proper account of the context of the site including the character, appearance and land uses of the locality or neighbourhood, and be compatible in terms of mass, scale, layout density, design, and siting.

(2) Retention of the raised patio

- 6.6 As previously mentioned above, this patio was built as a replacement patio in good faith on the reasonable assumption that planning permission was not needed. This one done to ensure the garden was well and safely connected to interior spaces to encourage its use and to allow for supervision of the occupiers' young children, as encouraged by the Quality Spaces SPD.
- 6.7 Despite their letter of 06 June 2022 saying the patio was in accordance with approved plans H/21/91552 for the side extension, when told by the Council that permission was in fact needed for both the northern boundary fence and the patio an application was made for their retention. This original application (H/22/93556) for the retention of these structures was withdrawn on the advice of the planning officer (Appendix 2). They felt the need for the southern boundary fence between no.32 and no.31 to be increased in height and this should be done via a revised application.
- 6.8 Taking the Council's professional advice at face value, a revised application was submitted (H/23/94919). However, having now taken professional advice to support this appeal, the appellant is firmly of the view that planning permission is not required for this patio, a point previously confirmed in writing by the LPA before they made a U-turn without any clear explanation as to why planning permission was ultimately considered necessary.

- 6.9 The Planning Officer took detailed measurements on site (Appendix 7b) and the appellant confirms these dimensions to be accurate.
- 6.10 It is believed that the patio does not require planning permission. It is in accordance with the approved drawings H/22/93556 (Appendix 1) and it is in accordance with the provisions of Class E of Part 1 of Schedule 2 of the GPDO.
- 6.11 Class E of Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO) permits the provision within the curtilage of a dwellinghouse any building (the patio falls within the definition of a building because it is a structure or erection) or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse. This is subject to restrictions, including E.1(h) which states that development is not permitted by Class E if it would include the construction of a veranda: balcony or raised platform. For the purposes of Part 1 “raised” in relation to a platform means a platform with a height greater than 0.3 metres.
- 6.12 Permitted Development rights for householders – Technical Guidance September 2019 clarifies that ground level is the surface of the ground immediately adjacent to the building in question and would not include any addition laid on top of the ground such as decking. Where ground level is not uniform (for example if the ground is sloping, as the case at 32 Bradshaw Close), then the ground level is the highest part of the surface of the ground next to the building.
- 6.13 The patio has been built on uneven ground. However, it is clear from the officer’s measurement that the patio does not exceed 30cm above ground level, the highest part of the surface of the ground adjacent to the new patio. This appeal is accompanied by an appeal decision relating to a property at Salter House, 10 Old Turnpike, Honley, in Holmfirth (Appendix 10) where a deck extending from the house across an uneven garden and was deemed to be Permitted Development by virtue of Class E. These two structures are virtually identical save for the materials used in the construction of the raised platform. They both include the construction of a raised platform attached to the rear elevation of the dwellinghouse projecting into the rear garden which is made of uneven ground, with the top of the platform (deck/patio) not exceeding 30cm above the highest adjacent ground level.
- 6.14 Notwithstanding the appellant’s now fully informed view that planning permission is not required for the patio, it remains that the patio does not adversely affect the neighbours’ amenities and planning permission should not be withheld, if it is required.
- 6.15 When the patio was installed, no alterations were made to the existing boundary fence between no.32 and no.31. As a result, the fence now appears 1.5m tall above the patio, approximately 2m above ground level from the neighbours’ side. Concerns have been raised that at this height the fence is inadequate to preserve the neighbours’ privacy. At 1.5m high, coupled with the change in levels as no.31 is lower than no.32, it is not possible for occupiers of no.32 to look into their neighbours’ property without making a deliberate effort to do so, by standing immediately adjacent to the fence and looking down into the property. To even achieve this the person on the patio would need to be at least 1.7m tall and standing immediately adjacent to the fence deliberately looking over and down. Otherwise looking straight across, the existing fence prohibits all views of the property and lower garden other than the conservatory roof.

- 6.16 It is not possible to see directly into the garden (Appendix 11).

(3) The proposed increase to the height of the southern boundary fence

- 6.17 Notwithstanding the appellant's position that the current fence height is sufficient to ensure the neighbours' amenities are not adversely affected, they took the advice of the planning officer and offered to increase the height of the first three fence panels (adjacent to the patio) from 1.5m to 1.8m above the patio height.

- 6.18 Upon recommending planning permission for this alteration the planning officer's report to Committee on 27 September included a recommendation for the following condition:

Within 3 months from the date of this permission, the existing boundary treatment along the southern side of the patio/terrace (i.e., the first 3 panels from the rear of the dwelling) shall be raised to a height of 1.8 metres above the level of the patio/terrace. The revised boundary treatment shall match as closely as possible, in type, colour and texture that used on the remainder of the southern boundary fence and permanently retained for the lifetime of the development.

- 6.19 Whilst the appellant would rather increase the fence height for the first three panels on the southern boundary than replace/remove the patio, they remain of the view that any alterations to the fences are unnecessary to protect the neighbours' amenities. There are no views into the neighbouring property to be blocked.

- 6.20 In accordance with Policy DM1 of the Eastleigh Borough Local Plan this development does not have an unacceptable impact upon residential amenities of both new and existing residents, as built, but if the Inspector considers an increase to the fence height to be necessary to overcome concerns in respect to overlooking they are happy to do so.

Second reason for refusal

- 6.21 The second reason for refusal suggests the patio is an "excessive addition" that adversely affects the neighbours' amenity due to its size and scale combined with its height and close proximity to the southern boundary. The height of the patio and its proximity to the southern boundary have already been discussed and it has been demonstrated that it is not physically possible to look into the neighbours' garden with a 1.5m high fence in situ. The size and scale of the patio does not change this.

- 6.22 The size of the patio has been designed to allow the occupiers of the property full and safe use of the area immediately adjacent to the rear elevation of the dwellinghouse which previously comprised uneven ground and patios of uneven levels.

- 6.23 Being the full width of the property, this substantial patio encourages users to quickly move from the patio doors towards the rest of the patio and to the stairs down to the grassed part of the garden. A smaller patio would concentrate activities adjacent to the southern boundary fence and would likely be more problematic to the neighbours.

- 6.24 By connecting the garden with the interior living accommodation and allowing the occupiers to fully supervise their young children in a safe environment, this proposal is in accordance with the provisions of the Quality Spaces SPD and policy DM1.

6.0 Conclusions

- 6.1 This property has a complicated history, and whilst the appellant recognises that the Inspector must consider the application before them, the planning history is extremely relevant in this case.
- 6.2 Having done their best to cooperate with the Council and respond with applications, additional information or other action as requested, the appellant has been left with no choice other than to appeal or await the issue of enforcement action.
- 6.3 The replacement of boundary treatment on the northern boundary and the replacement of the patio was done on the assumption that planning permission was not needed for these structures. All efforts were subsequently made to secure retrospective permission with amendments even being proposed to limit the impact on neighbours' amenities, even when it is considered unnecessary.
- 6.4 The patio has been carefully and thoroughly measured by the Council and the appellant agrees with their dimensions. On the basis of what they have recorded, it is believed that planning permission is not in fact needed for the retention of the patio. Notwithstanding this point, the patio does not provide users with an opportunity to overlook the neighbours' property and adversely affect their privacy.
- 6.5 The replacement fence on the northern boundary provides the occupiers of the property with privacy, security and noise attenuation that was previous lacking with the original open block wall structure that served the boundary treatment. The fencing is of a design and character that is commonly seen in the local area.
- 6.6 These proposals are considered in full accordance with Policy DM1, SD1 and the Quality Living SPD and the Inspector is requested to grant permission for their retention, with or without a condition requiring the southern fence height to be increase to 1.8m above patio level for the first three panels as recommended to committee on 27 September.

7.0 Final thoughts

- 7.1 It is respectfully request that the Appeal Inspector allows this appeal and grants planning permission.
- 7.2 If the Inspector considers it necessary to increase the height of the southern boundary fence, first three panels, to 1.8m above the patio level, the appellant is happy to accept such a condition as recommended by the Planning Officer to the Committee on 27 September 2023.
- 7.3 However, if the Inspector agrees with the appellant that the existing arrangement is not adversely affecting the neighbours' amenities, their privacy in particular, then it is respectfully requested that permission be approved without the condition requiring alterations to the southern boundary fence.
- 7.4 It is recognised that there is annotation on the application drawings that suggests an increase to the fence height. To overcome this the following condition might be imposed:



Notwithstanding annotation on drawing 005 Rev G the fence height adjacent to the boundary fence shall be retained at 1.8m above the patio level unless otherwise agreed in writing with the LPA.

Appendices

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| Appendix 1 | Letter dated 06 June 2022 from Eastleigh Borough Council – no further action |
| Appendix 2 | Email from Planning Officer 17 March 23 recommending application be withdrawn |
| Appendix 3 | Report to Committee 12 July 2023 |
| Appendix 4 | Minutes from Committee meeting 12 July 2023 |
| Appendix 5 | Email from Planning Officer 29 Aug 2023 saying patio Permitted Development |
| Appendix 6 | Email from Planning Officer 15 Sept 2023 saying patio not PD |
| Appendix 7a | Report to Committee 27 Sept 2023 |
| Appendix 7b | Presentation to Committee 27 Sept 2023 |
| Appendix 8 | Decision notice H/23/94919 |
| Appendix 9 | Photo of previous boundary treatment |
| Appendix 10 | Appeal decision APP/Z4718/X/20/3256327 |
| Appendix 11 | Photos taken from patio looking towards no.31 |
| Appendix 12 | Application H/22/93556 (Withdrawn) |
| Appendix 13 | Pre appeal correspondence with EBC |