



# REGULATORY SERVICES COMMITTEE

# REPORT

3 October 2013

**Subject Heading:**

Planning Contravention  
3 Austral Drive

**Report Author and contact details:**

Simon Thelwell  
Projects and Regulations Manager  
01708 432685  
[simon.thelwell@havering.gov.uk](mailto:simon.thelwell@havering.gov.uk)

**Policy context:**

Local Development Framework

**Financial summary:**

Enforcement action and a defence of the Council's case in any appeal will have financial implications.

**The subject matter of this report deals with the following Council Objectives**

Ensuring a clean, safe and green borough	<input type="checkbox"/>
Championing education and learning for all	<input type="checkbox"/>
Providing economic, social and cultural activity in thriving towns and villages	<input type="checkbox"/>
Value and enhance the life of our residents	<input checked="" type="checkbox"/>
Delivering high customer satisfaction and a stable council tax	<input type="checkbox"/>

## SUMMARY

This report concerns the construction of an unauthorised decking area to the rear of the property. Raised decking areas, subject to certain criteria, can normally be constructed without planning permission. The decking at No. 3 Austral Drive fails to comply with permitted development criteria as it finished at a height in excess of 0.3m from natural ground level. The height of the decking causes an overlooking issue into the adjoining property at No.5 and is overbearing and intrusive and has a detrimental impact on the rear garden environment of the neighbouring property.

## RECOMMENDATIONS

That the committee consider it expedient that an Enforcement Notice be issued and served to require within 3 months of the effective date of the enforcement notice:

- i) Demolish the unauthorised decking or reduce in height the unauthorised decking to a maximum height of 0.3m measured from natural ground level.
- ii) Remove from the Land all materials, rubble, machinery, apparatus and installations used in connection with or resulting from compliance of (i) above.

In the event of non compliance, and if deemed expedient, that proceedings be instituted under the provisions of the Town and Country Planning Act 1990.

## REPORT DETAIL

### 1. **Site Description**

- 1.1 3 Austral Drive is a 2 storey, semi detached residential dwelling. The surrounding area comprises of two storey semi-detached dwellings.

### 2. **The Alleged Planning Contravention**

- 2.1 Without planning permission, the construction of an unauthorised decking area.

### 3. **Relevant Planning and Enforcement History**

- 3.1 On 16 August 2012 the Authority received a complaint that a rear decking area had been constructed. Officers investigated the complaint and found that the decking was constructed well in excess of the permitted development criteria of 0.3m from natural ground level on one side of the decking area where steps lead up to the higher point. The exact height is not known due to access not being gained to the property. A Planning Contravention Notice was served to gain that information but the owner failed to complete and return the Notice.
- 3.2 The decking area is causing a significant overlooking issue to the owners of the adjacent property at No.5.

3.3 After discussions with the owner on several occasions and written correspondence informing them that planning permission would need to be sought, it became apparent that the owner was not going to submit a planning application or reduce the decking in height.

#### 4. **Policy and Other Material Considerations**

4.1 As the unauthorised decking is not constructed within permitted development criteria it is considered that the development is unauthorised in its entirety.

4.2 The main planning issue in this case is that the decking by reason of its width, height and position is causing an overlooking problem to the neighbouring property. The decking is situated at the back of an existing extension, and due to its height, people on the decking can clearly see over the existing boundary fence toward the rear facing rooms and outdoor area nearest to the house, which are the most sensitive areas in terms of overlooking.

4.3 Policy DC61 (Design) of the Local Development Framework states that planning permission will not be granted when proposals result in unacceptable overshadowing, loss of sunlight/daylight, overlooking, or loss of privacy to existing and new properties.

4.5 It is regarded that the raised decking fails to comply with the requirements of Policy DC61.

#### 5. **Recommendation for action**

5.1 The owner of the property has had an opportunity to submit a planning application in order to try to retain the decking or to remove or alter the decking. To date the development remains unchanged with no application submitted. With that in mind, it is considered that the only course of action available to protect the Council's position and to maintain control over this development is to serve an Enforcement Notice.

5.2 Given the intrusive nature of the development it is considered that the decking should be removed in its entirety or the height reduced to bring it within the permitted development criteria of 0.3m above natural ground level within three months from the effective date of the enforcement notice.

## IMPLICATIONS AND RISKS

### **Financial implications and risks:**

Enforcement action may have financial implications for the Council.

### **Legal implications and risks:**

Enforcement action, defence of any appeal and, if required, prosecution procedures will have resource implications for the Legal Services.

### **Human Resources implications and risks:**

No implications identified.

### **Equalities implications and risks:**

Section 149 of the Equalities Act 2010 (EA) came in to force on 1<sup>st</sup> April 2011 and broadly consolidates and incorporates the 'positive equalities duties' found in Section 71 of the Race relations Act 1976 (RRA), Section 49 of the Disability Discrimination Act 1995 (DDA) and section 76(A)(1) of the Sexual Discrimination Act 1975 (SDA) so that due regard must be had by the decision maker to specified equality issues. The old duties under the RRA, DDA and SDA remain in force.

The duties under Section 149 of the EA do not require a particular outcome and what the decision making body decides to do once it has had the required regard to the duty is for the decision making body subject to the ordinary constraints of public and discrimination law including the Human Rights Act 1998.

Having considered the above duty and the Human Rights Act 1998 there are no equality or discrimination implications.

## BACKGROUND PAPERS

*Site photographs*