

5, Kettlebury Way,  
Marden Ash,  
Ongar,  
Essex, CM5 9EU

Your ref. PL/KS/EPF/2365/09

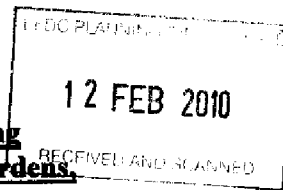
12th February 2010

Ms. K. Smith,  
Epping Forest District Council,  
Directorate of Planning & Economic Development,  
Civic Offices,  
High Street,  
Epping,  
Essex, CM6 4BZ

(By e-mail and by hand)

Dear Ms. Smith,

**Planning application ref. EPF/2365/09 for  
Certificate of Lawful Development for existing  
raised decking and patio at 40, Landview Gardens,  
Ongar, Essex, CM5 9EQ**



We thank you for your letter dated 25th January 2010 (received 28th January 2010) bringing to our attention the fact that this retrospective planning application has been lodged.

We note particularly the guidance:-

- i) at your sixth paragraph, that where we have made observations upon previous applications for this address where necessary we should reiterate our position (rather than cross-refer) and we will.
- ii) at your eighth paragraph, that our observations should be as full and as clear as possible and we will ensure that they are.

We own and live at No.5, Kettlebury Way, Ongar which is situated immediately West of the Application Property. We suffer severe direct overlooking from the various unauthorised development works at 40, Landview Gardens and accordingly we object strenuously to this retrospective planning application.

The various unauthorised development works, constructed in early 2009, include:-

- i) a two-storey rear extension with ground floor external sliding/folding doors (within a 3.50 metres/11'6" wide opening).

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- ii) a stepped raised platform and patio to facilitate a step down of some 1200 mm/4'0" from the threshold of the external sliding/folding doors in i) above to existing gardens level.

These two elements are identified separately only because the original "Planning trail" for each one took a separate course, but in function/use the elements are inseparable.

It is our understanding that the Applicant/Householder (a professional developer/builder guided by Professional Consultants) purported to take his authority to construct the two-storey rear extension from The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 which came into force on 1st October 2008. However he **failed** to observe certain limitations imposed by the GDO and the two-storey extension recently attracted Enforcement Proceedings accordingly.

We understand further that the Applicant/Householder **failed** to seek both Planning Approval and Building Regulations Approval prior to his execution of the works comprising the stepped raised platform and patio.

The Applicant/Householder's first attempt to create the stepped raised platform and patio caused severe direct overlooking into our home. We wrote to Epping Forest District Council on 24th April 2009 thus:-

**As you know we are deeply concerned about the entire raised platform installed at the rear of the dwelling spanning the full width of the plot and projecting some 4.00 metres into the rear garden from the rear face of the newly extended dwelling. The platform affords users direct views into the windows of our home. At our rear boundary fence (some 1800 mm tall) the unauthorised platform is just about 900 mm below the top of the fence and the balustrade to the platform is almost level with the top of the fence. Planting on the boundary would not provide an acceptable barrier and a fence needing to be some 3.00 metres tall, would not be acceptable either.**

and Enforcement Proceedings relating to the existing stepped raised platform and patio were set in train promptly.

In response to the Enforcement Proceedings on the existing stepped raised platform and patio the Applicant/Householder submitted the following Retrospective Planning Applications:-

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- a) EPF/0853/09.
- b) EPF/1347/09.
- c) EPF/2016/09.

In each case the Householder **failed** (despite clear instructions on the application forms) to provide any measurements, spot levels, etc. We alerted the Planning Department to these wants of detail in correspondence thus:-

- i) For a) above, our letter dated 8th June 2009.
- ii) For b) above, our letters (2 No.) dated 19th August 2009.
- iii) For c) above, our letter dated 17th November 2009.

In each case the Planning Department **failed** to seek from the Householder the necessary details.

The status of the foregoing Retrospective Planning Applications is thus:-

- a) EPF/0853/09

This was refused by the Committee by a unanimous vote.

- b) EPF/1347/09

This was withdrawn by the Applicant prior to the planning committee meeting.

- c) EPF/2016/09

This is still being processed by Planning Officers.

Given the foregoing it is clear that the Applicant/Householder believed that he did not have GDO rights for the existing stepped raised platform and that planning permission was required. By way of their agenda recommendations for a) and b) above it is apparent that the Planning Officers were similarly minded.

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In a different strategy by the Applicant/Householder the current application ref.EPF/2365/09 is for a Certificate of Lawful Development for the existing stepped raised platform and patio only and is based upon the premise that the structure substantially (but not entirely) meets the requirements of the GDO. It remains the case that there is severe direct overlooking into our home from the existing stepped raised platform and patio. The Planning Officers seem to regard this severe direct overlooking as an "unintended consequence" of alleged loose drafting of the General Development Order. We challenge that conclusion.

The Director of Planning provided unconvincing "preliminary findings" within his letter of 20th November 2009 that:-

- i) by measuring at a remote datum point the existing stepped raised platform could be viewed for the most part but not entirely as a GDO structure.
- ii) "neither the extension or the decking/patio are reliant on each other --- it (the stepped raised platform) is clearly capable of being separated from the extension".

We have challenged both of these finding within our letter of 3rd December 2009 thus:-

- a) in respect of i) above – there is existing ground level (garden) immediately adjacent to the stepped raised platform and this is the level to be addressed. Officers established the height as 500 mm, so that a planning application was necessary.
- b) in response to ii) above – the two-storey extension, with its sliding/folding ground floor doors (within a 3.50 metres/11'6" wide opening), cannot function without the stepped raised platform to provide access/egress from the two-storey extension to the rear garden. Hence planning approval is necessary for the two-storey extension with the stepped raised platform as one entity.

The Director of Planning has **failed** to respond to our letter of 3rd December 2009.

We wrote to the Planning Department on 10th December 2009 "We have noticed that the North-West corner of the purported GDO two-storey extension built in early 2009 is 1.87 metres from the Western boundary of No.40, Landview Gardens". Taking account of the projection of the eaves construction too, for the purposes of the General Development Order this measurement will be not more than 1.57 metres. The GDO requires this measurement to be not less than 2 metres – so there is a 21.5% error here. Accordingly it has been established that the two-storey extension has neither GDO rights nor a planning approval. Seemingly the various Officers visiting site, some measuring, had **failed** to detect this critical deviation by the Householder from the GDO.

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Apparently the Officers had **failed** to detect too until after 10th December 2009, the fact that the two-storey extension projects 3.04 metres rather than the 3.00 metres maximum allowed by the GDO. They remain silent as to the width of the extension.

Hence the two-storey rear extension was not a GDO structure and has now become the subject of retrospective planning application ref.EPF/2490/09 which is currently being processed by the Planning Officers.

The Epping Forest District Local Plan lays great emphasis on the requirement that development does not result in an excessive loss of amenity of neighbouring properties. A key factor to be taken into account by “developers” is the avoidance of excessive overlooking.

As noted earlier in this letter the subject Application, ref.EPF/2365/09, is for a Certificate of Lawful Development for the admission of the existing stepped raised platform and patio only as a GDO structure – it does not include the two-storey rear extension, nor the GDO shed.

The Application appears to adopt the “remote datum” concept promoted as a “preliminary finding” by the Director of Planning and Economic Development, although there is no definitive explanation. The Applicant’s interpretation of the concept seems to be that once the “remote datum” level is established the raised platform and patio can be constructed in its entirety on or within a horizontal plane 300 mm maximum above that datum. That might be so for a flat site but for a sloping site the 300 mm height limitation imposed by the GDO can only be accommodated by introducing a tiered or terraced arrangement with 300 mm maximum height steps – so that at no point in the entire structure does it exceed 300 mm in height above the ground over which the structure is built.

Subject only to the GDO 50% coverage limitation, acceptance of the principle of the Applicant’s apparent interpretation described above could result in the Householder being free to construct great areas of raised level platform in the length of the garden. Because of the natural fall of the ground Northwards, the platform would become progressively higher above ground as it reached Northwards with consequent intolerable overlooking into all of the homes backing-on to 40, Landview Gardens. Such a prospect flies directly in the face of the requirements of the Epping Forest District Plan. Tiering or terracing would address the slope in the site and avoid the unacceptable outcome described above.

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However, for other reasons we can demonstrate that the Applicant's "remote datum" is not the appropriate reference point in any event. As noted earlier:-

- i) current application ref.EPF/2490/09 seeks retrospective planning permission for the two-storey rear extension only
- ii) the subject Application ref.EPF/2355/09 seeks a Certificate of Lawful Development for the admission of the existing stepped raised platform and patio only as a GDO structure

and, of course, each of these structures sits upon its own respective "plot" albeit side by side. Further explanation follows.

Please find herewith photographs annotated thus:-

a) Photograph "A"

"Rear elevation of 40, Landview Gardens before the construction of the two-storey extension in early 2009."

b) Photograph "B"

"Rear elevation, pavings, rockery/gardens and lawn before the construction of the two-storey extension and stepped raised platform in early 2009."

c) Photograph "C"

"Relationship between paving and threshold of door with sidelights before the construction of the two-storey extension in early 2009."

d) Photograph "D"

"Raised platform constructed upon existing lawn in early 2009".

We observe the following from the photographs:-

- 1) by reference to the brick sizes in photograph "A" the butt has a "footprint" of 600 mm x 600 mm/2'0" x 2'0" and therefore, the footpath running across the full width of the elevation can be seen to be some 1200 mm/4'0" wide.

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- 2) in photograph "B" between the house and the camera there is shown:-
- i) the 1200 mm wide footpath mentioned at 1) above.
  - ii) centrally a set of steps ranging down from i) to iv). These steps rise some 0.75 metres/2'6" in the aggregate and have a similar going/projection.
  - iii) either side of the step a rockery/garden sloping down from i) to iv) following the line of the steps.
  - iv) the lawn.

Hence taken from i) and ii) above the overall projection of the foregoing from the face of the original rear wall of the house to the lawn is 1950 mm/6'5".

- 3) by reference to the brick sizes in photograph "C" the depth of step down from the level of the threshold to the surface of the paving is 375 mm/1'3". Hence taken together from 2) ii) and 3) the overall height from the level of the threshold to the surface of the lawn is 1125 mm/3'9". The paving and steps will have been built with falls to assist in shedding water away from the building, so these figures can safely be rounded up to 1200 mm/4'0".
- 4) photograph "D" shows the raised platform (first attempt) constructed directly upon the existing lawn – the deck is some 800 mm above the lawn. Currently the raised platform is partially reduced to a deck height of 500 mm above the existing lawn. Still the raised platform is constructed directly upon the existing lawn.

The combined mass of the original rearward external works projected 1950 mm/6'5" beyond the face of the original rear wall before giving way to lawn.

The two-storey extension which is the subject of the retrospective planning application ref.EPF/2490/09 projects 3040 mm/10'0" beyond the face of the original rear wall and the foundation "footprint" would exceed that. So the two-storey extension within its own site consumed all of the original rearward external works and encroached upon virgin lawn area too.

In turn this resulted in the site of the current stepped raised platform and patio being positioned entirely in virgin lawn area, entirely disassociated from the original rearward external works from which, it appears, the Applicant has taken his inappropriate "remote datum".

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The difference in height between the virgin lawn area and the threshold of the sliding/folding doors in the two-storey extension is 1.20 metres/4'0". the height of the stepped raised platform above the virgin lawn area varies between 500 mm/1'8" minimum and 1.20 metres/4'0" maximum – all exceeding the 300 mm/1'0" maximum prescribed in the GDO.

**As described the height of the existing stepped raised platform and patio above the virgin lawn area upon which it is sited exceeds the 300 mm maximum prescribed by the GDO and hence the structure does not qualify as a GDO structure. Please refuse application ref.EPF/2365/09 accordingly.**

The applicant has perpetrated the following significant errors in his retrospective Planning Application for a Certificate of Lawful Development for existing raise decking and patio:-

A) Errors in the Application Form

a) Section 4. Pre-application Advice

- i) the Applicant has **failed** to note the date(s) upon which the advice was given.
- ii) the information required by the form includes "Details of pre-application advice received?" The Applicant has **failed** to provide the information required but has responded "ON-GOING" instead.

Of course "ON-GOING" advice would be "post-application" and it rather begs the question as to what that "ON-GOING" advice might constitute.

b) Section 8. Description of Existing Use, Building Works or Activity.

The Applicant has responded "EXISTING RAISED DECKING AND PATIO BUILT MAY '09". This is incorrect. The answer should have been "EXISTING RAISED DECKING AND PATIO BUILT IN EARLY 2009, PRE 24TH APRIL, WITH VARIOUS ALTERATIONS EFFECTED THEREAFTER UP TO AND INCLUDING OCTOBER 2009".

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A) Errors in the Application Form (contd)

c) Section 9. Grounds For Application for  
A Lawful Development Certificate

The form states "If applicable, please give the reference number of any existing planning permission ---- affecting the application site. Include ---- the number of any condition being breached."

The Applicant cites planning permission ref.EPF/1070/08 dated 20/08/2008 and **fails** to identify a condition being breached.

The planning permission cited by the Applicant is inapplicable because:-

- i) it is wrongly noted as being dated 20/8/2008 whereas it is actually dated 21/8/2008.
- ii) its planning application documentation failed to reveal any rearward external works – particularly the provision for accommodating a step down of some 1200 mm/4'0" from the ground floor french doors of the extension to existing garden level. Without such provision the extension as drawn could not function. The Planning Department **failed** to seek from the Householder details for the rearward external works but, none-the-less, approval was given.
- iii) the footprint of the un-built two-storey extension approved in scheme reference EPF/1070/08 measured 5.80 metres/19'0" width and 3.50 metres/11'6" projection and that scheme had its own unique door and window configuration.

The "footprint" of the built two-storey extension for which current retrospective application reference EPF/2490/2009 seeks approval measures 7.00 metres/23'0" width and 3.04 metres/10'0" projection and this scheme too has its own unique door and window configuration.

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Epping Forest District Council,  
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A) Errors in the Application Form (contd)

c) Section 9. Grounds For Application for  
A Lawful Development Certificate (contd)

iii) Contd.

**The stepped raised platform which is the subject of current retrospective application reference EPF/2365/09, with its severe direct overlooking into our home, was purpose built to suit the “footprint” and function of scheme ref.EPF/2490/09 and could not be migrated into scheme reference EPF.1070/08 because the “footprint” and function differs in the latter.**

The form specifies “Please state why a Lawful Development Certificate should be granted”. The Applicant has responded “AGREED WITH JOHN DE WILTON PRESTON THAT IT IS LAWFUL BUT REQUIRE CERTIFICATE TO SATISFY NEIGHBOURS”

**A clear understandable statement of the substance of the “agreement” is required.**

d) Section 10. Information in Support of  
A Lawful Development Certificate

The form enquires “When was ---- the building works substantially completed” and the Applicant responded “02/10/2009”.

**Guidance from the Planning Portal runs “To be considered for a Certificate of Lawfulness applicants must show that — the ‘building works’ have been substantially complete for more than four years, prior to your application”. Information Leaflet No.6 from the D.O.E. Planning Service offers identical guidance. The building works comprising the stepped raised platform and patio have not been complete for more than four years and hence do not qualify to be considered for A Certificate of Lawfulness. Please reject the application accordingly.**

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A) Errors in the Application Form (contd)

e) Section 12. Declaration

The Applicant has **failed** to date the declaration.

f) Section 15. Site Visit

The form enquires "Can the site be seen from a public road, public footpath, bridleway or other public land? The applicant has answered "YES" when it should be "NO".

B) Errors and wants of information in the Application drawings/photograph

a) Drawing No.656/10C

(This drawing provides both the "location plan" and the "block plan")

In both plans our house (No.5, Kettlebury Way) is immediately to the North of No.7, Kettlebury Way. Each plan indicates our rear garden as being 13.50 metres deep from the rear wall of the main house to the rear boundary fence. This is wrong – in fact the measurement is just 9.00 metres.

b) Drawings Nos. 656 9G and 656 10C

i) Two storey rear extension and GDO shed

Both the two-storey extension and the GDO shed are illustrated on the drawings. Neither structure is being considered in the subject Application for a Certificate of Lawfulness. The Application relates to the stepped raised platform and patio only.

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B) Errors and wants of information in the Application drawings/photograph (contd)

b) Drawings Nos. 656 9G and 656 10C (contd)

ii) Remote datum and various notes

The drawings and the photograph contain various notes and dimensions which appear to relate to the Applicant's contention that a "remote datum" should prevail and its consequences.

However there is no statement on the drawings, on the photograph or in the Application Form bringing all of the information provided to a reasoned conclusion. Hence the Application lacks the necessary clarity to justify a Certificate of Lawful Development. **Please seek a fully reasoned statement.**

iii) Levels and dimensions to reveal the precise extent of direct overlooking into our home from the stepped raised platform and patio.

The drawings fail to reveal:-

- i) natural ground spot levels adjacent the stepped raised platform.
- ii) spot levels for the three main areas of stepped raised platform – two in timber decking and one in stone paving.
- iii) spot levels on each of the various steps.
- iv) overall constructional depth of the lowest area of decking. .
- v) spot levels for the top of the capping rail of the existing fence on the Western boundary.

and these various measurements/levels are critical in establishing the actual extent of direct overlooking into our home from the stepped raised platform and patio.

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- B) Errors and wants of information in the Application drawings/photograph (contd)
- b) Drawings Nos. 656 9G and 656 10C (contd)

**Neither the Planning Officers nor the Planning Committee can evaluate the Application without this critical information.**

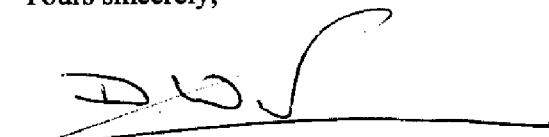
Indeed the EFDC "Validation Checklist" for use in a "Householder Application for planning permission for an extension, vehicular access or other works to a single dwelling" identifies a NATIONAL REQUIREMENT for the Applicant to provide a variety of information including "existing and proposed site sections and finished floor and site levels".

The word "REQUIREMENT" conveys mandatory status so that an application is incomplete without such information. This surely warrants the return of the subject Application to the Applicant for want of further and better particulars?

(End of Section "B" entitled "Errors and wants of information in the Application drawings/ photograph")

Taking account of all of the foregoing we request that you refuse the Applicant's request for a Certificate of Lawfulness.

Yours sincerely,



Mr.D and Mrs.P.Williamson

**Photograph "A"**

Rear elevation of 40, Landview Gardens  
before the construction of the two-storey  
extension in early 2009.



Local of 40 LANDVIEW GARDENS / 2016/2009



PHOTOGRAPH OF ORIGINAL STEPPED PAVING  
WHICH HOUSE WAS FIRST BUILT



**Photograph "B"**

Rear elevation, pavings, rockery/gardens and lawn before the construction of the two-storey extension and stepped raised platform in early 2009.

EPPING FOREST DISTRICT COUNCIL  
PLANNING SERVICES  
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**Photograph "C"**

Relationship between paving and threshold of door with sidelights before the construction of the two-storey extension in early 2009.







**Photograph "D"**

"Raised platform constructed upon existing lawn in early 2009".