
Appeal Decision

Site visit made on 27 January 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 11 February 2020

Appeal Ref: APP/Q1445/D/19/3240943

3 Downside, Brighton BN1 5EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss Sadie Lamb against the decision of Brighton & Hove City Council.
 - The application Ref BH2019/02162, dated 23 July 2019, was refused by notice dated 15 October 2019.
 - The development proposed is the erection of decking area to rear.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of decking area to rear, at 3 Downside, Brighton BN1 5EQ, in accordance with the terms of the application ref BH2019/02162, dated 23 July 2019, and the plans submitted with it, subject to the following condition:
 - 1) Notwithstanding any information in the submissions, within 2 months of the date of this decision, details of additional screening to fitted to the side of the balcony facing 5 Downside, shall be submitted to and approved in writing by the Local Planning Authority, together with a timetable for its installation. This screening shall then be installed in accordance with the approved timetable and retained thereafter.

Procedural Matters

2. The description in the banner heading and my decision above is that used by the Council, as it is a clearer, more precise and concise description than that provided on the application form.
3. The development has been largely implemented. Whilst the works so far undertaken have aided my assessment of the appeal scheme, I have based my decision on the submitted plans.

Reasons

Privacy

4. 5 Downside forms part of a reasonably compact triangular block of dwellings which front Downside, Copse Hill and Eldred Avenue. This layout gives rise to an inherently high level of mutual overlooking between dwellings and between dwellings and garden spaces. This is accentuated by the fact that the block is built on land whose level falls steeply from Downside, meaning that dwellings along Downside are located at a significantly higher level than those to the south.

5. The decking has been constructed immediately to the rear of No 3, continuing at the same level as that of the ground floor. As it has been built partially on top of a pre-existing masonry terrace. The effect of the scheme has thus been to extend the depth of the available elevated area of outdoor space to the rear of the dwelling by around 1.1 metres.
6. Views from the decking are possible into the lower parts of the gardens of 1 and 5 Downside, which adjoin the garden of No 3 to left and right. Views into these gardens would however also have been possible from the terrace. In this regard the added depth allows for only a modest increase in the view, which is not sufficient to cause any significant harm.
7. Gardens towards the south cannot be clearly seen, even with the added depth provided by the decking. This is because ground levels fall beyond the rear boundary fence, enhancing the screening that it provides. Again the modestly increased view causes no significant harm.
8. Views are also possible from the decking towards the first floor windows of dwellings positioned south of No 3, fronting both Copse Hill and Eldred Avenue. This is however chiefly a function of sharp differences in ground level. Indeed, whilst direct views towards some of these windows otherwise exists from windows in rear elevation of No 3, and would have existed from the terrace, more extensive, closer and direct views are possible from within the garden of No 3 itself. Set within this context, the view provided by the decking again causes no significant harm.
9. The decking is some distance from the boundary with No 1, but directly abuts that with No 5. This appears to have been similarly true of the terrace. Views from the decking are possible towards the windows of a conservatory which is positioned to the rear of No 5, and set in line with the extension to the rear of No 3. A fence and troughs containing bamboo have been positioned along the boundary, but these do not effectively screen the view.
10. Taking perspective into account, the extent of the view possible from the decking towards the conservatory is not much greater than that which would have been possible from the terrace. However, notwithstanding the fact that the conservatory is hung with blinds, any additional view provided in such close proximity is harmful. This view could however be simply screened by affixing additional fencing or trellising above the current fence. This need not be of significant height, nor extend the full depth of the decking in order to be provide effective screening. This additional screening could be secured by condition. Though the appellant has suggested additional bamboo planting, it is unlikely that this would be as effective.
11. The Council has itself considered scope to increase screening, but states that this would cause unacceptable shading and overbearing effects to No 5. Though some additional morning shading could occur, this would be so minimal as to cause little harm. It could otherwise be limited by use of trellis. Whilst there is a sharp difference in height between the boundary fence and the level of the adjacent garden at No 5, this difference is less than that which exists between the conservatory and the same space. Within this context the both modest, and limited increase in height of the fence necessary would not cause unacceptable overbearing effects.

12. For the reasons outlined above I conclude that, subject to additional screening, the details of which can be separately agreed by the Council, the decking would not cause unacceptable harm to the living conditions of occupants of adjoining dwellings on account of the loss of privacy. The development would therefore comply with Policy QD27 of the Brighton and Hove Local Plan 2005 (the LP) which states that planning permission will not be granted where it would cause material nuisance and loss of amenity.

Noise

13. As the decking directly adjoins living spaces within the dwelling it is likely that it would see a high level of use during the summer. The level of use would probably be greater than that of the terrace given it provides a larger and more practical space for sitting out. However I see no reason to believe that the level of use or noise generated would differ from that to be generally expected of outdoor amenity spaces located immediately to the rear of dwellings. In this regard the fact that the space is elevated rather than positioned at ground level is unlikely to cause any significant difference.
14. For the reasons outlined above I conclude that the decking both does and would not cause unacceptable harm to the living conditions of occupants of adjoining dwellings on account of noise. The development therefore does and would comply with Policy QD27 of the LP, whose terms are outlined above.

Conditions

15. The Council has requested a condition requiring the development to be carried out in accordance with the approved plans. However, this condition is not appropriate given that the development has already been largely implemented. I have however made reference to the plans within my decision.
16. The Council has also requested a condition requiring that the materials used should match those in the existing building. However, this condition is again inappropriate given both the prior implementation of the development, and fact that the materials used do not match those used in the main dwelling. I have not therefore imposed this condition.
17. I have however imposed a condition requiring the installation of additional screening to the side of the decking facing No 5 in order to safeguard privacy.

Conclusion

18. For the reasons set out above I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR