



Appeal Decision

Site visit made on 29 July 2020

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2020

Appeal Ref: APP/X1118/W/20/3247852

St Brelades, Langleigh Road, Ilfracombe EX34 8EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Gary Higgins against the decision of North Devon Council.
 - The application Ref 70996, dated 13 January 2020, was approved on 26 February 2020 and planning permission was granted subject to conditions.
 - The development permitted is raised decking in rear garden area.
 - The condition in dispute is No 3 which states that: The Laurel hedge on the North West boundary with the neighbouring property shall be retained to a height of not exceeding 2.5 metres from ground level.
 - The reason given for the condition is: To ensure adequate light into neighbouring garden and dwellinghouse and in accordance with Local Plan Policy DM01 and DM25.
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Decision

1. The appeal is allowed and the planning permission Ref 70996 for raised decking in garden area at St Brelades, Langleigh Road, Ilfracombe, EX34 8EA, granted on 26 February 2020, by North Devon Council, is varied, by deleting condition No 3.

Main Issue

2. The main issue is whether the condition is reasonable and necessary having regard to the effect of the decking on the living conditions of neighbouring occupiers at No 11 Trinity Gardens, with particular regard to light.

Reasons

3. St Brelades is a detached, split level dwelling currently in the process of being extended. The boundary treatments to either side of the garden are wooden fences, and the rear boundary is formed from a Laurel hedge. The Laurel hedge provides a visual buffer between the appeal garden and the neighbouring dwelling set at a lower level. The raised decking has been built on the lower level of the sloping garden, and has provided a levelled platform with balustrading around its outer edge.
4. The neighbouring dwelling at No 11 Trinity Gardens is also a split level detached dwelling which is set at a lower level than the appeal site. It has a shallow rear garden and its rear elevation, with window openings, is only a short distance from the dividing boundary. There is a retaining wall of around 1.2 metres above the level of the garden with a fence of a similar height above it. The Laurel hedge sits immediately behind the fence. At the time of my visit, the Laurel hedge height varied between approximately 2.5 and 3.5 metres from its base level above the retaining wall.

5. The Laurel hedge existed before the decking was constructed and there is conflicting evidence about its former condition and the regularity with which it was maintained prior to the appellant's occupation of St Brelades. Permission was granted for the raised decking on a retrospective basis with the condition relating to the retention of the hedge at a maximum height of 2.5 metres.
6. In respect of conditions, the National Planning Policy Framework (the Framework) sets out that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (paragraph 55).
7. Due to the sloping topography and built density, there is a degree of mutual overlooking which is to be expected in such an area. Ordinarily, a boundary treatment condition requiring the construction or maintenance of a wall or fence would be used to maintain privacy. In this instance, due to the level differences and spacing between the decking and the neighbouring dwelling and garden, the hedge does not specifically need to be higher than the decking balustrade to prevent overlooking.
8. Whilst the increased height of the decking relative to that of the garden may make it desirable for the hedge to be allowed to grow higher than previously, the hedge height was not restricted before the decking existed. The hedge is not integral or directly resulting from the construction of the decking and the decking structure itself does not result in any issues of loss of light. Whilst there may be other legislation to control the height of hedges between neighbouring dwellings, the condition to control the height of the hedge is not a remedial measure directly relevant to the decking structure.
9. I therefore find that there is no justification for the disputed condition in terms of Policies DM01 or DM25 of the North Devon and Torridge Local Plan (2018) in respect of the effects of the raised decking on the neighbouring occupiers. Furthermore, having regard to the tests for the use of planning conditions set out in the Framework and the advice in the Planning Practice Guidance, I find that the condition is not necessary or reasonable.

Conclusion

10. For the reasons given, I conclude that the planning permission should be varied as set out in the formal decision above.

Hollie Nicholls

INSPECTOR