



Appeal Decision

Unaccompanied site visit made on 3 September 2020

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 September 2020

Appeal Ref: APP/X1165/C/20/3249699

Land at the Babbacombe Bay Hotel, 33-35 Babbacombe Downs Road, Torquay, Devon TQ1 3LN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Alan Frankum against an enforcement notice issued by Torbay Council.
 - The enforcement notice was issued on 24 February 2020.
 - The breach of planning control as alleged in the notice is: *Without planning permission, the creation of an extended area of decking measuring approximately 8sqm in the approximate position shown hatched in black on the attached plan 2 ('the Unauthorised Works')*.
 - The requirements of the notice are: *Permanently remove the Unauthorised Works and all materials used in its construction from the Land.*
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended ("The 1990 Act").
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Reasons

2. The ground of appeal is that planning permission should be granted for what is alleged in the notice. The main issue is the impact of the extended area of decking on living conditions at the neighbouring property at 37 Babbacombe Downs Road, with particular regard to privacy.
3. The Babbacombe Bay Hotel fronts on to Babbacombe Downs Road, with views out over the sea. Portland Road runs along the western flank of the building, while its eastern side is attached to No. 37 Babbacombe Downs Road. The Babbacombe Bay Hotel has been extended to the rear, and a decked sitting-out area has been created on the flat roof of the ground-floor extension. Originally, this decked area covered about two thirds of the flat roof, stopping just over 2m short of the boundary with No. 37. It has now been expanded to cover the whole of the flat roof, extending out to the boundary with No. 37 and running alongside it for some 3.3m. It is this addition to the original sitting-out area that is the subject of the notice.

4. No. 37 has also been extended to the rear. There is a two-storey pitched-roof element to this extension, with two windows in its western flank wall, serving a bedroom and a bathroom. These windows face out over the flat roof of the intervening single-storey element of the extension, toward the side boundary with the Babbacombe Bay Hotel.
5. The Appellant rightly points out that since these buildings were originally constructed as terraced houses with narrow yards, there was already some overlooking of the garden at No. 37 and of the side windows in its rear extension, those windows also being visible from Portland Road. But in situations such as this where overlooking already occurs, any development needs to be carefully designed so as not to worsen its effects. Policy DE3 of the Torbay Local Plan seeks to ensure that new development does not have an undue impact upon the amenity of neighbouring uses, and the supporting text explains that residential development should be designed to protect privacy in existing dwellings, so that the outlook and quality of space will not be compromised.
6. While there would already have been a considerable amount of overlooking between the side-windows in the rear extension at No. 37 and the existing rear terrace at the Babbacombe Bay Hotel, the unauthorised expansion of that terrace has brought the decked sitting-out area – which is at the same level as these windows – much closer to them. This has significantly increased the extent to which these windows are overlooked. The extended area of decking also protrudes further outward than the original decked area, bringing it closer to the garden of No. 37, and so increasing the extent to which that neighbouring outdoor amenity space is overlooked. As a consequence of these impacts, the privacy of the occupiers of No. 37 has been unduly reduced.
7. I saw that in order to address concerns about overlooking and the reduction of privacy, the Appellant has erected a 6 foot high close-boarded fence around the outer edge of the extended terrace. While I appreciate that this screen, and indeed the decked area itself, is attractive and well-presented, the problem is that the presence of a fence of this height, in such close proximity to the facing windows, appears overbearing and has an unacceptably adverse effect on their outlook. I share the Council's view that the harmful impacts of the extended decking could not be satisfactorily resolved by the erection of a privacy screen: if the current fence was replaced with one that was lower and/or less opaque, an unacceptable level of overlooking would still occur.
8. I understand that the Appellant has relevant protected characteristics for the purposes of s.149(1)(b) and (c) of the Equality Act 2010. I have therefore had due regard to the Public Sector Equality Duty (PSED) contained in that section of the Equality Act, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I appreciate that the outdoor decked area to the rear of the property provides a valuable, usable outdoor amenity space for the Appellant. However, it is important to be clear that the notice does not seek the removal of this outdoor amenity space in its entirety, only the unauthorised extension to this area. Weighing all of the relevant considerations in the balance, I consider that upholding the notice is proportionate.

9. The Appellant provided photographs of other development in the area where overlooking occurs. It is important to be clear that the Development Plan does not, in the context of built-up residential areas, seek to preclude any overlooking at all: rather, it seeks to ensure that such overlooking as does occur does not unduly affect the living conditions of neighbouring occupiers. Each development proposal needs to be considered and determined in the context of its own site-specific merits, and I am not party to the full balance of considerations that informed the decisions to permit the examples to which the Appellant refers.
10. In conclusion, I find that for the reasons given above the extended area of decking conflicts with the aims of Local Plan Policy DE3, and there are no other material considerations of sufficient weight to overcome that conflict and justify a grant of planning permission. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Jessica Graham

INSPECTOR