
Appeal Decision

Site visit made on 29 January 2025

by **M Aqbal BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 May 2025

Appeal Ref: APP/D1265/D/24/3339331

17 Weare Close, Dorset, Portland DT5 1JP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr C Harrison against the decision of Dorset Council.
 - The application Ref is P/VOC/2023/05333.
 - The application sought planning permission for: Erect rear decking (Variation of condition 2 of planning approval WP/20/00915/FUL - decking, as approved, has been built other than in accordance with approved plan 2904:001 Rev C) without complying with conditions 2 and 3 attached to planning permission Ref P/VOC/2023/01316, dated 26 July 2023.
 - The conditions in dispute are numbers 2 and 3 which state that:
 - (2) Prior to the first use of the raised decking hereby approved, the boundary walls as detailed on the approved plan shall have been raised to a height of 1.8m from the ground level along the entire length of the boundary and retained and maintained as such thereafter.
 - (3) Prior to the first use of the raised decking hereby permitted the glass guard/barriers shall have the entire internal faces (facing towards no. 17 Weare Close) of the glass obscured to a minimum obscurity of level 3. The obscuring of the glass shall be by way of an applied film/sticker on the entire internal face of the glass, and this shall be maintained for the life of the development, and it becomes defective or unstuck, the obscured film/sticker shall be replaced within one calendar month. The obscured glass guard/barriers shall be retained as such thereafter for the life of the development.
 - The reasons given for conditions 2 and 3 are:
 - (2) To safeguard the amenity and privacy of the occupiers of adjoining residential property.
 - (3) To protect amenity and privacy.
-

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 1 May 2025.

Decision

1. The appeal is allowed and planning permission is granted to erect rear decking (Variation of condition 2 of planning approval WP/20/00915/FUL - decking, as approved, has been built other than in accordance with approved plan 2904:001 Rev C) without complying with conditions 2 and 3 attached to planning permission Ref P/VOC/2023/01316, dated 26 July 2023, at 17 Weare Close, Dorset, Portland DT5 1JP and subject to the following conditions.
 - 1) With the exception of the requirement of condition 2 of this permission, the development hereby permitted shall be carried out in accordance with the following approved drawing: 2904:374/001 Revision A – As built decking.

- 2) Within one month of the date of this permission, the sections of glass balustrade shown along 'as built north west elevation 1:100' and 'as built north east elevation 1:100' on approved drawing: 2904:374/001 Revision A – As built decking, shall be obscured to a minimum level three obscurity and retained as such thereafter.

Costs applications

2. A costs application was made by Mr C Harrison against Dorset Council. This application is the subject of a separate Decision. A separate costs application was made by Dorset Council against Mr C Harrison. This costs application was subsequently withdrawn by Dorset Council.

Background and Main Issue

3. On the information before me, disputed conditions 2 and 3 of planning permission P/VOC/2023/01316, stem from conditions originally proposed by an Inspector in allowing an appeal¹ for raised decking at the appeal property. At the time, both conditions were considered necessary to reduce overlooking of neighbouring properties to the rear of the appeal property in Killicks Hill.
4. During my visit, I observed that an area of raised decking has been installed at the appeal property. The approved drawing² before me is intended to show this 'As built.' Accordingly, I have determined the appeal on the basis of the approved drawing and my observations.
5. The appellant's application and subsequent submissions to support the removal of disputed conditions 2 and 3, are largely predicated on the assertion that the requirements of these conditions cannot be enforced.
6. However, the appeal before me is under Section 73 of the above Act. In particular, and irrespective of whether or not disputed conditions 2 and 3 are enforceable, Section 73(2)(a) allows me to grant planning permission "subject to conditions differing from those, subject to which the previous planning permission was granted, or that it should be granted unconditionally...".
7. Against the above background, the main issue is whether disputed conditions 2 and 3 are necessary or reasonable in respect of safeguarding the living conditions of neighbours.

Reasons

Condition 2

8. The raised decking is in part supported by a wall ('the boundary wall') which faces the neighbouring properties to the rear of the appeal property along Killicks Hill. Based on the reasoning in allowing the above mentioned appeal, the Inspector found that views from the residual lower amenity area towards the properties on Killicks Hill would largely be contained by the boundary wall which would be increased in height to 1.8m. The Inspector also found that the increased height of the boundary wall would partially restrict views down into the rear garden areas from the raised decking area.

¹ ref: APP/P1235/D/20/3247226

² 2904:374/001 Revision A – As built decking.

9. On the information before me, the appeal property already incorporated a patio area which allowed some overlooking to the rear. Moreover, this property incorporates upper floor accommodation and from this there are views available towards the properties in Killicks Hill and their associated gardens. Therefore, notwithstanding the approved raised decking, a considerable degree of overlooking of these neighbouring properties already existed.
10. To measure the boundary wall accurately and to ascertain its height would require access onto third party land. Instead, my assessment of this is based on the approved drawing. On the approved drawing, the height of the boundary wall ranges between about 1.65m to 1.8m.
11. Nonetheless, where the height of the boundary wall does fall short of 1.8m, this is by a limited amount. Therefore, in my opinion, because of this and given that the residual lower decking area is largely a confined space and unlikely to be used for amenity purposes, any parts of the boundary wall which are less than 1.8m in height would not materially increase overlooking towards the properties on Killicks Hill or significantly change views down into the rear garden areas of these properties from the raised decking area. In particular, given the extent of overlooking already available from the living accommodation associated with the appeal property.
12. Accordingly, I do not consider that disputed condition 2 is reasonable or necessary to safeguard the living conditions of neighbours.

Condition 3

13. The raised decking area is sizeable and extends closer to the rear of the properties in Killicks Hill than the internal accommodation associated with the appeal property. As such, and notwithstanding the extent of overlooking available from the appeal property, the use of the raised decking area does allow some additional actual overlooking and also increases the perception of overlooking for neighbours to the rear of the appeal property.
14. Because the balustrade is about 1.1m in height above the level of most of the raised decking area, even if the glazing for this is obscured, this would not prevent most adults and older children when standing close to the balustrade from being able to see over this. Nevertheless, obscuring the glazing of the balustrade would limit direct views towards the properties immediately to the rear, particularly when stood or seated back from the edge of the raised decking area. Moreover, an obscure glazed balustrade would reduce the perception of overlooking. Overall, the obscuring of the glass balustrade would provide some mitigation for neighbours against the loss of privacy associated with the use of the raised decking area.
15. Consequently, a condition requiring that the glazing to the balustrade is obscured is reasonable and necessary. Because the balustrade has already been installed, the installation of a film or finish to level three obscurity to the glazing of the balustrade would be acceptable. I also consider that a one month period to secure the implementation of this is reasonable and my condition 2 reflects these requirements.

Other matters

16. The appellant has suggested that I instigate a costs application against the Council. This is wholly at my discretion and in this case, I do not consider this to be necessary.
17. I have also had regard to matters raised by third parties. However, these do not alter my findings on the main issue.

Conditions

18. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 of the Act should also repeat the relevant conditions from the original permission unless they have already been discharged. Condition 1 of the original permission requires the development to be undertaken in accordance with the approved plans. As I cannot be certain that the development has been undertaken wholly in accordance with the approved plans, this form of condition needs to be retained. Therefore, my condition 1 reflects this and also refers to the requirements of my condition 2.

Conclusion

19. I have found that the removal of disputed condition 2 would not harm the living conditions of neighbours. However, a condition which reflects disputed condition 3 is necessary and reasonable to safeguard the living conditions of neighbours. Accordingly, I conclude that the appeal should only succeed in respect of the removal of condition 2 but with a new condition to reflect disputed condition 3 (my condition 2) as set out above.

M Aqbal

INSPECTOR