



# Appeal Decision

Site visit made on 4 January 2010

by **Michael Evans BA MA MPhil DipTP MRTPI**

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

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**Decision date:**  
**20 January 2010**

## Appeal Ref: APP/Q1445/A/09/2109402 24 Redhill Drive, Brighton BN1 5FH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice, within the prescribed period, of a decision on an application for planning permission.
- The appeal is made by Mr Peter Hodgson and Miss Nicola Ball against Brighton and Hove City Council.
- The application Ref: BH2008/03961 is dated 16 December 2008.
- The development proposed is to construct a retaining wall not exceeding 2m in height above ground, the construction of a wooden deck and handrail and the construction of a raised soil bed containing large shrubs and mature trees.

### Decision

1. I dismiss the appeal.

### Main issue

2. I consider that the main issue in this appeal is the effect on the living conditions of the occupiers of the adjacent dwelling at 26 Redhill Drive.

### Reasons

3. A decked platform has been erected in the rear garden of no. 24 Redhill Drive creating a terrace in a relatively steeply sloping garden. The height above ground level increases significantly towards the south, allowing views into the adjacent garden at no. 26. The terrace has been the subject of an appeal that was dismissed and in response the scheme has been modified so that a broadly triangular area of the decking would be removed to allow the planting of several conifers. The removed area would be insufficiently extensive, in itself, to significantly limit views into the neighbouring garden. The Appellants argue that existing and proposed planting would overcome the concerns regarding overlooking.
4. However, this is unsatisfactory as the decked structure is likely to be a longer lasting feature than the existing and proposed vegetation, which may die or be removed. Furthermore, in Circular 11/95 *The Use of Conditions in Planning Permission* it is indicated that the long term protection of trees cannot be secured by conditions and that a requirement for maintenance would only apply to the first few years.
5. As a consequence, I consider that the combination of existing and proposed planting could not be relied on to protect the privacy of adjacent occupiers. The Appellants have also suggested that a six foot boundary fence could be constructed. If erected at ground level this would not prevent overlooking given the elevated nature of the decked structure. If placed on top it would be likely to result in an unacceptably overbearing effect due to the overall height

- and size of the resulting structure. In any case no plans showing the proposed boundary fencing have been provided.
6. It is therefore considered that because of the proximity and raised elevation of the decking the proposal would be likely to result in unacceptable overlooking of the garden at 26 Redhill Drive. Despite being some distance from the rear of the neighbouring dwelling this would occur in a useable and reasonably secluded area where a higher standard of privacy may reasonably be expected. It is therefore concluded that the living conditions of the occupiers of the neighbouring house would be harmed. This is contrary to the intentions of Brighton and Hove Local Plan 2005 policy QD27, which seeks to prevent such adverse effects.
  7. The Appellants have expressed concerns about the Council's handling of the planning application. Nevertheless, I must consider this appeal strictly on its planning merits. Because of the above conclusions it is therefore determined, taking account of all other matters raised, that the appeal fails.

*M Evans*

INSPECTOR