



Appeal Decision

Site visit made on 23 September 2008

by **J O Head BSc(Econ) DipTP MRTPI**

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

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Decision date:
7 October 2008

Appeal Ref: APP/Q1445/A/08/2074447

24 Redhill Drive, Brighton, East Sussex BN1 5FH

- 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 Peter Hodgson & Nicola Ball against the decision of Brighton & Hove City Council.
- The application Ref BH2007/03324, dated 29 August 2007, was refused by notice dated 5 November 2007.
- The development proposed is the installation of garden decking in the rear garden.

Decision

1. **I dismiss the appeal.**

Procedural matters

2. As the decking is already in place, I have treated this appeal as one against the refusal of planning permission for its retention.
3. I note the appellants' submissions that they were unaware that planning permission would be required for the installation of the decking. Whether or not planning permission is required is not a matter for me to determine in the context of an appeal made under S78 of the above Act. It is open to the appellants to apply for a determination under sections 191/192 of the Act to clarify this matter. My determination of this appeal under section 78 of the Act does not affect the issuing of a determination under S191/192.

Main issue

4. The main issue is the impact of the decking on the level of privacy enjoyed by the occupiers of No 26 Redhill Drive.

Reasons

5. The dwellings in this part of Redhill Drive have long and very steep back gardens leading down, at a gradient of some 35°, towards the rear of the properties in Valley Drive to the south. The decking that is the subject of the appeal forms a terrace in the lower half of the garden. The rear of the decked area is approximately at the natural ground level but the southern edge and sides are raised on a rendered blockwork wall which, on the eastern side, is close to the boundary with No 26. A decorative timber balustrade increases

the overall height of the structure. The steepness of the slope results in the south-eastern corner of the decking being a significant height above ground level and I saw that, notwithstanding the existing vegetation along the boundary, this enables a clear view to be obtained over the adjacent area of garden at No 26.

6. The garden of No 26 at this point comprises a lawn, with a tree close to the boundary with the appeal property and denser planting at the southern end. The angle of the slope makes standing in an upright position difficult and it is likely that the levelled areas of garden closer to the house are those that are most intensively used by the occupiers. Nevertheless, this part of the garden is clearly maintained as an amenity space. Because of the height and close proximity of the decking structure to the boundary at this point, it appears particularly intrusive and overbearing. When the decking is in use, I consider that persons in the garden of No 26 would have an uncomfortable sense of being overlooked at close range in a location where, in the context of the surroundings, a reasonable level of privacy would normally apply.
7. Although the newly planted *Cupressus Leylandii* trees on the boundary to the south of the decking should, in time, screen the structure from the south-east there is, in my opinion, insufficient room between the end of the decking and the boundary with No 26 to plant vegetation that would screen it adequately from the east and prevent direct close-range overlooking. The trees that have been planted in a timber box attached to the wall are, in my experience, unlikely to survive as they cannot be adequately maintained and appear to have insufficient soil or room for proper growth. Privacy might be maintained by the erection of a fence or planted trellis at the edge of the decking, but this would be likely to emphasise the size and height of the structure.
8. The most intensively used areas of rear gardens tend to be those closest to the house. In these circumstances, some loss of privacy in the lower part of the long garden cannot be said to cause serious harm to the living conditions that the dwelling provides. Nonetheless, I have no doubt that the elevated position of the decking and its closeness to the boundary has the potential to cause significant and unexpected nuisance in a pleasant area of garden which would otherwise be reasonably secluded. Bearing in mind also the height of the structure and its intrusive appearance, I consider that the overall impact of the decking is excessively unneighbourly. On balance, it reduces the amenity value of the garden and the level of privacy enjoyed by the occupiers of No 26 Redhill Drive to an unacceptable degree that conflicts with the requirements of Local Plan Policy QD27.

John Head

INSPECTOR