



Appeal Decision

Site visit made on 24 June 2013

by Jennifer Tempest BA(Hons) MA PGDip PGCert CertHE MRTPI IHBC

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

Decision date: 3 July 2013

Appeal Ref: APP/Q1445/D/13/2197745
95 Mill Rise, Brighton, East Sussex BN1 5GJ

- 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 Mr M Simah against the decision of Brighton & Hove City Council.
 - The application Ref BH2012/02744, dated 26 July 2012, was refused by notice dated 20 February 2013.
 - The development proposed is construction of raised decking in rear garden.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are the effect of the development on:
 - (1) the living conditions of the occupiers of neighbouring property with particular reference to privacy; and
 - (2) the character and appearance of the appeal property and its immediate surroundings.

Reasons

Living Conditions

3. Mill Rise is on sloping ground. The pair of semi-detached properties, 95 and 93 Mill Rise, have their two storey front elevation facing Mill Rise. However, although entered at ground floor level from the front, the main ground floor living accommodation of the appeal property is elevated above the rear garden. A similar arrangement appears to be the case for the houses to either side.
4. The decking and steps down to the garden are already in place. The Council's report indicates that the brick piers supporting the decking are around 1.5 m in height and the appellant states the garden is around 1.8 metres below the ground floor level of the house. The garden itself slopes away from the house.
5. From some parts of the decking area I was able to see clearly through the ground floor window of the adjoining semi-detached property, No 93 Mill Rise. Given the levels and boundary treatment at garden level, I consider this degree of overlooking would not be possible whilst standing in a similar position in the garden level of the appeal property. Hence use of the decking would result in an unacceptable loss of privacy to the neighbouring property. I accept that were the appeal property and the adjoining house sited on level ground, it

would be normal to have a screen fence or similar between the two properties. However, they are not on level ground and the situation with regard to overlooking is created by the proposal.

6. With regard to the privacy of users of the gardens on either side of the appeal property, the layout of the dwellings combined with the levels are such that there is already the potential for a relatively high degree of mutual overlooking of rear gardens. Nonetheless, the introduction of a substantial area of decking, which is large enough for sitting out on and children's play, increases the likelihood of overlooking taking place. Thus I consider that both the perception and the reality of neighbours being overlooked whilst in their gardens would be greater than would be the case with use of the garden of No 95 at ground level, or with the provision of steps without a substantial deck. Accordingly, I consider the proposal has an adverse effect on the privacy of neighbours to each side.
7. I noted during my site visit that the fence panel which has been positioned on the side of the decking provides a measure of additional privacy to the garden of No 93 in views from inside the appeal property. However, this benefit is not sufficient to outweigh the harm caused by the proposal.
8. Accordingly I find that the proposal conflicts with that part of Policy QD14(b) of the Brighton & Hove Local Plan 2005 (Local Plan) which requires extensions and alterations not to result in a significant loss of privacy to neighbouring properties. It also conflicts with Policy QD27 of the Local Plan which seeks to protect the amenities of adjacent occupiers.

Character and Appearance

9. The brick piers match the brickwork of the house. The timber rails, balusters, steps and decking are simple and robust in form and appearance. I consider that they are acceptable in the context of the appearance of the appeal property and the various extensions and additions to the rear of other properties in the immediate area.
10. The screen fence panel, whilst it would not appear intrusive or unusual were it at ground level, does appear as an incongruous feature in this elevated position. As a consequence of the ground levels, the rear of the property at this level is visible from neighbouring gardens and I consider this aspect of the proposal is harmful to the character and appearance of the dwelling and of the immediate area. In this regard the scheme is contrary to Policy QD14 (a) of the Local Plan as it is not well designed and detailed. I do not consider that other elements of the proposal are harmful to the character and appearance of the appeal property or to views of it from neighbouring gardens.

Other matters

11. I have taken into account what I was able to see of the rear elevations of other properties in the immediate locality and the photographs provided by the appellant. The ground floor of No 97 appears to be set above its garden by a lesser height than is the case with the appeal property. The area which has been created outside the sliding doors of No 97 is considerably smaller than that of the appeal proposal and is set some distance from the boundary with No 99. Additionally, No 99 has a conservatory on the rear which incorporates obscure glazing in the elevation facing No 97.

12. A timber deck and steps has been erected at No 91 Mill Rise. The Council advise this has been in place for some time and I have not been provided with the planning history of this structure. I noted during my site visit that there is a relatively high fence on the garden level boundary of No 91 with the adjoining neighbours as well as considerable vegetation.
13. Accordingly, I do not consider that these examples are sufficiently similar to the appeal proposal to lead me to alter my conclusions. In any event, each proposal must be determined on its own merits.

Conclusion

14. I appreciate the desirability of providing direct and safe access to the garden of this family house. However, I do not consider that the proposal achieves this without creating unacceptably harmful effects on the privacy of the occupiers of the neighbouring properties.
15. For the reasons given above I conclude that the appeal should be dismissed.

Jennifer Tempest

INSPECTOR

