



Appeal Decision

Site visit made on 2 February 2010

by **E C Grace** DipTP FRTPi FBEng PPIAAS

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

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Decision date:
9 February 2010

Appeal Ref: APP/Q1445/D/09/2118494

9 Southon Close, Portslade, East Sussex BN41 2RX

- 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 Mrs D Metcalfe against the decision of Brighton & Hove City Council.
- The application Ref BH2008/03981, dated 14/4/09, was refused by notice dated 16/6/09.
- The development proposed is excavations to rear garden and erection of raised decking.

Procedural Matters

1. The application was originally submitted on 23 December 2008, but in view of a decision by the appellant to modify the proposal and change agent, involving the submission of a revised application form (14/4/09) and plan it was not validated until 27 April 2009. Both the application and appeal forms describe the development as being engineering operation excavation more than 1m. Although the two plans accompanying the application were submitted separately with a four month interval and show different proposals, I see from the decision notice that the Council considered both of them when making their decision and redefining the development as excavations to rear garden and erection of raised decking (retrospective). The agent objected to the altered description indicating that the lower decking was undertaken as Permitted Development prior to 1 October 2008. However, the Council did not respond until after they had determined the application and stated they regarded the excavation and decking as one engineering works and that the excavation was essential to facilitate the decking.
2. At the time of my visit, there was timber decking at the ground floor level of the house, with a further decking area (Level 1) about 1m higher extending between that and a timber retaining wall across the width of the garden. A flight of steps is positioned alongside the northern flank boundary fence before turning at right angles across the face of the retaining wall. The steps proceed to the centre of the garden then turn through another right angle and continue to ascend into Level 2 area within a pathway incised into the natural ground slope. Although the earlier plan shows a further area of decking and flower beds at this level neither were in place as work has been suspended awaiting the outcome of this appeal. Moreover the rearmost part of the garden depicted as Level 3 with a further area of decking and flower bed is largely in its original state of sloping grass. Because of the dichotomy between the submitted plans I propose to regard the latter (Dwg No 9063/1) omitting further excavations or decking at Levels 2 and 3, as superseding the earlier plan and deal with this case as being for the retention of engineering works and decking.

Decision

3. I allow the appeal, and grant planning permission for retention of engineering works and decking at 9 Southon Close, Portslade in accordance with the terms of the application, Ref BH2008/03981, dated 14/4/09, and the plan (Dwg No 9063/1) submitted with it, subject to the following conditions:
 - 1) No decking shall be constructed other than between the house and the timber retaining wall marked A on the plan. Wall A shall be reduced to a height not exceeding 1.8m within 2 months of this decision and retained at such height thereafter.
 - 2) The remainder of the garden beyond that retaining wall shall be laid out in accordance with details that shall be submitted to the Local Planning Authority within 2 months of this decision and thereafter implemented as approved by them in writing during the first available planting season. Details of these landscape works shall include any proposed changes to finished levels or contours, positions and species of any trees and heights of all boundary fencing.

Main Issue

4. The main issue in this case is whether the works result in unacceptable harm to the living conditions of occupiers in neighbouring dwellings.

Reasons

5. The appeal property is an end of terrace house situated on a plot that slopes steeply up from the road to the rear boundary and more gently from north to south across its width. This steep slope gives rise to a degree of overlooking and also difficulty in utilising the garden effectively. I consider the ground level decking as being wholly satisfactory. The excavation already undertaken at the next level has enabled the decking here to be incised into the slope and thus provides a level area for sitting out while at the same time lessening potential overlooking and enhancing privacy, or rather it will do when the fence along the boundary with No 10 is replaced.
 6. Although I regard these parts of the development as entirely acceptable, I consider the extent of garden already covered by decking represents the maximum that is reasonably tolerable to enable sufficient area to be retained for laying out with grass, shrubs, or trees and possibly vegetables. Hence, for the avoidance of doubt I shall impose a condition preventing installation of further decking on the upper levels of the garden, as originally envisaged.
 7. Despite my acceptance of the excavation work and decking already carried out, I find the timber retaining wall marked A on the plan, measuring about 2.3m high, is unduly tall and overbearing in appearance. Also, it would provide for the ground height behind it to exceed the original garden level and thus increase the propensity for overlooking. I consider that the combination of the loss of privacy and overbearing appearance causes harm to the living conditions of neighbouring occupiers. Nevertheless, I am content that I could address this matter by the imposition of a condition restricting the height of that timber retaining wall to 1.8m, which would more closely reflect the natural ground contours at this point and equate to a measurement for walls and fences that is commonly accepted as being reasonable.
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8. Moreover, as it appears that further ground modelling may be necessary and that there is an intention to introduce some planting to enhance the visual appearance of the garden, I shall require submission of details for the laying out of that area for the avoidance of doubt and in the interest of residential amenity.
9. For the above reasons I conclude that subject to the imposition of conditions in respect of the aspects I have mentioned, in order to provide certainty and safeguard residential amenity, the development would not contravene Local Plan Policy QD27 and that the appeal should be allowed.

Edward Grace

Inspector

