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## Appeal Decisions

Site visit made on 26 October 2018

**by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 November 2018**

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### **Appeal A Ref : APP/Q1445/C/18/3197869**

#### **Land at 76 Greenbank Avenue, Saltdean, Brighton, BN2 8QQ.**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Pamela Young against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 23 January 2018.
- The breach of planning control as alleged in the notice is without planning permission the erection of a single storey extension and raised platform at the rear of the property.
- The requirements of the notice are to remove the raised, timber platform which extends from the ground floor level to the rear and sides of the property.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: the appeal is dismissed and the enforcement notice is upheld**

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### **Appeal B Ref : APP/Q1445/W/18/3197872**

#### **Land at 76 Greenbank Avenue, Saltdean, Brighton, BN2 8QQ.**

- 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 Pamela Young against the decision of Brighton & Hove City Council.
- The application ref. BH2017/03816 undated but submitted to the Council on 17 November 2017 was refused by notice dated 12 January 2018.
- The development proposed is enlargement of existing conservatory, erection of single storey rear extension, creation of raised decking with railings, privacy screens and steps into garden (part-retrospective).

**Summary of Decision: the appeal is dismissed**

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### **Preliminary Matters**

1. I undertook an accompanied site visit to the appeal property and unaccompanied site visits to the neighbouring properties either side.
2. At the site visit the Appellant sought confirmation that a plan submitted in January 2018 was being taken into account. This issue was raised with the parties in correspondence. The Council confirmed that the January plan had not

been formally accepted. I must determine this appeal based on the application before me and the January plan is not cited in the decision notice. Nevertheless, I shall consider the January plan as a material consideration in making my determination.

## **Appeal A Ground (a) appeal and deemed application**

### **Appeal B**

3. The reasons for issue of the enforcement notice and refusal of planning permission both concern the raised platform, the main issue is therefore the same in both appeals.

#### **Main Issue**

4. The main issue in the determination of these appeals is the effect of the raised platform on the living conditions of current and future occupiers of neighbouring residential properties with particular regard to outlook.

#### **Living conditions**

5. The appeal site comprises a detached bungalow located in a residential area. The site sits on sloping ground the ground level at the front of the property being higher than the ground level at the rear of the property. The appeals concern a raised platform at the rear of the property. The platform comprises wooden decking that sits above the ground level of the rear garden and extends to the rear and sides of the property.
6. The development plan (including the Brighton & Hove City Plan Part One and saved policies in the Brighton & Hove Local Plan) mirrors the National Planning Policy Framework (the Framework) in emphasising the need for development to respect the amenities of neighbours. Policy QD27 of the Local Plan provides that planning permission will not be granted where it would cause loss of amenity to adjacent users or residents.
7. Due to the sloping nature of the site the decking sits in a substantially elevated position. It is of relatively substantial size in its domestic garden setting. It is visually prominent from the properties on both sides and affords clear sideways views into windows of neighbouring properties. It dominates the outlook from the neighbouring gardens and creates an overbearing outlook particularly from the conservatory at no. 78. The Appellant comments that the occupier of no 78 has made no attempt to have blinds or obscure glazing fitted to the conservatory windows but the onus is on the Appellant to design a scheme that does not create undue harm not upon a neighbour to seek to mitigate harm caused by development.
8. I conclude that by virtue of its size, elevated position and separation distances from neighbours the raised platform creates a dominant feature with harmful overbearing impact to adjacent neighbours. It is likely to prevent the quiet enjoyment of residential gardens and creates an oppressive outlook from habitable rooms of neighbouring properties.
9. My attention is drawn to other decking in the area but I do consider that similar decking is so widespread as to be characteristic of the area. In any event any harm caused by other development does not justify the harm identified in this case.

10. The Appellant describes the decking as an accessible area for a wheelchair bound family member. I have taken these needs fully into account but there is no justification before me as to why decking of this scale is necessary. I have balanced the need for disabled facilities but I am not persuaded on the evidence before me that the needs could not be accommodated by alternative measures that do not create the identified harm.
11. I have considered the effect of the January plan on the identified harm. The proposed reduction in the width of the decking would not alleviate the identified harm as it would remain highly visible to neighbours.
12. I have considered whether conditions could overcome the harm. I have taken into account the Planning Practice Guidance. I do not consider that measures such as opaque screening and landscaping would alleviate the harm.
13. I conclude that the development causes undue harm to the living conditions of current and future neighbours with particular regard to outlook contrary to relevant policies in the development plan (including policy QD27 of the Local Plan) and the Framework.
14. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application and the section 78 application.

#### Other matters

15. Neighbours raise a number of matters such as dustbins, fire safety and property valuations which are not relevant to these appeals and are not matters which I have taken into account.

### Conclusions

#### Appeal A

16. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed planning application.

#### Appeal B

17. For the reasons given above I conclude that the appeal should be dismissed.

### Formal Decisions

#### Appeal A: APP/Q1445/C/18/3197869

18. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

#### Appeal B: APP/Q1445/W/18/3197872

19. The appeal is dismissed.

*S. Prail*

**Inspector**

