

## Appeal Decision

Site visit made on 14 March 2017

**by Diane Fleming BA (Hons) MRTPI**

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

**Decision date: 24 April 2017**

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### **Appeal Ref: APP/Q1445/C/16/3163681 35 Guildford Street, Brighton BN1 3LS**

- 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 Katharine Bullock against an enforcement notice issued by Brighton & Hove City Council.
  - The enforcement notice was issued on 6 October 2016.
  - The breach of planning control as alleged in the notice is, without planning permission, the erection of a rear roof terrace and metal staircase creating access from the rear garden to the flat roof of the single storey extension.
  - The requirements of the notice are 1. Remove the metal staircase from the north east corner of the property that provides access from the rear garden to the flat roof of the single storey extension. 2. Remove the metal balustrades, supports, hand rail and supporting structures from the top of the flat roof of the single storey projection at lower ground floor level at the rear. 3. Cease the use of the rear flat roof of the single storey projection at lower ground floor level as a roof terrace.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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### **Decision**

1. It is directed that the enforcement notice is varied by the deletion of step 3 from paragraph 5 of the notice. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **The ground (a) appeal and the deemed planning application**

#### Main Issue

2. The main issue is the effect of the development on the living conditions of neighbouring occupiers, having regard to privacy, noise and disturbance.

#### Reasons

3. The appeal relates to a mid-terrace property situated in the West Hill Conservation Area (CA). The building is two storeys in height at the front but with basement accommodation that opens on to a small courtyard at the rear. A single storey addition has been added to the end of a half width rear extension that occupies most of the courtyard. Stairs from the level of the courtyard provide access to the flat roof of the addition. Wooden decking has been placed on the roof to create a terrace about 2.5m x 2m in area and around the edge there is a post and wire enclosure.
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4. From the roof terrace it is possible to see directly into the courtyard at No 36 as well as into its habitable room windows at first floor level if looking towards the rear of the terrace. From the staircase it is possible to see into the courtyard of No 34, though this would be a momentary view whilst using the staircase. However, it is Nos 8 and 9 Camden Terrace that are most affected by the development. This is because the appeal property is sited higher on the hillside than these detached dwellings and the roof terrace is therefore in an elevated position.
5. Nos 8 and 9 generally look onto and are accessed from a narrow passageway that runs parallel to Guildford Street. The rear walls of the dwellings back onto the rear boundaries of the houses in Guildford Street and do not contain any windows. No 8 has a small side garden that is adjacent to the rear boundary of the appeal site. This is entirely overlooked by anyone using the roof terrace. No 9 has, what appears to be, a habitable room window at first floor level overlooking the garden of No 8 and anyone using the roof terrace would be able to see into this room due to its close proximity.
6. On the opposite side of the passageway there are two pairs of cottages facing each other separated by small front gardens. From the roof terrace it is possible to see over the top of these gardens but due to their size, intervening fencing and position on the opposite side of the passageway, I consider it is not possible to look directly into them. Any perceived loss of privacy is therefore limited. From the roof terrace it is also possible to obtain views into the first floor bay windows of the cottages. However, these views are restricted to being oblique views only and the harm caused by the development in this respect is insignificant, especially as there is a high level of existing mutual overlooking from the cottages.
7. With regard to noise and disturbance, I consider it is the occupiers of Nos 8 and 9 who would be most affected by any activities on the roof terrace. On this point, the occupier of No 8 has stated that he has been disturbed by people playing loud music on the terrace. The appellant states that the previous occupiers of the appeal site regularly climbed on to the flat roof. As there is a significant drop into the neighbour's courtyard she installed a hand rail for health and safety reasons. The Council's requirement to remove it could give rise to health and safety concerns again. However, I consider matters of health and safety do not make the current development acceptable and do not override the effect of the development on the living conditions of neighbouring occupiers.
8. The appellant also takes the view that no one has a right 'not to be overlooked' and the use of any outside space in this densely developed area has the potential to cause a disturbance. Whilst in general external sounds might be more noticeable due to the close layout of the properties, the proximity between the appeal site and Nos 8 and 9 is different and has the potential to result in significant harm. The Council's policies refer to a number of matters when considering the acceptability of alterations to buildings and these include slope and overall height relationships, amongst other issues. They also require that development does not result in a significant loss of privacy and that regard should be had to the existing space around buildings. As such, the degree of overlooking from new development is an important issue which is also recognised by the National Planning Policy Framework (the Framework). This

states that planning should always seek to secure a good standard of amenity for all existing occupants of land and buildings.

#### Other Matters

9. The site lies within the CA. I shall therefore have regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the area. The distinctive character and appearance of the area stems in part from the homogeneity of the terraced housing. The development of the roof terrace does not harm this characteristic as it is tucked away at the rear and is a simple structure with a modest effect on the appearance of the host property. For these reasons I consider it preserves the character and appearance of the CA.

#### Conclusion on the ground (a) appeal and the deemed planning application

10. For the reasons given I conclude that the development results in harm to the living conditions of neighbouring occupiers, having regard to privacy, noise and disturbance. It therefore does not accord with Policies QD14 and QQD27 of Brighton and Hove's Local Plan, adopted 2005. I give these policies weight as they are consistent with the Framework.

#### **The ground (f) appeal**

11. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require that the roof terrace and the staircase leading to it be removed. The purpose of the notice must therefore be to remedy the breach of planning control.
12. The Council also require the use of the flat roof area as a roof terrace to cease. The flat roof currently falls within a single planning unit which appears to have a lawful use as a house. The flat roof can therefore be used for any purpose which falls within the ambit of that use without the need for planning permission. I find in this case that the Council have confused a notice attacking operational development with a notice attacking a material change of use as the third requirement of the notice is to cease the use.
13. Where there is operational development, that should be identified in the allegation and its removal sought in the requirements. Where there is a material change of use, the requirements can seek both the use to cease and the works carried out to facilitate that use to be removed. It is therefore necessary to vary the requirements of the notice to delete the reference to the cessation of the use. There would be no prejudice to the appellant nor would this prejudice the Council as the reason for serving the notice is to remedy the breach of planning control, namely the erection of the roof terrace.
14. The appellant submits that the requirements of the notice are excessive and that an alternative lesser step could be to erect a privacy screen in place of or adjacent to the hand rail. However she does not state how high this would be, its extent or the material for the screen. She also states that as the staircase is below the wall of the courtyard that there is no need to remove this. Whilst the first suggestion might reduce the level of overlooking, it would not remedy the breach of planning control. Screening the terrace would not undo that

initial action of constructing the terrace and would not address all of the harm caused by the development set out in the reason for issuing the notice.

15. In any event, if I were to allow the appeal on ground (f) then I would need to vary the requirements of the notice in such a way that unambiguously sets out what needs to be done. The appellant has not adequately identified the lesser step and as such I am not able to vary the requirements. As no other lesser steps have been submitted, I therefore find that the steps required by the notice do not exceed what is necessary to remedy the harm caused and the appeal on ground (f) fails.

### **The ground (g) appeal**

16. This ground of appeal is that the time given to comply with the requirements of the notice is too short. It is therefore limited in scope to a consideration of the actual time needed to carry out the work specified in the steps. The basis of the appellant's appeal though is that she needs to retain the roof terrace for three months to enable work to be done on the back of the house. She does not actually specify what she considers to be a reasonable period to undertake the works for removing the terrace.
17. The roof terrace and staircase are simple structures and I consider their removal by a competent builder could be achieved in the time specified. As such, I see no reason to vary the period for compliance. The appeal on ground (g) therefore fails.

### **Conclusion**

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

*D Fleming*

INSPECTOR