



Appeal Decision

Hearing held on 7 July 2009.
Site visit made on 7 July 2009.

by **B C Scott BA(Hons) Urban & Regional Planning MRTPI**

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

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Decision date:
13 July 2009

Appeal Ref: APP/Q1445/A/09/2096808

9 Benfield Close, Portslade, East Sussex, BN41 2DD.

- 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 Peter Fagan against the decision of Brighton & Hove City Council.
- The application Ref: BH2008/01110 dated 27 March 2008, was refused by notice dated 1 August 2008.
- The development proposed is rear south facing single storey extension to bungalow with chimney at end.

Procedural Matters/Application for Costs

1. The proposed development (the extension and chimney) has been carried out. The Appellant adopts the Council's description of the proposed development *single storey rear extension (retrospective)*.
2. The Appellant raises concerns about the Council's handling of the proposed development (which I understand started life as intended permitted development). At the Hearing and after due consideration, the Appellant decided not to make a claim for costs relating to the appeal process itself, but will be seeking a remedy concerning prior events through the Council's grievance procedure. Whereas I fully understand the Appellant's concerns, my decision is based upon the planning merits of the proposed development before me.

Decision

3. I dismiss the appeal.

Main issues

4. I consider the two main issues in this case to be the effect of the proposed development on; firstly, the character and appearance of the area; and secondly, on the living conditions of the adjoining occupiers, with particular reference to light and outlook.

Reasons

Character and appearance

5. The appeal property is a semi-detached bungalow with some roof accommodation. It is originally of generic estate design amongst others that have been modified over the years. The proposed development adds a cuboid form at the rear with a free standing chimney above it. Policy QD14 of the

Brighton & Hove Local Plan 2005 (LP) requires extensions to be, amongst other things, well designed in relation to the host property and to take account of the existing space around buildings.

6. In my opinion, 'well designed' in this context means either an integrated form or a subordinate one. Due to its unlike cuboid form, the flat roof of the extension prevents an effective visually integrated result with the host building, the prominent feature of which is a large scale hipped roof.
7. The space about the host building on the appeal site is unusual because it spreads mainly sideways towards the rear and is quite restricted in depth from the original rear wall. The extension occupies virtually the whole of that depth along the shared boundary and is orientated towards the side space. It would have on this side, when finished, rendered panels above a brick waist to match the host building. The eaves line ties in closely, when due allowance is made for a junction of a flat roof with a pitched one. For those reasons, I consider that the extension sits comfortably within its plot and general surroundings.
8. Having said that, a subordinate result is not obtained due mainly to the position, height and scale of the chimney. To my mind, notwithstanding its intrinsic design, the chimney is out of place because it bears no relation to either the extension or the host building, given its freestanding nature above a flat roof; it looks overpowering. Moreover, from the neighbours' side (no.10), which does not have the benefit of such side space as the appeal site, the result is a high wall of discordant brick-work (no rendered panels are on this side, or are proposed), the scale of which is greatly exaggerated by the position, height and mass of the brick chimney.
9. I acknowledge that the extension is at the rear and has limited visual impact. Although I bear that in mind, good design is to be encouraged everywhere to make attractive places in which to live, whether viewed from private or public land. Government policy is to promote good design and the Development Plan reflects this. The extension does not amount to good design for the reasons I have given. I conclude that the proposed development is harmful to the character and appearance of the area in conflict with the requirements of Policy QD14.

Living Conditions

10. The proposed development backs onto rear gardens westwards and is alongside a shared boundary to another, northwards. LP Policy QD27 requires development not to cause material nuisance and loss of amenity to residents, including such things as daylight, sunlight and outlook. LP Policy QD14 applies a similar requirement to extensions and alterations and is implemented with reference to a 45 degree guideline.
 11. Given the distances and orientations involved, I am satisfied that the extension and chimney do not interfere with the outlook and light of the adjoining occupiers to the rear. However, as far as I can tell from the submitted drawings, the extension cuts a 45 degree line from the patio doors of the adjoining occupiers at no 10. From my examination of the light and outlook from there (in the garden) I formed the view that some loss of light (particularly afternoon sunlight) and outlook have resulted.
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12. Even so, mid-day sunlight is high in the sky and is not blocked by the proposed development. Also, whereas I felt a sense of enclosure in that garden due to the extension, it was not an unpleasant feeling or in any way claustrophobic or shut in. The chimney, however, felt overbearing because of its position, height and mass. In the circumstances, I conclude that the overall effect of the proposed development on the living conditions of the adjoining occupiers counts against it to an unacceptable degree, in conflict with the requirements of the above policies.

Other Considerations

13. The Appellant asserts that the proposed development as carried out is only marginally different to a fallback position derived from the then prevailing permitted development rights and points to the Council's decision not to take enforcement action. Having regard to its reasoning in a letter to the Appellant dated 23 January 2009 (erroneously shown as 2008) I do not disagree with the Council's enforcement position. The fallback is that the extension would remain but the chimney may not.

14. I bear in mind that any fallback position does not prevent me from dismissing an appeal for a scheme that is patently unacceptable in planning terms. The fallback position in this case is not indicate an acceptable impact as I am required to examine the planning merits of the appeal proposal under current circumstances, which are changed. I note that new permitted development rights [Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008] would rule out a scheme that is greater than 3 metres beyond the rear wall of the original dwellinghouse; the extension reaches 6.8 metres. In any event, I have identified harm to the character and appearance of the area and to the living conditions of the adjoining occupiers attributable to the chimney especially. Thus, the proposed development is more harmful than the fallback position and I am in no doubt that it is patently unacceptable in planning terms for the reasons I have given.

15. Third Parties state that smoke from the chimney has been a problem. I have no evidence before me that shows this to be a continuing problem or one that is not being addressed under Environmental Health legislation. However, I acknowledge that the current position may be attributable to the good practice of the Appellant in the choice of fuels to be burnt, which may not be the case with any future owners. To my mind, the design and scale of the chimney is a constant reminder to adjoining occupiers of potential problems in that regard, which adds to the unacceptable effect of the proposed development.

16. I have examined those many other chimney examples to which my attention is drawn, but find no reason to consider the appeal before me other than upon its individual planning merits. I share the Council's view that most of those examples are of chimneys that are part of the original fabric of dwellings and are thereby well-related to them, unlike with the appeal scheme. I have considered all other matters raised but none alters my conclusions on the main issues, which lead me to dismiss the appeal.

B C Scott
INSPECTOR

DOCUMENTS SUBMITTED AT THE HEARING

Document 1

The Council's letter of notification of the arrangements for the Hearing

Document 2

Direction dated 4 June 2008 by the Secretary of State concerning saved policies contained in the Brighton and Hove Local Plan 2005