



Appeal Decision

Site visit made on 7 August 2009

by

Jane V Stiles BSc(Hons)Arch DipArch RIBA DipLA MLI PhD MRTPI
an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
24 August 2009

Appeal Ref: APP/Q1445/C/08/2091874

Land at 31 Roedean Crescent, BRIGHTON, BN2 5RG

- 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 Mark Lloyd against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 6 November 2008.
- The breach of planning control alleged in the notice is failure to comply with condition No. 5 of a planning permission Ref BH2007/02616 granted on 11 September 2007.
- The development to which the permission relates is two storey pitched roof side extension and roof conversion (including 2 front dormers and 3 rear dormers). The condition in question is No. 5 which states that: The 3 no. dormers in the rear roof slope shall not be glazed otherwise than with obscured glass and the lower sections of all 3 dormers shall be fixed shut and thereafter permanently retained as such. The notice alleges that the condition has not been complied with in that there is clear glazing to three rear dormer windows which are conditioned to be obscure glazed with the lower portion fixed shut.
- The requirements of the notice are to:
 - a) Obscure glaze the central rear roof dormer.
 - b) Remove side hung, centrally opening, double glazed windows from the two rear roof dormers (either side of the central dormer) and replace with obscure glazed windows, either fixed shut or with the bottom section fixed shut and a top hung opening ventilation window.
- The period for compliance with the requirements is 4 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. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Decision

1. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matters

2. The present owners purchased the appeal property in February 2008. At that time, planning permission Ref: BH2007/02616 had been granted for a two storey pitched roof side extension and roof conversion (including 2 front dormers and three rear dormers) subject to 9 conditions but it had not been implemented.

3. The appellant has developed the property, albeit not in accordance with the permission BH2007/02616 but it is only the construction and glazing of the windows in the 3 rear dormers which are the subject of the enforcement notice.

Main issue

4. The main issue in this appeal is the effect of the roof conversion on the living conditions of adjoining residential occupiers by reason of overlooking and loss of privacy.

Reasons

5. The deemed planning application (dpa) is to carry out the development without compliance with condition 5 from the date on which development was carried out (s73A(3)(a)).
 6. The reason given for imposing condition 5 states: *To safeguard the privacy of the occupiers of the adjoining property and to comply with policies QD14 and QD27 of the Brighton and Hove Local Plan.*
 7. Policy QD14 will only permit rooms in the roof if the proposed development would not result in significant loss of privacy to neighbouring properties; while Policy QD27, amongst other things, endeavours to protect existing residents from loss of amenity. The supporting text to Policy QD27 makes it clear that residents and occupiers can be seriously affected by changes in overlooking and privacy.
 8. Although the appeal dwelling (No. 31) lies on a north-south axis, its garden lies on a north-north-east to south-south west axis. The appeal dormers face more or less due north. The land rises up from Roedean Crescent towards the rear of the property with the open countryside of the South Downs beyond the appellant's rear boundary. The ridge of No. 31 is higher than that of the adjoining properties at Nos. 29 and 33 and neither of the adjoining properties has dormer windows in their roofs.
 9. The approved plans show a larger central dormer window set between a matching pair of smaller dormers. All 3 windows were shown with a central vertical glazing bar and a horizontal glazing bar which divided each respective window with 1/3 above the bar and 2/3 below the bar.
 10. However, in this case, the appellant has glazed the central dormer with one clear sheet of glass and there is no provision for it to be opened. The 2 smaller dormers on either side each have a pair of clear glazed windows that are side hung and which are not divided with a horizontal glazing bar.
 11. I saw on site that the westernmost dormer serves a bedroom; the central dormer serves a staircase and the easternmost dormer serves a bathroom. From the westernmost dormer it is possible to see across almost the full width and depth of the rear garden to No. 29. From the easternmost dormer it is possible to see across almost the full width of the rear garden of No. 33 and the greater part of the depth of that garden. From the central dormer, there are similar but more limited views of the rear gardens of Nos. 29 and 33. In my conclusion, therefore, the appeal dormers, taken by themselves, have resulted in a high degree of overlooking and a significant loss of privacy in conflict with the aims of Policies QD14 and QD27.
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12. First, I acknowledge that there is an existing east facing bedroom window in the flank wall of No. 31, at first floor level, from which the appellant could, if he so wished, overlook a part of the garden of No. 33. However, views of No. 33 from that window are oblique as that window is located towards the front of the property rather than the rear; and the direct view from that window is of the facing flank wall of No. 33. Secondly, I acknowledge that there is an existing west facing bedroom window at first floor level from which the appellant, if he so wished, could obtain a view of the garden of No. 29. Thirdly, I acknowledge that there is a degree of overlooking of both Nos. 29 and 33 from the first floor rear windows of No. 31, although this would appear to be largely obscured by vegetation in the summer months. By contrast, the dormer windows are too high up to be obscured by planting. Finally, I acknowledge that walkers and ramblers utilising the footpath in the open fields alongside No.33 could potentially look over the boundary fence into the rear garden of No. 33.
13. Nevertheless, in my view, it is not acceptable to insert 3 windows which result in a high degree of overlooking and loss of privacy simply because other opportunities for overlooking already exist. In any event, the introduction of 3 clear glazed dormer windows has changed the degree of overlooking in a negative way such that the level of privacy enjoyed by the adjoining neighbours has diminished. Therefore, these dormer windows are in conflict with Policies QD14 and QD27 of the Brighton and Hove Local Plan.
14. I have taken account of all other matters raised in this appeal. However, first there is no right to a view, in any event. Secondly, in this particular case, the fitting of obscured glass would deprive the appellant of a view that he was not entitled to in the first place by virtue of condition 5. Thirdly, it is a matter for the appellant if he chooses to utilise the bedroom in the roofspace as his 'main bedroom'. From the plans submitted there are 4 double bedrooms at first floor level with en suite bathrooms, one of which also has an en suite dressing room. In any event, the bedroom in the roof space has the benefit of a clear glazed dormer to the front. Finally, in my view, there is sufficient means of ventilating the rooms in the roof space.
15. The appeal on ground (a) therefore fails.

Jane V Stiles
INSPECTOR

