



Appeal Decision

Site visit made on 25 November 2009

by **Elaine Benson BA (Hons) Dip TP MRTPI**

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

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Decision date:
15 January 2010

Appeal Ref: APP/Q1445/A/09/2108714

218 Freshfield Road, Brighton, East Sussex BN2 9YD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Wayne Russell against the decision of Brighton & Hove City Council.
- The application Ref BH2009/00890, dated 8 December 2008, was approved on 18 June 2009 and planning permission was granted subject to conditions.
- The development permitted is a rear first floor extension.
- The condition in dispute is No 4 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no window, dormer window, rooflight or door other than those expressly authorised by this permission shall be constructed without planning permission obtained from the Local Planning Authority.
- The reason given for the condition is: to safeguard the amenities of the occupiers of nearby properties and to comply with policies QD14 and QD27 of the Brighton & Hove Local Plan.

Decision

1. I allow the appeal, and vary the planning permission Ref BH2009/00890 for a rear first-floor extension at 218 Freshfield Road, Brighton, East Sussex, granted on 18 June 2009 by Brighton & Hove City Council, deleting condition 4 and substituting for it the following condition:
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows or doors other than those expressly authorised by this permission shall be constructed on the side elevations of the extension facing onto 216 and 220 Freshfield Road.

Main issue

2. The main issue in this appeal is whether the disputed condition is reasonably imposed to prevent overlooking and a loss of privacy to the neighbouring properties at 216 and 220 Freshfield Rd.

Reasons

3. The planning history for the appeal site includes a series of applications for a dormer window and first-floor extension which were refused planning permission. Following the October 2008 changes to the General Permitted Development Order, the appellant claimed that planning permission for the

dormer window element of the proposal was no longer required and stated that it would be constructed under permitted development rights. The appeal proposal was therefore submitted for the first-floor extension alone. Planning permission for the extension was granted subject to the condition set out above.

4. Development orders are designed to give a freedom from detailed planning control which is acceptable in the great majority of cases. Although it is possible, exceptionally, to impose conditions to restrict further development which would normally be permitted by a development order, there is a general presumption against such restrictions. Circular 11/95 paragraph 87 states that 'Save in exceptional circumstances, conditions should not be imposed which restrict permitted development rights granted by development orders.' Such conditions are normally considered unreasonable unless there is clear evidence that the works excluded would have serious adverse effects on amenity.
5. The Council's evidence is that it sought to control the future construction of windows or doors in the side elevations of the extension in order to be able to assess their impact on the living conditions of the adjacent occupiers at that time. I have had regard to the side facing window on the neighbouring property, No 216, and the relationship between the appeal property and its two neighbours. I understand the Council's reason for seeking to prevent side facing windows or doors in the extension to preclude overlooking or loss of privacy. However, the wording of the imposed condition would also prevent the construction of any other dormer window, window or door in the property. To my mind, the disputed condition 4 goes beyond what is reasonably related to the proposal and is more onerous than can or has been justified by the Council. Furthermore, there is little evidence that that the works excluded by condition 4 would have serious adverse effects on amenity.
6. I conclude that the imposition of condition 4 is unnecessary, not relevant to the approved extension and unreasonable. It does not comply with the tests set out in Circular 11/95 and I therefore allow the appeal for its removal. However, as I have identified a need to prevent the construction of side facing windows or doors in the extension to prevent overlooking or loss of privacy, I have substituted the disputed condition 4 with a condition to protect the living conditions of the neighbouring occupiers.

Elaine Benson

INSPECTOR