



Appeal Decision

Site visit made on 17 February 2010

by **Simon Poole BA(Hons) DipArch MPhil MRTPI**

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

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Decision date:
31 March 2010

Appeal Ref: **APP/Q1445/A/09/2115484** **269 Kingsway, Hove, East Sussex BN3 4LJ**

- 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 Vic Marchant against the decision of Brighton and Hove City Council.
- The application Ref BH2008/03179, dated 2 October 2008, was refused by notice dated 4 June 2009.
- The development proposed is a side and rear extension at basement and ground floor level.

Decision

1. I dismiss the appeal.

Background and Procedural Matters

2. In December 2006 planning permission was granted for a rear basement level extension (Ref BH2006/03550). At the same time the Council issued a Certificate of Lawfulness Use or Development (LDC) (Ref BH2006/03552) confirming that a scheme comprising a single storey, ground floor level, side and rear extension was permitted development under Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development Order) 1995. A basement and ground level rear extensions have been constructed which are materially different from the above. A retrospective planning application – the subject of this appeal – has therefore been submitted to seek to regularise matters.
3. The proposed development is described on the planning application form as “retrospective amendments to the approved applications BH2006/03550 and BH2006/03552”. However, as there is no mechanism to retrospectively amend this development, the proposal needs to be assessed in its entirety and on its individual merits. The description of development in the banner heading above therefore omits reference to the previous approvals.
4. The appellant’s evidence compares the appeal scheme to the combination of the basement permission and the scheme subject to the LDC. The latter is not a planning permission, but indicates that at the time the certificate was issued, the development described on the certificate would be lawful. In this case it was based on an assessment of permitted development rights. If the situation at the property subsequently changes, such as with the construction of another extension or amendments to permitted development rights, the certificate would be unlikely to be relevant. Whilst the ground floor and basement

extensions may be lawful on their own, it is unlikely that they could be implemented together. Whether or not this is the case would need to be established via an application under section 191 Town and Country Planning Act 1990.

5. In any case, the development that is now proposed would not be the same as the previous proposals with the extension projecting further from the building and would be much taller than the proposal the subject of the LDC. While I have taken into consideration the LDC and the basement approval, I am not satisfied that they represent a credible fall-back position.

Main Issues

6. The main issues in this case are:
 - i) the effect of the appeal scheme on the living conditions of the occupiers of the ground floor flat at 271 Kingsway, with particular regard to outlook, daylight and privacy;
 - ii) whether the appeal scheme provides satisfactory living conditions for occupiers, with particular regard to private amenity space provision; and
 - iii) the effect of the appeal scheme on the character and appearance of the host property.

Reasons

7. The appeal property is a large 3-storey mid-terraced house with a pitched roof. In common with the houses to either side, it has a 2-storey rear wing and a short rear garden, which is bounded at the back by an alleyway beyond which is the end property in Wish Road.

Living Conditions – Neighbouring Residents

8. One flank wall of the appeal scheme extends along the boundary with 271 Kingsway for over 5m of its length and is over 3m in height above ground level. It is in close vicinity to the ground floor flat at No.271, which has glazed doors in the main rear-facing elevation and a window in the side of the rear wing of the property which faces the property boundary. I note that outlook from, and natural light to, these windows would have been somewhat restricted by surrounding buildings prior to the erection of the appeal scheme. However, I consider that, due to its height, bulk and proximity to No.271, the appeal scheme results in an additional and significant diminution in outlook and daylight which has an unacceptable effect on the living conditions of occupiers of No.271. For this reason the proposal conflicts with LP Policies QD14 and QD27, which state amongst other things that planning permission will not be granted for development that results in a loss of amenity to existing residents.
9. The appeal scheme includes a ground floor window that faces into a small courtyard area formed between the existing house, the extension and the property boundary with No.271. Although this is close to the windows in No.271 it is obscure glazed, which I consider adequately prevents an unacceptable loss of privacy to the occupants of No.271. I note that the window can be opened. However, were I minded to allow the appeal I consider that overlooking via the window could be prevented by the imposition of a

condition requiring the window to be fixed shut. My views in respect of this matter do not however outweigh my conclusions relating to the effects of the proposal on outlook and daylight.

Living Conditions – Occupiers of the Appeal Property

10. The appeal scheme has resulted in a significant reduction in the size of the rear garden. The area remaining is about 6.5m by 4m and is on 2 levels with a set of steps and a retaining wall between. As a result the retained space provides limited scope for recreation. In light of the fact that the garden serves a relatively large family house I consider that the amount and quality of private amenity space provided is substandard and results in unsatisfactory living conditions for occupiers in this respect. The appeal scheme is therefore contrary to the aims of LP Policy QD27, which states that planning permission will not be granted for development that results in a loss of amenity to existing and future residents.

Character and Appearance

11. Although the materials of the appeal scheme generally match those of the host property and the use of a flat roof minimises the bulk of the scheme as much as possible, the scheme is a substantial addition which extends significantly beyond the prevalent rear building line of the buildings to either side of the terrace and is clearly visible from Wish Road. As a result of its siting, height and bulk it dominates the rear of the host property and represents unsympathetic overdevelopment. I therefore consider that the appeal scheme fails to meet the aims of LP Policies QD1, QD2 and QD14, which seek extensions to existing buildings that are of a high standard of design and enhance the positive qualities of local neighbourhoods.

Other Matters

12. The appellant has referred to the garages and additions to the rears of other properties in the terrace. However, there is no evidence before me that demonstrates that these developments were undertaken since the adoption of the current development plan. In any case, I do not consider them to be directly comparable to the appeal scheme and their presence does not outweigh the harm identified above.

Conclusions

13. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Simon Poole

INSPECTOR

