



Appeal Decision

Site visit made on 31 August 2010

by **M A Champion BSc CEng FICE
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an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
17 September 2010

Appeal Ref: **APP/Q1445/C/10/2119935**

Land at **114 Hythe Road, Brighton, BN1 6JS.**

- 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 Ms Lindsey Shakoori against an enforcement notice issued by the Brighton & Hove City Council.
- The Council's reference is 2008/0099.
- The notice was issued on 1 December 2009.
- The breach of planning control as alleged in the notice is:
Without planning permission the construction of a roof terrace, with balustrade, to the rear first floor.
- The requirements of the notice are:
 1. Cease the use of the first floor flat roof as a terrace.
 2. Remove the balustrade from the first floor flat roof.
 3. Remove the door access to the first floor flat roof and reinstate the window which existed prior to the unauthorised development (to match the rear first floor window and blockwork at No 112 Hythe Road – See Appendix 1 [of the notice]).NB. For the avoidance of doubt the terrace referred to is accessed from the half landing which leads to the first floor and is therefore described as the first floor terrace.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in sections 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld with variation.

The appeal on ground (a) and the deemed application

Main Issues

1. The main issues are the effect of the development on the character and appearance of the building, and on the living conditions of neighbouring residents with particular regard to overlooking and privacy, and noise and disturbance.

Policies

2. Policies QD14 and QD27 of the Brighton & Hove Local Plan 2005 deal with extensions and alterations and protection of amenity.

Reasons

3. The appeal site lies in a residential area on the south side of Hythe Road. It comprises a three-storey mid-terraced house with a basement that leads to the rear garden owing to falling ground levels, and a roof conversion with a large rear dormer and Juliet balcony. A first floor terrace has been constructed over

the existing ground floor rear projection and is accessed from a half-landing on the stairway.

4. My attention has been drawn to appeal ref: APP/Q1445/A/09/2114717 dismissed in March 2010 for the same development. This is a recent decision and I have not been made aware of any change of policy or circumstance since. Although screens were included in the previous application they had not been installed at the time of the previous appeal. Neither had they been fitted at the time of my visit.
5. The previous Inspector found that overlooking from the terrace was significantly more harmful than from the upper floor rear windows within the building. He also considered that the likely low level of use of the terrace would not result in unacceptable noise and disturbance, but that the proposed screens would harm the character and appearance of the area.
6. While I have no reason to disagree with these views, I consider additionally that, if use of the terrace were to increase beyond the low level assumed in the earlier appeal, then, in view of the open aspect to the rear and the height above rear garden level, the living conditions of neighbouring residents would be adversely affected by noise and disturbance.
7. Furthermore, for the same reasons, the terrace is in a highly prominent position and visible from the rear windows and gardens of many neighbouring properties. It is, in my opinion, an incongruous feature which detracts from the appearance of the building.
8. I conclude, therefore, that the development harms both the character and appearance of building and the living conditions of neighbouring residents by way of overlooking and loss of privacy, and potentially noise and disturbance, contrary to Policies QD14 and QD27. The appeal on ground (a) fails.

The appeal on ground (f)

9. This ground of appeal is that the steps required to comply with the notice are excessive and that lesser steps would overcome the objections. The appellant states that reinstating the window is excessive as the door could remain but with the balustrade railings reconstructed as a Juliet balcony.
10. The existing door opens outwards, and such permanently fixed railings would not permit the door to open sufficiently to allow access to the terrace. As this proposal would also reflect the appearance of the dormer above, I do not consider that it would be out of keeping. I shall vary the notice accordingly. The appeal on ground (f) succeeds to this extent.

Conclusions

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

Formal Decision

12. I direct that the enforcement notice be varied by the deletion from paragraph 3 of the words

“Remove the door access to the first floor flat roof and reinstate the window which existed prior to the unauthorised development (to match the rear first floor window and blockwork at No 112 Hythe Road – See Appendix 1)”

and the substitution therefor of the words

“EITHER

Remove the door access to the first floor flat roof and reinstate the window which existed prior to the unauthorised development (to match the rear first floor window and blockwork at No 112 Hythe Road – See Appendix 1)

OR

Permanently install railings (to the same design, height, spacing, size, materials and finish as the existing railings to the Juliet balcony in the rear roof dormer) across the outside of the door and fixed to the wall on either side in such a position as to prevent the door being opened and to prevent access to the first floor flat roof”.

13. Subject to this variation 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.

M A Champion

INSPECTOR

