



Appeal Decision

Site visit made on 5 September 2011

by Michael Evans BA MA MPhil DipTP MRTPI

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

Decision date: 7 September 2011

Appeal Ref: APP/Q1445/D/11/2156290

44 Crescent Drive South, Woodingdean BN2 6RB

- 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 Lee Phillips against the decision of Brighton and Hove City Council.
 - The application Ref BH2011/00606, dated 10 February 2011, was refused by notice dated 24 May 2011.
 - The development proposed is to install a glass safety rail to a first floor flat roof area at the rear, adjacent to a dormer addition with French doors.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in the consideration of this appeal are:
 - The effect of the proposal on the character and appearance of the area.
 - The effect on the living conditions of the occupiers of the adjacent dwellings in respect of overlooking and privacy.

Preliminary Matters

3. The proposed safety rail has already been installed but the appeal must, nevertheless, be considered strictly on its own merits. The Appellant indicates that the rail is shown on one of the drawings submitted with a previous planning application that was approved by the Council. If, as a result, the Appellant considers that planning is not needed, this is not a matter to be determined in the context of an appeal made under section 78 of the above Act. It is open to the Appellant to apply for a determination under section 191/192 of the above Act to determine this matter. The determination of this appeal under section 78 of the above Act does not affect the issuing of a determination under section 191/192 of the same Act.

Reasons

4. The appearance of dwellings in the vicinity of the appeal site varies significantly. As a result the metal rails with glass panels below, despite suggesting the presence of a balcony, do not disrupt any significant regularity of design. Furthermore, the balustrade is a subordinate feature set below the ridge and of modest size and scale in relation to the overall roofscape.
5. Despite such features not being found at most properties in the immediate vicinity, it is therefore concluded that the character and appearance of the area has not been harmed. In consequence, there is compliance with the underlying aims of Brighton and Hove Local Plan 2005, Policies QD1, QD2 and QD14, which include preventing such adverse effects.
6. It is acknowledged that there is a condition imposed on the previous permission preventing the use of the flat roof as an amenity area and allowing access only for maintenance or emergency purposes. The Appellant indicates that this has been complied with. However, there is no impediment to entry onto the roof, which is readily facilitated by the French doors and encouraged by the presence of the safety rail. The area is therefore available for use as an external amenity space. Even if the Appellant is able to ensure that it is not used as such, it is likely that future occupiers would access this pleasant outside area to enjoy the attractive views available in this elevated position despite the condition.
7. However, this would be at the undue expense of the privacy of adjacent occupiers. Although relatively small, the space is large enough for more than one person to stand on and enables particularly intrusive overlooking down into the patio areas immediately to the rear of the adjacent dwellings. It is also possible to see into the rear of the house itself at no. 46. Visibility from within the bedroom at no. 44 looking through the French doors is noticeably more restricted, giving significantly less scope for undue overlooking.
8. The undue impact is, in itself, sufficient reason to justify dismissing the appeal, given the substantial detriment to privacy. This is the case even if the balustrade cannot be seen from the patio areas of the adjacent dwellings so that concerns regarding perceived overlooking are not justified, as contended by the Appellant.
9. The level of privacy at no. 42 has been diminished to a degree by rooflights in the side of the roof at the appeal site. However, these do not affect no. 46 and the current proposal has, in any case, resulted in unacceptable overlooking in addition to that possible from the rooflights. As a result these openings provide no significant justification for the proposal.
10. For the above reasons, it is concluded that the privacy of the occupiers of the adjacent dwellings has been unacceptably compromised and living conditions have been harmed. In this respect there is conflict with Local Plan Policies QD14 and QD27, which, among other things, seek to avoid such detrimental impacts.
11. No significant evidence has been submitted to support the contention that the balustrade is justified to enable access onto the roof for maintenance or emergency purposes. The Appellant has referred to other balconies in the

area. However, the full details and background of these relatively isolated examples have not been provided. Consequently, no meaningful comparison can be made with the current proposal which must, in any event, be considered on its own merits. It is concluded that none of the above, or any other matter raised, including the absence of harm in relation to character and appearance, is sufficient to outweigh the unacceptable effect on living conditions. It is therefore determined that the appeal fails.

12. There have been letters of support for the proposal from local residents but the concerns of the immediate neighbours regarding privacy are well founded in this instance. The photographs submitted by the Appellant have been carefully considered in reaching this decision.

M Evans

INSPECTOR

