



Appeal Decision

Site visit made on 26 September 2011

by **JP Roberts BSc(Hons), LLB(Hons), MRTPI**

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

Decision date: 10 October 2011

Appeal Ref: APP/Q1445/D/11/2158748
26A Clifton Terrace, Brighton BN1 3HB

- 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 Ian Pointer against the decision of Brighton & Hove City Council.
 - The application Ref BH2011/01202, dated 23 April 2011, was refused by notice dated 30 June 2011.
 - The development proposed is a new second floor balcony.
-

Decision

1. The appeal is dismissed.

Procedural matter

2. The appeal was accompanied by an amended plan which showed screening to the balcony and a wooden door. As neither the Council nor local residents have had the opportunity to comment on the amended plan, it is not appropriate for me to take this plan into account, although I shall refer to the matters it includes in relation to possible conditions below.

Main Issue

3. The effect of the proposal on the living conditions of neighbouring residential occupiers with particular regard to overlooking.

Reasons

4. It is proposed to construct a balcony at the rear of the property at second floor level, to be positioned in the angled gap between 27A Clifton Terrace and the building at 9-10 Victoria Road. From the balcony, views would be had of nearby patios / terraces of neighbouring properties. In particular, anyone standing at the balcony edge would have very clear views of the terrace immediately below at 27 Clifton Terrace and of the terraces at the rear of 9-10 Victoria Road.
5. Whilst I recognise that the area is typified by densely grouped houses, where balconies and terraces are commonplace, and some degree of overlooking of neighbouring properties is not unusual, in this case, I consider that being able to look directly down on large areas of private amenity space would be highly unneighbourly. Even if people using the balcony were sitting down, their presence would be likely to be audible to neighbours using the lower terraces and there would be a perception of being overlooked which would cause material harm to their privacy.

6. I saw on my visit the closeness of the proposed balcony to the second floor window to 27 Clifton Terrace, but the angle between them would be such that it would be difficult to obtain significant views into the property, and the Council indicates that it is a secondary window, and I therefore agree that the balcony would not result in material harm as far as this relationship is concerned.
7. However, this does not affect my finding that the balcony would result in harmful overlooking of neighbouring terraces. This would conflict with saved Brighton and Hove Local Plan Policy QD27, which says that planning permission will not be granted for any development which, amongst other things, would cause a material loss of amenity to adjacent residents.
8. Although not featured as a reason for refusal, both the Council and a neighbour have expressed concerns about the use of a UPVC door in a conservation area. The appellant has indicated a willingness to provide a timber door, and had the appeal been allowed, this could reasonably have been required by the imposition of a condition.
9. I have given consideration to whether a condition could be imposed to screen the balcony, but the Council's reservations about doing so, expressed in the delegated report, appear to me to be sound. To require an effective screen would result in a material change to what is a modest proposal, and would possibly negate some of the purpose in seeking a balcony in the first instance. This would be contrary to the advice in Circular 11/95 *The Use of Conditions in Planning Permissions*.
10. For the reasons given above, I conclude that the appeal should be dismissed.

JP Roberts

INSPECTOR