



---

# Appeal Decision

Site visit made on 20 December 2011

**by Gareth Symons BSc(Hons) DipTP MRTPI**

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

**Decision date: 22 December 2011**

---

**Appeal Ref: APP/Q1445/D/11/2164678**

**51 Upper Abbey Road, Brighton, East Sussex, BN2 0AD**

- 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 Nathan Eames against the decision of Brighton & Hove City Council.
  - The application Ref: BH2011/02267, dated 7 August 2011, was refused by notice dated 6 October 2011.
  - The development proposed is a wood based roof terrace to sit on top of existing flat roof of 51 Upper Abbey Road and accessed via the existing dormer loft conversion.
- 

## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are the effects of the development on the living conditions of neighbours, with particular regard to privacy, noise, disturbance and outlook, and on the character and appearance of the area. The terrace and a balustrade are already in place. I shall consider the appeal accordingly.

## Reasons

### *Living Conditions*

3. From the front edge of the terrace there are clear views down into the rear windows of the houses most immediately at the back of the appeal site in Belle Vue Gardens. There are also views into the rear outdoor amenity spaces of those houses and back towards the rear windows of the houses either side of the appeal property. In my opinion, such views have caused a serious invasion of privacy to these neighbours.
4. It is accepted that sitting down on the terrace would restrict the views out towards the houses in Belle Vue Gardens in particular. However, persons walking out onto the terrace would at least initially be standing and there would be a natural tendency to go to the edges of the terrace to look around. At social gatherings, for example on pleasant outdoor evenings, it would not be unusual for persons on the terrace to remain standing thus prolonging views towards neighbouring houses. It would not be practicable to enforce the use of the terrace to seating only. While the appellants may not want to use the terrace for entertaining it would also not be possible to prevent this and any future occupiers may wish to use the area differently anyway. Placing a trough along the front edge of the terrace with some planting in would only provide

very marginal screening and not alleviate sufficiently the ability to look into other people's houses and rear amenity spaces.

5. It is acknowledged that there are already some high level views from the windows in the existing rear dormer of the appeal house towards the backs of the houses in Belle Vue Gardens. However, those views are different and less harmful to the neighbours at the back because they are from further away and not so directly downwards. Also from these windows it is not possible to see back into the rear windows of the houses either side. In addition the affected neighbours in Belle Vue Gardens would be very conscious of the ability for persons on the roof terrace to look down on them and see what they were doing. That possibility means that these neighbours in particular would feel that the private enjoyment of their outdoor spaces would be much diminished.
6. At my site visit I looked out of the existing first (middle) floor rear windows where it is possible to see towards the Belle Vue properties. However, the size and position of these windows mean that views from them are more restricted than those from the roof terrace. I also looked from the existing patio area of the appeal house towards the back of the Belle Vue houses and saw the difference in levels between the two sets of properties. I recognise that from here some views are possible into rear facing windows and gardens. It is accepted that in areas such as there will usually be some existing mutual overlooking. However, such tight knit situations make it even more important to ensure that existing amenity levels are safeguarded.
7. It is noted that from the existing dormer extension access can already be gained onto the flat roof. It is also claimed that the flat roof has been used as a terrace for the last 3 ½ years. However, given the high level position of the terrace, the installation of the balustrade will allow a much safer use of this area. This will lead to an increased propensity to be on the roof for outdoor amenity purposes. The flat roof at no 53 does not have a rail around it. Although that roof may sometimes be used for sitting out on, I consider that its use would not be frequent for the very obvious safety reasons. This limitation means that views from the roof of no 53 are less invasive to privacy.
8. Despite a roof terrace at no 49 which does have a safety rail and some other roof terraces further away, the more regular use of the appeal roof, most probably when neighbours would also want to be outside, adds to my strong concerns about the very neighbour unfriendly nature of the development.
9. There is no evidence from the Council to support the assertion that users of the roof terrace would be so noisy that they would unacceptably disturb neighbours. In my opinion noise from residents legitimately using their back gardens/amenity areas would be little different. The Council also has other powers to abate any noise nuisance if it did occur. I also find little to back up the view that the terrace is overbearing and therefore impacts adversely on the outlook from neighbours' houses. Nevertheless, these findings do not persuade me from my previous conclusions about significant harm to neighbours privacy. As such the appeal scheme conflicts with the amenity aims of policies QD14 and QD27 from the Brighton and Hove Local Plan (LP).

#### *Character and Appearance*

10. The terrace is formed from timber decking and the balustrade comprises a wooden handrail and uprights which have horizontal thin steel cables between

them. Roof terraces also often have tables and chairs on them like those shown in the photographs submitted of the adjoining terrace. In my opinion the terrace has a suburban back garden design that, along with its high level position, looks out of place in this urban terrace setting. Domestic paraphernalia would also create a cluttered appearance at odds with the plain and simple character of the rear facades of these traditional character properties. Although the houses have been altered in varying ways, the roof terrace is inconsistent with the architectural style and period of the buildings.

11. Most of the other houses in the two rows of terraces do not have roof terraces. The few that do exist are therefore in the minority. I am also not convinced that the other terraces set a good design precedent for this one to follow, whether or not they have had planning permission. Views of the roof terrace are relatively limited from adjoining roads but it is nonetheless very visible from numerous nearby windows. The roof terrace has harmed the character and appearance of the area in this context. The development does not accord with the design aims of LP policy QD14.

### **Other Matters**

12. The appellant has stated that the appeal scheme accords with another LP policy which is QD3 and suggested that it also complies with the Council's Supplementary Planning Guidance BH1 *Roof Alterations and Extensions*. However, the Council did not identify any conflict with either of these and even if the appeal scheme did accord with them, that does not outweigh my findings about conflicts with the other two policies referred to from the LP.
13. The Portsmouth appeal decision (APP/Z1775/D/11/2151095) was in relation to a flat roof which was small and access out onto it was through a bedroom window which was not direct or easy. In this context the Inspector found that use of the roof would be restricted and it would not be a viewing platform in general use. However, in the case now before me the appeal roof is of such a size and with easy access that it is likely to encourage regular use and lead to the harm to privacy identified above. The two developments appear to be materially different and so I attach little weight to the Portsmouth case.
14. In terms of the other appeal decision in Brighton (APP/Q1445/D/10/2124207), that involved a terrace at a semi-detached property. The decision turned on whether oblique views from the terrace back towards the adjoining property (the other semi-detached house) caused a privacy problem bearing in mind an intervening screen along the edge of the terrace. The case did not seem to involve overlooking towards properties at the rear or high level peering down into back gardens/patios. On this basis the Brighton appeal decision also has significant differences from the case I am now considering. It therefore has little bearing on this appeal. In any event, each planning appeal should be considered on the basis of its individual circumstances and merits.
15. I have considered all other matters raised. None outweigh my earlier findings.

### **Conclusion**

16. I conclude that the appeal should not succeed.

*Gareth Symons*

INSPECTOR

