



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: 9 January 2012

Appeal Ref: APP/Q1445/C/11/2158450

44 Crescent Drive South, Brighton, BN2 6RB

- 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 Mr Lee Phillips against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2010/0428.
- The notice was issued on 7 July 2011.
- The breach of planning control as alleged in the notice is without planning permission the installation of a glass panelled safety rail ("Safety Rail") on the rear elevation at first floor level to the property.
- The requirement of the notice is: Remove the safety rail on the rear elevation of the property at first floor level.
- The period for compliance with the requirement is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

The appeal on ground (c)

1. An appeal on this ground is that there has not been a breach of planning control. The onus to do that rests with the appellant.
2. The main argument by the appellant is that the glass safety balustrade has been fitted in the position that it was always intended to be. To support that assertion a planning permission (Ref: BH2005/06204) for various alterations and extensions at the appeal property has been referred to. The approved plans and some subsequent minor amendments, which were also endorsed by the Council, show railings in front of the doors to the first floor rear facing dormer window. However, those railings would appear to be flush with the outside of the doors. Had it been the intention to enclose the flat roof area in front of the dormer, and that is what had been applied for, the proposed side elevations would have depicted the handrail and any railings extending out from the dormer window to the edge of the roof. They do not.
3. Furthermore, the safety rail shown on the approved drawings is clearly in the form of railings and not a handrail with only glazing below. Even if permission had been given to put a rail around the flat area in front of the dormer, its style was not how the current balustrade looks. The proposed and existing arrangements are materially different. Planning permission BH2005/06204 did not allow the alleged breach of planning control

4. It is noted that the appellant considers that he was granted planning permission for the balcony area and has referred to condition 5 of the aforementioned planning permission. However, the roof, with the glass balustrade in place, can be used as an amenity area which condition 5 specifically prevents. The condition also specifies that the flat roof shall only be used for maintenance or emergency purposes only. In my opinion the existing access arrangements onto the roof mean that its use is beyond the limited rights intended and restricted by condition 5.
5. I agree with the appellant that the other appeal decisions referred to by the Council are not in any way comparable to this appeal. In my view the way that the balustrade juts out from roof means that it has materially affected the external appearance of the building and the shape of the roof. No other reasons have been advanced to show why the glass panelled safety rail does not constitute a breach of planning control. The ground (c) appeal fails.

The appeal on ground (a)

6. There are two main issues. The first is the effect of the development on the living conditions of neighbours with regard to privacy. The second is the effect that the safety rail has on the character and appearance of the area. I shall refer to an appeal decision Ref: APP/Q1445/D/11/2156290 dated 7 September 2011. This was in relation to a refusal of planning permission to retain the same safety rail that is subject of the enforcement notice and which is now before me. The similarities between the two appeals in terms of not only the development but also the issues involved mean that I shall attach significant weight to the other appeal decision which was dismissed.

Living Conditions

7. I have read the previous Inspector's decision. I agree with his findings about how persons who stand on the roof/balcony and use it as an external amenity space can look down into the patio areas immediately to the rear of the adjacent dwellings. This causes particularly intrusive overlooking. It is also possible to see into the rear of no 46 itself. It is noted that the side facing windows to no 46 are in an extension to the property, and if that extension and its windows were not there, then there may not be a privacy problem. Nevertheless, the extension is there and the impact of the appeal development must be assessed on the basis of the current circumstances.
8. I have considered all other matters raised in the previous appeal and those raised in this appeal. They include the involvement of a local councillor and a suggested compromise arrangement of fitting rails outside the patio doors which I consider in more detail below. It is also noted that the previous Inspector considered the matter of restricting access onto the flat roof. However, none of these matters outweigh the harm to the living conditions of neighbours. The development conflicts with the amenity aims of policy QD27 from the Brighton and Hove Local Plan (LP).

Character and Appearance

9. I agree with the previous Inspector about how the safety rail has not harmed the character and appearance of the area. As such the appeal development complies with the design aims of LP policies QD1 and QD2.

Ground (a) conclusion

10. The harm to the living conditions of neighbours is the prevailing consideration. Consequently planning permission should not be granted for the alleged breach of planning control. The ground (a) appeal does not succeed.

The appeal on ground (f)

11. Under S173(4) of the 1990 Act an enforcement notice may be issued for certain purposes. They are (a) remedying the breach of planning control by making any development comply with the terms of any planning permission which has been granted in respect of the land, by discontinuing the use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.
12. In this case the alleged breach of planning control is the installation of a safety rail and the enforcement notice's only requirement is to have that rail removed. Consequently the purpose of the notice must fall into S173(4)(a) of the 1990 Act because it seeks to remedy the breach of planning control by restoring the land to its condition before the breach took place. No lesser steps would achieve the purpose of the notice.
13. If the existing safety rail was to remain and another one was put immediately in front of first floor doors, this would restrict access onto the roof. However, it seems that the new rail would be along the lines of that which was granted planning permission as referred to above. Persons could potentially step over that and therefore still be on the roof looking towards their neighbours. It seems to me that it is the existing rail which has allowed the roof to be used and it is that use which causes the amenity problem. To achieve the purpose of the notice the existing safety rail needs to be removed. The requirement of the notice is not excessive. The ground (f) appeal fails.

The appeal on ground (g)

14. In my opinion it would take longer than 1 month to arrange for the safety rail to be removed and for the work and any subsequent repairs to be carried out. A period of 3 months is what should be reasonably allowed. On this basis the appeal on ground (g) succeeds and I shall vary the notice accordingly.

Conclusion

15. Having regard to all other matters raised, the appeal does not succeed.

Formal Decision

16. I direct that the words under section 6 of the notice should be deleted and replaced with "3 months after the notice takes effect". Subject to this variation I dismiss the appeal and uphold the enforcement notice.

Gareth Symons

INSPECTOR

