



Appeal Decision

Site visit made on 10 January 2012

by D G T Isaac LLB

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

Decision date: 30 January 2012

Appeal Ref: APP/Q1445/A/11/2163984

39 Salisbury Road, Hove, East Sussex BN3 3AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Brightwell Homes against the decision of Brighton & Hove City Council.
 - The application Ref. BH2011/01822, dated 22 June 2011, was refused by notice dated 28 September 2011.
 - The application sought planning permission for demolition of existing building and erection of a 4 storey private residential building containing 9 mixed sized units and a community area on ground floor without complying with conditions attached to planning permission Ref. BH2010/01782, dated 20 October 2010.
 - The conditions in dispute are Nos. 9, 10 and 12.
 - Condition 9 states that: *"The lower sections of windows to the rear elevation at first, second and third floor levels, as indicated on approved drawing no. BRX 201 02, shall not be glazed otherwise than with fixed shut obscured glass and shall thereafter be permanently retained as such."*
 - Condition 10 states that: *"Access to the flat roof areas at first, second and third floor levels to the rear of the building shall be for maintenance or emergency purposes only and the flat roof shall not be used as a roof garden, terrace, patio or similar amenity area."*
 - Condition 12 states that: *"The development hereby permitted shall be carried out in accordance with the approved drawings no. BRX/100/02, BRX/200/02, BRX/201/02, BRX/202/03, BRX/203/05, BRX/204/01, BRX/205/01 & BRX/207/02 submitted 10 June 2010"*
 - The reason given for condition 9 is: *"To safeguard the amenities of the occupiers of the adjoining property and to comply with policy QD27 of the Brighton and Hove Local Plan."*
 - The reason given for Condition 10 is: *"In order to protect adjoining properties from overlooking and noise disturbance and to comply with policy QD27 of the Brighton and Hove Local Plan."*
 - The reason given for Condition 12 is: *"For the avoidance of doubt and in the interests of proper planning."*
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Brightwell Homes against Brighton and Hove City Council. That application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is the effect of the variation or removal of the disputed conditions and the addition of the proposed privacy screen on the living conditions of neighbouring residents in Palmeira Avenue.

Reasons

4. The application to vary the disputed conditions incorporated a proposal to erect an obscure glazed privacy screen on the flat roof area to the rear of the appeal building at third floor level. The appellant has also made it clear that whilst conditions 9 and 10 apply to the first, second and third floor levels at the rear of the building, the intention of the application was to seek a variation of the conditions only insofar as they relate to the third floor level of the building.
5. The proposed privacy screen, which would be some 1.8m in height, would enclose the three sides of the flat roof area outside the main rear elevation of the building at third floor level. The rear elevation of the building faces the rear windows and gardens of neighbouring properties in Palmeira Avenue and the screen is clearly intended to enable the flat roof areas at third floor level to be used as amenity areas without unduly affecting the residents of the neighbouring properties in terms of overlooking.
6. It was suggested in the appeal statement that it was doubtful whether the proposed screen would be readily visible from the rear gardens of nos. 9 and 11 Palmeira Avenue. However, when I visited the site a temporary screen of comparable height to that proposed was in place on one part of the flat roof area in a position that the proposed screen would occupy, and it was clearly open to view from the rear gardens of nos. 9 and 11 Palmeira Avenue. I was also able to see that the proposed screen would be clearly visible from rear facing windows of the neighbouring properties and I formed the opinion that it would add significantly to the visual impact of the building when viewed from the rear gardens of nos. 9 and 11 Palmeira Avenue, as well as from some of the rear facing windows in these neighbouring properties which are divided into flats and occupied by different residents at different levels.
7. As matters stand the staggered arrangement of the different levels at the rear of the appeal building limits the impact of the higher levels of the building in views from the neighbouring properties in Palmeira Avenue. By contrast however, the proposed privacy screen would be viewed some 2.5m in front of the main elevation of the building at third floor level and it would significantly reduce the mitigating effect of the staggered arrangement of the different levels at the rear of the building in views from the neighbouring properties in Palmeira Avenue.
8. Rather than being seen against the backdrop of the building, when viewed from some of the neighbouring properties in Palmeira Avenue the proposed screen would be viewed as adding to the prominence, visual impact and apparent height of the building at third floor level at a point significantly closer to the properties in Palmeira Avenue than the main elevation of the building at that level. Moreover, when viewed alongside the lower levels of the building, the position and overall height and width of the proposed screen would be such that it would add to the visual impact of the building to an extent that it would appear unduly dominant and overbearing when viewed from some of the

- neighbouring properties in Palmeira Avenue and thereby have an unacceptable effect on the living conditions of the residents of those properties.
9. Having regard to its height and design, if the proposed privacy screen was in place, the use of the flat roof areas as amenity areas should not result in any materially greater levels of overlooking of the adjoining properties. Nevertheless, this is not sufficient to outweigh my finding that with the addition of the proposed screen the building would appear unduly dominant and overbearing when viewed from some of the neighbouring properties in Palmeira Avenue and that it would thereby have an unacceptable effect on the living conditions of the residents of those properties.
 10. By incorporating a proposal to erect a privacy screen which would result in the building having an unduly overbearing effect on neighbouring residents in Palmeira Avenue, the application to vary the disputed conditions would also conflict with the aims of policies QD14 and QD27 of the Brighton and Hove Local Plan (LP) both of which seek to protect the amenity of residents of neighbouring properties in various respects including outlook.
 11. Although the proposed screen formed an integral part of the application, as it would result in the building having an unacceptably overbearing effect on neighbouring residents in Palmeira Avenue, I have also considered the effect of varying or removing the disputed conditions if the screen was not in place. However, without the screen in place, the disputed conditions are necessary to prevent unacceptable levels of overlooking of the neighbouring properties from the third floor of the building and a consequent loss of privacy. The conditions are also necessary to prevent unacceptable levels of overlooking from the first and second floor levels of the building.
 12. On the main issue in this appeal, I therefore conclude that the variation or removal of the disputed conditions and the addition of the proposed privacy screen would have an unacceptable effect on the living conditions of neighbouring residents in Palmeira Avenue and that it would conflict with LP policies QD14 and QD27. I also conclude that in each case the disputed conditions are reasonable and necessary and that they satisfy the tests set out in Circular 11/95.
 13. Turning to other matters raised, I acknowledge that the application was made after the Council had granted planning permission for the construction of an additional floor of accommodation with a rear facing balcony incorporating a privacy screen at the adjoining building Amber Court (Ref: BH2010/03843). However, although the privacy screen on the building at Amber Court would be a broadly similar distance from the nearest neighbouring properties in Palmeira Avenue, it would be lower in height and the appellant has acknowledged that it would not be identical. The rear elevation of Amber Court is also not staggered in the same way as the building that is the subject of this appeal and overall there are some significant differences between the relationship of the respective buildings and their proposed privacy screens with their closest neighbouring properties. Furthermore, I do not know the full circumstances of the application concerning the building at Amber Court and each application has to be considered on its individual merits in relation to the development plan and any other material considerations.
 14. I acknowledge that the use of the flat roof as an amenity area would offer the benefit of providing additional private outdoor amenity space for future

residents of the third floor apartments. However, the third floor apartments already have roof terraces to the front of the building.

15. I have also considered all of the other matters raised. Although the appellant has pointed out that the representations made by neighbouring residents have mainly focussed on matters other than the impact of the proposed screen, some of the neighbours have made it clear in their representations that they fully support the Council's reason for refusal. Whilst a number of neighbouring residents have expressed particular concerns about the effect of the application in terms of noise and disturbance, I agree with the view expressed in the Planning Officer's Delegated Report that the most likely use of the flat roof area would be for sitting out purposes which would not in itself generate unreasonable levels of noise or disturbance. However, none of these or any of the other matters raised whether viewed individually or taken together are sufficient to outweigh my conclusion on the main issue which in itself provides a sufficiently compelling reason to dismiss the appeal.
16. For the above reasons and having regard to all other matters raised I therefore conclude that the appeal should be dismissed.

D G T Isaac

INSPECTOR