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# Appeal Decision

Site visit made on 26 March 2013

**by H Lock BA (Hons) DipTP MRTPI**

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

**Decision date: 16 April 2013**

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**Appeal Ref: APP/Q1445/A/12/2186486**

**Flat 3, Winchester House, 8 Fourth Avenue, Hove, East Sussex, BN3 2PH**

- 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 Laurence Broderick against the decision of Brighton & Hove City Council.
  - The application Ref BH2012/01890, dated 21 June 2012, was refused by notice dated 31 August 2012.
  - The development proposed is the construction of first floor balcony with railings to rear elevation.
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## Decision

1. The appeal is dismissed.

## Main Issue

2. The main issue is the effect of the proposal on the living conditions of neighbouring residents, with particular reference to privacy and noise disturbance.

## Reasons

3. The appeal property is an upper floor apartment located in a block of five flats. The building is positioned in reasonably close proximity to neighbouring buildings and gardens to the rear. The flats do not have access to an external amenity area, as the rear courtyard contains a block of garages and is otherwise surfaced for vehicle manoeuvring.
  4. The proposed balcony would be relatively shallow in depth but would span much of the rear elevation of the appeal property. It would be positioned close to habitable room windows of other apartments in the block, and to the rear gardens beyond the garages. Although there are balconies elsewhere in the vicinity, those most comparable are located on the front elevations of nearby buildings, overlooking the road. Those visible from the rear of the property are fire escapes or small-scale roof terraces with limited potential for use as amenity areas. The proposed balcony would be of sufficient size for it to have a functional rather than decorative purpose, but its position in relation to neighbouring properties would give rise to an unacceptable loss of privacy for
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nearby residents, and potential noise nuisance as a result of the use of the area.

5. There is already a degree of mutual overlooking between the rear windows of flats in Winchester House and the dwellings and their gardens to the rear. However, the size of the proposed balcony and its use would allow for a more intrusive form of overlooking than the present arrangement. Although there are mature trees beyond the garage block they do not provide effective screening to all properties behind the appeal site. I have given little weight to the separation distances for two-storey rear extensions cited by the appellant, as the Council has indicated that the standards have not been adopted.
6. The courtyard to the rear of Winchester House is relatively quiet compared to the public domain to the front, and local residents indicate that noise levels in this area are low. Notwithstanding the use of the garages, the proposal would introduce a more intrusive source of noise disturbance that would adversely affect the use of the rear-facing habitable rooms of other residents in Winchester House. Although the appellant advises that the balcony would be used as a quiet sitting out area, its use - and hours of use - could not reasonably be controlled by a planning condition. Moreover, whilst I accept that it would not be a large area for entertaining, noise and nuisance levels would not necessarily be determined by the number of people using the balcony.
7. The amenity and accommodation benefits that would be afforded to the appeal property and its occupiers are noted, as are the space standards set out in the Code for Sustainable Homes. However, any proposals to create outdoor space have to be considered in context, and in this case the benefit to the host flat would result in an unacceptable compromise to the conditions for neighbouring residents.
8. I therefore conclude that the proposal would be detrimental to surrounding residents as a result of increased overlooking and potential noise disturbance to an extent that their living conditions would be harmed. This would be contrary to the aims of Policy QD27 of the Brighton and Hove Local Plan 2005, which seeks to avoid development that would cause material nuisance and loss of amenity to residents. Furthermore, it would conflict with the core principle of the National Planning Policy Framework, to always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

### **Other Matters**

9. The appeal property is located within The Avenues Conservation Area. There is a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising planning functions. The proposal would be well designed and in keeping with other features on the front elevations of buildings in the vicinity, and as such the character and appearance of the conservation area would be preserved. However, this does not outweigh the harm identified above.

### **Conclusion**

10. For the reasons given above I conclude that the appeal should be dismissed.

*Hilary Lock* INSPECTOR

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