



Appeal Decision

Site visit made on 22 June 2015

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

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

Decision date: 22 July 2015

Appeal Ref: APP/Q1445/W/15/3005133
285 Dyke Road, Hove, East Sussex BN3 6PD

- 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 E Herandi against the decision of Brighton & Hove City Council.
 - The application, Ref. BH2014/02755, dated 14 August 2014, was refused by notice dated 31 October 2014.
 - The development proposed is the construction of a new 3 bedroom detached bungalow.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a new 3 bedroom detached bungalow at 285 Dyke Road, Hove, East Sussex in accordance with the terms of the application, Ref. BH2014/02755, dated 14 August 2014, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is whether there would be adequate living conditions for future occupiers of the proposed bungalow in terms of privacy.

Reasons

3. The Council's objection to the proposed bungalow is that because of its proximity to the host property No. 285 Dyke Road, the latter's west facing windows and roof terrace would unacceptably overlook the east facing windows and the majority of the garden of the new dwelling. This was also a concern in respect of a previous scheme and supported by an Inspector at appeal.
 4. In an attempt to overcome the Inspector's concerns the current scheme amends its predecessor. The footprint of the proposed bungalow has been reduced to increase the distance between its east facing windows and the first floor windows and second floor terrace at No. 285 Dyke Road, resulting in a back to back distance of just over 20m. Despite the angle of view from the flats this distance is not untypical of an urban context and planting on the proposed dwelling's side of a 2m high boundary fence would be under the control of future occupiers with the opportunity to increase privacy through management of its height and density.
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5. The Inspector was also concerned there would be little opportunity to find an area in the proposed garden that would not be readily overlooked from the flats in No. 285. To address this the current proposal includes the provision of a pagoda, which although open at its sides would have a roof to prevent overlooking. I consider this to be an innovative approach that would significantly increase the levels of privacy at the new property.
6. My assessment of the main issue is influenced by two further factors. Firstly it will be for future occupiers of the bungalow to decide whether the relationship between the dwelling and its garden and the flats at the host property is such as to lead to inadequate privacy or any perception thereof. I accept that the opinions of occupiers are rarely determinative, as the planning system exists to safeguard issues such as privacy as a matter of public interest. However, they are nonetheless an important material consideration.
7. Secondly, the Council's Notice of Refusal says that the harm caused by the overlooking is considered to outweigh the benefit provided by the additional residential unit. Given that housing supply is a particularly high priority in national planning policy, and indeed locally in Brighton given the absence of a five year figure, I consider the flexible and positive approach advocated in the National Planning Policy Framework 2012 ('the Framework') and the Planning Practice Guidance of March 2014 merits substantial weight in my decision.
8. All things considered, I conclude that the amendments to the previous scheme would be sufficient to ensure adequate living conditions for future occupiers of the proposed bungalow in terms of privacy and avoid a conflict both with Policies QD27 and HO5 of the Brighton & Hove Local Plan 2005 and the core planning principles of the Framework.
9. The Council has suggested a number of conditions if the appeal is allowed. Whilst most of them are reasonable and necessary I agree with the appellant that having regard to the March 2015 changes in Government policy, proposed conditions 12 and 17 relating to the now defunct Code for Sustainable Homes are inappropriate.
10. A condition requiring the development to be carried out in accordance with the approved plans is required for the avoidance of doubt and in the interests of proper planning. Conditions relating to external materials and landscaping will safeguard visual amenity, whilst conditions requiring details of land levels and the withdrawal of permitted development rights will protect the living conditions of adjoining occupiers.
11. Conditions in respect of details of hard surfacing and measures to deal with any as yet unidentified contaminants will reduce the risk of flooding and pollution respectively. A cycle storage facility condition will encourage this sustainable travel; a Lifetime Homes condition will optimise the long term benefit of the dwelling; a refuse storage and recycling condition will provide adequate facilities for the sustainable collection of waste, and a condition requiring adequate signage of the access is in the interests of highway safety.

Martin Andrews

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin before the expiration of three years from the date of this Decision;
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos. PL01 Rev. C; PL02 Rev. C; PL03 Rev. B; PL04 Rev. D; PL05 Rev. D; PL06;
- 3) The hard surfaces hereby approved shall be made of porous materials and retained thereafter, or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property;
- 4) The new dwelling hereby permitted shall be constructed to Lifetime Homes Standards prior to its first occupation and shall be retained as such thereafter;
- 5) No extension, enlargement, alterations or provision within the curtilage of the dwelling house as provided for within Schedule 2, Part 1, Classes A, B, C & E of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) shall be carried out without planning permission first having been obtained from the Local Planning Authority;
- 6) No development shall take place until samples of the materials (including colour of render, paintwork and colourwash) to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details;
- 7) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping, which shall include hard surfacing; boundary treatments; planting, indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development;
- 8) All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. All hard landscaping and means of enclosure shall be completed before the development is occupied;
- 9) No development shall commence until full details of the existing and proposed land levels of the proposed development in relation to Ordnance Datum and to surrounding properties have been submitted to and agreed in writing by the Local Planning Authority. The details shall include

finished floor levels and elevations with datum levels clearly marked. The development shall be constructed in accordance with the agreed details;

- 10) No development shall take place until a scheme for the storage of refuse and recycling has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in full as approved prior to first occupation of the development and the refuse and recycling storage facilities shall thereafter be retained for use at all times;
- 11) If, during development, contamination not previously identified is found to be present at the site no further development shall be carried out until the developer has submitted and obtained written approval of the Local Planning Authority for a Method Statement to identify, risk assess and address unidentified contaminants;
- 12) The development hereby permitted shall not be commenced until further details of secure cycle parking facilities for the occupants of, and visitors to, the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times;
- 13) The development hereby permitted shall not be commenced until details of appropriate signage on the access have been submitted to and approved in writing by the Local Planning Authority. The signage shall be carried out in full as approved and retained as such thereafter.