



Appeal Decision

Site visit made on 13 October 2009

by **JP Roberts BSc(Hons) LLB(Hons) MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
27 October 2009

Appeal Ref: APP/Q1445/A/09/2104792 23 Tennis Road, Hove, East Sussex BN3 4LR

- 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 Dennis and Mrs Elizabeth Kenward against the decision of Brighton & Hove City Council.
- The application Ref BH2008/02764, dated 16 August 2008, was refused by notice dated 17 November 2008.
- The development proposed is described as "*revised application – original 3/7/07 refused 24/8/07 BK2007/02529 Proposed landing and first floor room (bedroom /dining room) doors to replace existing window and proposed access stair garden (shared with father in ground floor). We are the freeholders*".

Procedural matter

1. The Council's decision notice describes the proposal as a *Proposed balcony to rear at first floor level, access spiral staircase and replacement of window with glazed doors*. I consider that this more accurately and concisely describes the proposal and I shall adopt this description.
2. The appellants argue that the decision on the application was made outside of the prescribed period for determination, and that the decision is both invalid and flawed. As no appeal against non-determination was made, I consider that the Council was entitled to determine the application, and I shall deal with the appeal on its planning merits.

Decision

3. I dismiss the appeal.

Main issue

4. The effect on the living conditions of the occupiers of 21 Tennis Road with particular regard to noise and disturbance.

Reasons

5. The appeal site is occupied by a terraced property which comprises two flats, one on the ground floor and the other occupying the first floor and rooms in the roofspace and dormer. The proposal would provide a balcony outside a first floor living room with a spiral staircase to access the rear garden, which is otherwise inaccessible without going through the ground floor flat, which is occupied by a relative of the appellants.

6. The balcony would be about 1m in depth and 2.5m in length and would be, at its closest, about 2m or so away from a first floor bedroom window in the adjoining residential property at 21 Tennis Road. An opaque screen on one side of the balcony closest to No 21 is proposed to provide a degree of privacy.
7. A previous proposal for a balcony and stairs was refused by the Council and dismissed on appeal last year (Ref: APP/Q1445/A/08/2069270). The Inspector in that case found that the proposal would result in excessive overlooking and unacceptable levels of noise and disturbance. Although I have not been provided with the plans that accompanied that application, I understand that the depth of the balcony in this case is somewhat smaller, and that the stairs have been relocated to the opposite side of the balcony to be furthest from the boundary with No 21.
8. However, at about 1m in depth, the balcony would still be of an adequate size for two people to sit on. Metal staircases tend to be noisy when in use, and whilst the degree of disturbance to the occupiers of No 21 would undoubtedly be lessened by its relocation to the other side of the balcony, the area which could be used for sitting out would, in my opinion, be so close to the boundary and first floor bedroom window of No 21, which is at a slightly lower level than those in No 23, that I consider that the use of the balcony for sitting out would potentially cause a serious degree of disturbance. I consider that this would conflict with Brighton and Hove Local Plan Policies QD14 and QD27 which respectively deal with extensions and alterations and the protection of amenity, and both seek to protect neighbours' amenities.
9. I also share the previous Inspector's concerns about the effect of the proposal on overlooking and on the living conditions of the ground floor flat should it cease to be occupied by a relative and this adds to my reason for dismissing the appeal. The proposal would enable the occupiers of the upper flat to access the garden without causing disturbance to the occupier of the ground floor flat, but this benefit does not outweigh my concerns.
10. I have had regard to the possibility of imposing a condition to require the removal of the development once the appellants cease to occupy the property, but this would not overcome or mitigate sufficiently the harm that I have found.
11. For the reasons given above I conclude that the appeal should be dismissed.

JP Roberts

INSPECTOR