



Appeal Decision

Site visit made on 12 May 2010

by **Victor Crumley** DipTP DMS MRTPI

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

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Decision date:
27 May 2010

Appeal Ref: APP/Q1445/A/10/2119610 40 Tongdean Avenue, Hove BN3 6TN

- 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 Mrs L Achurch against the decision of Brighton and Hove City Council.
- The application Ref BH/2009/00838, dated 7 April 2009, was refused by notice dated 18 August 2009.
- The development proposed is construction of new house.

Application for costs

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Decision

2. I dismiss the appeal.

Main issues

3. I consider the main issues in this appeal to be:
 - a) the effect of the proposal upon the character and appearance of the Tongdean Conservation Area;
 - b) the effect upon the living conditions of the occupiers of the adjacent property at No. 36 Tongdean Avenue with particular reference to loss of outlook and loss of privacy; and on the living conditions of the occupiers of the host property at No. 40 Tongdean Avenue, with particular reference to loss of outlook.

Reasons

Character and appearance

4. The appeal site is the side garden of No. 40 Tongdean Avenue, a substantial 2-storey house in a large plot within the Tongdean Conservation Area. In my view the special character of the conservation area derives mainly from the spacious pattern of large houses in generous plots, mainly though not entirely of traditional appearance, designed to high standards and constructed of traditional materials. The many fine trees in the streets and gardens of the conservation area add maturity and considerable beauty, and contribute significantly to its character. These features are reflected in the published Conservation Area Character Statement, which refers to '...the grouping of individually designed large houses dating from the early 20th century on generous plots with mature street trees and dense garden and boundary planting'. Section 72(1) of the Planning (Listed Buildings and Conservation

Areas) Act 1990 places a duty on decision makers to give special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

5. The new house would be of traditional appearance and in certain respects would not be dissimilar to the existing property on the site. The ridge of the new house would be set at a similar level to that of No. 40, but because of the lower site level the new property would be considerably larger, with an overall height of about 8.6m by comparison with the 7m height of No. 40. It would contain three floors of accommodation, and although the second floor would be within the roof space, the rooms there would be lit by large glazed gables to front and rear, about 2m high, set entirely above first floor level. In these respects it would differ from No. 40 where first floor accommodation is contained within the roof space, and where much of the roof is drawn down to ground floor eaves level. In my view the appeal proposal would convey the appearance of a significantly larger house. It would be set back from the front of No.40, but a proposed open car port would be forward of it. The new property would be about 1.8m from the side wall of No. 40, and about 0.8m from the boundary with No. 36.
6. It was argued for the appellant that the spacious character of the conservation area does not extend to the side-to-side relationship of the houses, and that extensions and alterations have eroded the visual separation between houses. Although many houses are quite close to neighbouring properties, particularly where garages or side extensions have been built, I saw that extensions close to the boundary are usually single storey, as has occurred at No. 36, and are often softened by planting. In my view this helps to reduce the effect of building close to the boundary, and to retain the spacious character.
7. While I saw that a few smaller houses near the Barrowfield Close boundary of the conservation area have a more conventional spacing, the dominant appearance of well separated dwellings remains and contributes to the character of the area. I consider that the sub-division of this plot and the addition of the large house proposed, with high flank walls set very close to the adjacent houses, would appear cramped and overintensive, would harm the appearance of the street scene at this point, and would undermine the spacious character of the area. I conclude that it would fail to preserve or enhance the character or appearance of the Tongdean Conservation Area, and would contravene Policies QD1, QD2, QD3 of the Brighton and Hove Local Plan.

Living conditions

8. The adjacent house at No. 36 lies well to the rear of, and at a lower level than, the house proposed on the appeal site. In addition, although it occupies a substantial footprint, No. 36 is at present largely a single storey property, with a modest area of first floor accommodation set within the roof space. The 2-storey flank wall and high roof of the new house would project some 15m in front of its front elevation. At eaves level the flank wall would be about 2.5m above the eaves of No. 36, with the new ridge a further 3.5m higher; the wall and the high roof above would in my view give a feeling of towering over the front of No. 36. The orientation of No. 36 at an angle to the street and adjacent houses means that its front windows would also be oriented towards the new house. To the rear, the considerable height of the new house would be prominent from the extensive patio and lawned areas. While the outdoor spaces immediately in front and behind No. 36 are separated by its own garage block and rear extension from the boundary and the new house, I conclude that these outdoor areas, part of the rear garden and the windows on the front

elevation would suffer a severe overbearing and enclosing effect from the new property, and a significant loss of outlook.

9. The occupiers of No. 36 argued that the single storey section at the rear of the new house proposed to be sited along the boundary would have a flat roof which would be accessible from the first floor rear bedroom window and would be used as an outdoor balcony. This would result in severe overlooking of the rear of his property and garden, and would pose an unacceptable loss of privacy. I agree that such a use would be unacceptable, but I see no indication from the appeal drawings that it is intended to use the rear flat roof in this way. The matter could be set beyond doubt by the imposition of a suitable condition of any planning permission constraining the design of the window and use of the roof, and I do not therefore consider that the proposal threatens the privacy of the adjoining occupiers. However, this does not outweigh my conclusion about the loss of outlook.
10. The host property at No. 40 currently benefits significantly from the open character of its large side garden. The construction of this substantial property immediately adjacent to the side wall of No. 40 in this previously spacious setting would in my view have an adverse overbearing impact on the house and the garden at both the front and the rear, to the detriment of the living conditions of its occupiers. I acknowledge the general importance of increasing residential densities, but this should not in my view be done in a way that would harm living conditions for existing occupiers. This together with my concern about the effect on No. 36 leads me to conclude that the proposal would have an unacceptable adverse effect on the living conditions of the occupiers of the adjacent properties, contrary to Local Plan Policies QD1, QD2 and QD3.

Other matters

11. I have taken account of the fact that a substantial first floor extension has been approved at No. 36 which, if constructed in full, would increase markedly the size and bulk of that house. In my view, while this might reduce the effect of the appeal proposal on the patio areas closest to the rear of No 36, it would not change the impact on large areas of the rear garden or the effect at the front of the house, and does not cause me to reach a different conclusion.
12. I have noted the appellant's view that the design of the rear of the property is intended in part to screen the appearance of the rear of the boundary extensions to No. 36 from her garden, but I do not accept that this justifies the development now proposed. I have also taken into account her view that the Council's approval of a pair of semi-detached houses for the site at No. 42 supports the case for sub-division of the appeal site. However, the Council had previously resisted the subdivision of this plot into separate detached units, and I consider my decision to be consistent with that position. The Council argued that the approved semi-detached houses would have the appearance of a large single house on a substantial plot, and I have no reason to disagree. I note that, standing some 4m from the boundary with No. 40, the approved semi-detached pair would appear well separated from it. I do not therefore believe that the Council's position in that case supports the appeal proposal.

Victor Crumley

INSPECTOR
