



Appeal Decision

Site visit made on 3 September 2012

by David Warden MSc MRTPI

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

Decision date: 12 September 2012

Appeal Ref: APP/Q1445/D/12/2179794
20 Benett Drive, Hove BN3 6UT

- 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 Thomas O'Connor against the decision of Brighton & Hove City Council.
 - The application Ref BH2012/00377, was refused by notice dated 26 April 2012.
 - The development proposed is the formation of rooms in roof with the erection of side and rear hipped-gables and a front dormer (retrospective), revision to BH2011/00637.
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Decision

1. The appeal is allowed and planning permission is granted for a roof conversion incorporating hipped-gable ended roof extensions to the rear and to both sides of the property, a Juliet balcony to the rear, a front dormer and associated works at 20 Benett Drive, Hove BN3 6UT in accordance with the terms of the application, Ref BH2012/00377, dated 9 February 2012, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 467/09 Rev A and 467/11.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
 - 4) Notwithstanding the provisions of condition 2, before first use of the extension hereby permitted, the rooflight to the side roof slope shall be fitted with obscure glazing and shall be constructed such that no part of the framework less than 1.7m above finished floor level shall be openable. The rooflight so provided shall thereafter be retained.

Procedural and Background Matters

2. The National Planning Policy Framework ('the Framework') was published in March 2012, at the heart of which is a presumption in favour of sustainable development. I have had regard to it in reaching my decision.
 3. The appeal site previously comprised a detached bungalow with a hipped roof and a relatively small dormer to the rear roof slope. There have been a number of previous planning applications at the appeal site. In particular, planning permission was granted in May 2011 for a roof conversion incorporating a
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hipped-gable end to the rear with a Juliet balcony, a front dormer and associated works. There are also previous permissions that include a side extension with a hipped roof. The appellant suggests that, following the grant of the May 2011 permission, the two hipped-gable extensions to the side roof slopes were erected under permitted development. Furthermore, that once these side roof extensions were complete, the front dormer and rear hipped-gable approved under the May 2011 permission were erected. However, a subsequent application for a certificate of lawful use or development ('LDC'), which related to the side roof extensions, was refused and the appeal¹ that followed was recently dismissed.

4. The Inspector in that appeal was concerned only with the interpretation of the relevant planning law. He concluded that, having regard to the Council's photographic evidence, what had been carried out was a composite development, with no material break between completing the side roof extensions and starting those to the front and to the rear. As there is not a single permission that permits the composite development, it is not lawful. The Inspector confirmed that, whilst not considerations that were relevant to an LDC appeal, the fact that the appellant could have lawfully constructed exactly what has been built if he had gone about it in the particular way that was necessary to achieve that outcome is a factor which would be material to the determination of a planning application for such development.
5. As outlined above, development similar to that proposed has already been carried out. However, there are a number of differences between what has been built and that shown on the submitted plans. In particular, the plans show that the point at which the side gables would be hipped would align with the eaves of the front dormer; whereas, as built, the bottom of the side hipped sections is closer to the ridge line (i.e. there is 'more gable' and 'less hip'). Furthermore, the size and position of many of the rooflights shown on the plans differ from those constructed, with an additional rooflight built into the front slope. Whilst it may have been possible to deal with the rooflight differences by condition, the differences to the side hipped-gables result in a bulkier roof form. These are material differences that cannot be so addressed. In light of these differences, I shall consider the appeal on the basis of the development depicted on the submitted plans, which involves that described in my formal decision above. I have adopted a more detailed description than that given on the application form, as did the Council.

Main Issue

6. With the exception of the matter of obscure glazing discussed below, the Council raise no issue in respect of the living conditions of nearby residents, having regard to the features of the proposal, I find no reason to disagree. The main issue in this case, therefore, is the effect of the proposal on the character and appearance of the surrounding area.

Reasons

7. The area surrounding the appeal site is predominantly residential in character, comprising of a mixture of bungalows and houses, some of which have been extended and altered to varying degrees, including a number of roof extensions.

¹ APP/Q1445/X/12/2169793.

The appeal property forms part of a run of similar detached bungalows that are set below the level of this side of Bennett Drive. Whilst there is some continuity, in the form of predominantly fully hipped roofs, I do not consider that the roofs are uniform. In particular, many include existing alterations such as dormer windows to the front and side slopes, as well as some roofs that appear to have flat/crown topped sections. Whilst I understand that the alterations comprise a mixture of those carried out under permitted development rights and those with express permission, they nonetheless form part of the existing context. Furthermore, whilst located some distance from the appeal site, there are existing hipped-gable ended roofs that are similar to that proposed at Nos 2, 4, 6, 50, 52 and 54 Bennett Drive.

8. The proposed extensions, particularly those to the sides, would add considerable bulk to the roof and would change its overall form. This would be in contrast to the more modest hipped roofs present to many of the bungalows to this side of the street and would disrupt the degree of continuity that is present, contrary to guidance within the Council's SPG². Furthermore, I note that the Council has sought to support consistency by seeking to retain ridge lines and fully hipped side roof slopes. Whilst the proposal would also be seen alongside the existing roof additions nearby, I find that there would be some visual harm in this regard. This would substantially be from the side roof extensions; albeit, due to the variation already present, the harm would be limited.
9. The appellant suggests that there is a fallback position in relation to the development already constructed; in that the removal of the front and rear roof extensions that have been constructed would render the side alterations 'permitted development'. However, this is difficult to reconcile with article 3(5)(a) of the GPDO³, which provides that permitted development rights do not apply to an existing building where the building operations involved in the construction of that building are unlawful. Nevertheless, I am mindful that if it had been completed in a certain way the existing similar development at the appeal site would be lawful. Moreover, it is the side roof extensions that have most dramatically changed the appearance of the property within the streetscene. It is clear from the recent LDC appeal decision that, if it were not for the additions to the front and rear, planning permission would not have been required for these side roof extensions, which would have a similar visual effect to the appeal scheme. These are factors that, to my mind, must be weighed against the limited visual harm identified above.
10. All in all, taking the above factors into account, as well as the variation in roof forms found nearby, I conclude that the proposal would not cause material harm to the character and appearance of the surrounding area. In this regard, notwithstanding that the proposal would not fully accord with the Council's SPG, I find no conflict with policy QD14 of the Brighton & Hove Local Plan 2005 ('LP'), which seeks, amongst other things, to protect local character.

Other Matters

11. Having regard to the Framework, the LP, which was adopted in July 2005, is not of any significant age. Moreover, I have not been provided with any substantive

² Supplementary Planning Guidance 01 'Roof Alterations and Extensions', approved February 1999.

³ The Town and Country Planning (General Permitted Development) Order 1995 (as amended).

evidence that would lead me to conclude that, in the context of this appeal, the relevant LP policies are inconsistent with the Framework. Therefore, whilst the policies in the Framework have been considered, in light of the facts in this case, they do not alter my overall conclusion.

Conclusion and Conditions

12. For the above reasons, I conclude that the appeal should succeed. Otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning. In addition to imposing such a condition, along with the standard time limit condition, I have considered the other conditions suggested by the Council in light of Circular 11/95 and paragraph 206 of the Framework. In the interests of visual amenity, and as I am dealing with the appeal on the basis of the development depicted on the submitted plans, a condition requiring matching materials is required.
13. Whilst the development as constructed differs slightly in this regard, the plans show a single side facing rooflight serving an en-suite shower room. The Officer's Report seeks a condition requiring it to be fitted with obscure glazing to accord with policy QD27 of the LP, which seeks to protect living conditions. I am satisfied that, having regard to views into the conservatory to the rear of the adjoining property, such a condition is necessary to protect the privacy of the adjoining occupier.
14. The Council also seeks a condition that would restrict the insertion of windows to the side gable ends and would remove permitted development rights in this regard. However, not only do paragraphs 86 to 88 of Circular 11/95 state that such conditions should not be imposed, save in exceptional circumstances, such a condition is not necessary to protect the privacy of the adjoining occupiers. This is because conditions within Classes A, B and C of Part 1 of Schedule 2 of the GPDO already require glazing in such locations to be obscured and subject to opening restrictions. No other conditions are necessary.

David Warden

INSPECTOR