



Appeal Decision

Site visit made on 21 January 2013

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 25 January 2013

Appeal Ref: APP/Q1445/D/12/2188309
79 Hove Park Road, Hove BN3 6LL

- 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 Spencer Orman against the decision of Brighton & Hove City Council.
 - The application Ref BH2012/01956 was refused by notice dated 22 October 2012.
 - The development proposed is described in the planning application as the '*(part) demolition of front boundary wall and reinstatement of walls and piers forming new hardstanding access*'.
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Decision

1. The appeal is allowed and planning permission is granted for the part removal and reinstatement of front boundary wall/piers, formation of hardstanding, surrounding wall and associated works at 79 Hove Park Road, Hove BN3 6LL in accordance with the terms of the application, Ref BH2012/01956, dated 27 June 2012, and the plans submitted with it, 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 plan: drawing no. HPR – CO – 100, dated 26 June 2012.
 - 3) No development shall take place on the proposed crossover until details of the crossover, illustrated on drawing no. HPR – CO – 100, dated 26 June 2012, have been submitted and approved in writing by the local planning authority. The details shall include construction method of the crossover and materials to be used. Development shall thereafter take place in accordance with the approved details unless otherwise agreed in writing by the local planning authority.

Reasons

2. The proposal involves the removal of a section of the front wall, excavation of the raised garden to create a hardstanding, which includes a drain for surface water. Two off-street car parking spaces are created. The development has partly been carried out except for the crossover. In my decision above, I have taken the description of the proposal from the Council's refusal of planning permission notice.

3. The **main issues** are as follows: firstly, the impact of the development upon the character and appearance of the locality and secondly, the effect of the proposed crossover upon the health and wellbeing of an Elm tree located near the site on Hove Park Road.

First main issue - impact upon the character and appearance of the locality

4. Number 79 is a detached property located within a mainly residential area on the corner of Hove Park Road and Hove Park Way. There is a large green space opposite and most of the properties are situated to the north of Hove Park Road. The street scene is characterised by detached dwellings set in reasonably sized plots. The houses are mainly set back from the highway with high level front gardens.
5. Retaining walls form strong boundary features along the frontages of properties in this part of the locality. I concur with the Council's assessment that a number of properties have removed part of the front boundary walls for either a single car parking space or for access purposes. The excavation of front gardens and the creation of hard-surfaced parking spaces are not that atypical of the street scene. Frontage parking is part of the locality's changing character and appearance.
6. Turning next to the appeal scheme, it retains large sections of the existing boundary walls along Hove Park Drive and Hove Park Way. In comparison, the length and width of the wall removed does not materially result into a significant gap when considered within the context of no. 79's existing retaining walls and the appearance of the wider street scene. In my view, the extent of the hard-surfaced area is limited and the scale of the development does not represent a disproportionate level of hard landscaping. In its complete form, the hardstandings and associated works would not appear incongruous, unsympathetic or out-of-keeping with the character of the street scene and host dwelling. This is because of the overall design and height of the surrounding retaining walls, steps and the balustrade.
7. Accordingly, the development complies with Policy QD14 of the Brighton and Hove Local Plan 2005, which, amongst other matters, requires developments to be well designed, sited, takes account of existing space around buildings and the character of the area. The development complies with paragraph 56 of the National Planning Policy Framework.
8. For all of the above reasons, I conclude that the development does not have a materially harmful impact upon the character and appearance of the locality.

Second main issue - effect of the proposed crossover upon the nearby Elm tree

9. The Elm tree, which forms part of the national Elm collection, is located in the footpath to the east of the site. It is in proximity of the site and I concur with the submitted tree report's findings that it has public amenity value because of its prominence within the street scene¹. There are signs of some localised disruption to the surface of the public footpath, which could be put down to damage caused by structural roots. The appellant's assertion is that the development would be a planning gain because the crossover would remedy

¹ See RW Green Ltd Arboricultural report (Ref RG-NDJ-LHPR) October 2012 carried out in accordance with British Standard 5837:2012: 'Trees in relation to design, demolition and construction Recommendations'.

such trip hazards. That may be so, but the Council's concerns about the impact of the crossover upon the longevity of the nearby tree cannot be criticised.

10. The crossover, which would require consent from the local highway authority, would be 5.5 metres wide. The tree report indicates that it would be largely outside the root protection area as shown on drawing no. RG – NDJ – LHPR – 001, dated October 2012. Given the overall location, scale and size of the crossover and the spread of the tree, vehicles would not pass directly beneath a significant portion of the tree's canopy. To address concerns about the potential compaction of tree roots by the regular passage of vehicles, suitable materials could be used in the construction of the crossover. A condition could be imposed to require details of the construction method and the nature and type of materials to be used.
11. Taking all of the points in the preceding paragraph together, subject to the imposition of a suitably worded condition, I find that the proposed crossover would not be detrimental to the health and wellbeing of the Elm tree because of its extent and scale. Accordingly, the scheme would comply with LP Policy QD16, because the development seeks to retain the Elm tree, and general design guidance set out in section 7 to the Framework.
12. For all of the above reasons, I conclude that the proposed crossover would not have a detrimental effect upon the health and wellbeing of the Elm tree.

Conditions, other matters and conclusion

13. The Council has not suggested any conditions for my consideration. Having considered advice contained in Circular 11/95: '*The use of conditions in planning permissions*,' I will impose the standard commencement condition because a significant element of the development remains to be commenced. To avoid doubt, it would be necessary to impose a condition requiring the development to be carried out in accordance with the submitted proposed layout plan.
14. The appellant's agent suggested a condition requiring the proposed crossover work to be implemented under the Council's supervision. However, such a condition would not be reasonable or enforceable because it would be too imprecise. An alternative would be to require the submission of the crossover's construction details to the Council. As I have already stated elsewhere, the construction of the crossover would require consent from the local highway authority as there is no evidence to show that the highway land is within the control of the appellant.
15. For all of the above reasons and having considered all other matters including those raised by the occupiers of nos. 50 and 81 Hove Park Road, which I have addressed above, I conclude that the appeal should be allowed subject to conditions.

A U Ghafoor

INSPECTOR

