
Appeal Decision

Site visit made on 30 October 2013

by Cullum J A Parker BA(Hons) MA MRTPI AIEMA

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

Decision date: 15 November 2013

Appeal Ref: APP/Q1445/D/13/2205523
70 Windmill Drive, Brighton, East Sussex BN1 5HJ

- 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 R Smithson against the decision of Brighton & Hove City Council.
 - The application Ref BH2013/02220, dated 28 June 2013, was refused by notice dated 5 September 2013.
 - The development proposed is the removal of existing balcony to rear flat roof, increase in size of flat roof area and installation of new guarding to form balcony with improvements to protect privacy of adjacent properties.
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Decision

1. The appeal is allowed and planning permission is granted for the removal of existing balcony to rear flat roof, increase in size of flat roof area and installation of new guarding to form balcony with improvements to protect privacy of adjacent properties at 70 Windmill Drive, Brighton, East Sussex BN1 5HJ in accordance with the terms of the application, Ref BH2013/02220, dated 28 June 2013, 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 approved plans numbered 02-0613, 02-0613a, 02-0613b, 02-0613c, 02-0613e, 02-0613j, 02-0613n and 02-0613o.

Procedural matter

2. It is noted that the drawings referred to on the Council's Decision Notice dated 5 September 2013 are different from those in the Planning Officer's Report, namely the drawings numbered 02-0613 ending in d, k and p. It is understood that the incorrect plans on the decision notice relate to a concurrent planning application (ref: BH2013/02218) and it is the plans ending in e and j, that correctly relate to this appeal. For the avoidance of doubt, I have considered the current proposal with regard to the drawings before me ending in e and j and not d, k or p.

Main Issues

3. The main issues are the effect of the proposed development on the character and appearance of the host dwelling and wider area and on the living conditions of neighbouring occupiers in terms of loss of privacy.

Reasons

Character and appearance

4. The appeal dwelling is a detached house located in a residential area of Brighton. To the rear there is an existing single storey rear extension, the width of which spans across the rear entire elevation. Above the single storey extension there is a timber balcony with timber balustrade, which covers approximately two thirds of the extension's roof. The last third of the roof is formed of an obscured lean to style glass roof, underneath which is currently used as a study. The study is located on the western side of the extension and does not currently have a balcony element above it.
5. The existing balcony is not readily visible from the public realm, with views towards it mainly from the rear gardens of nearby dwellings. Within the locality, there are examples of balconies further afield to both the front and rear of dwellings. There have been a number of rear alterations to dwellings in the area, for example No 68 to the west, has a large dormer in its roof form and single storey rear extension, and No 72 to the east adjoining the site has a single storey rear extension.
6. As such, there is not a uniform character or appearance to the rear elevations of dwellings along this part of Windmill Drive. It is, therefore, unlikely that the introduction of 1.8 metre high obscured glazed screens on either side of the proposed balcony, would detract from the appearance of the dwelling or wider area. Accordingly, the proposal would not harm the character or appearance of the locality or the host dwelling.

Living conditions

7. During my site visit, I observed the existing balcony and wider context of the area from both the rear garden of No 70 and from the existing timber balcony. At present, given the lack of any obscure or oblique side screening, it is possible to look into the rear gardens of both Nos 68 and 72. To the west, No 68 has a single storey rear extension with a window in its flank wall. Direct views from the existing balcony into this room, which is a dining room/kitchen area, and towards the patio area in the rear garden of No 68 are currently possible from the existing balcony.
8. The appellant states that the existing balcony was constructed well in excess of four years ago. Furthermore, the Council said in an email that the balcony 'does not have historic consent but...may have been in situ for some time, quite likely longer than the four years beyond which we can take any action to have it removed.' That email also suggested that the appellant could apply for a lawful development certificate. He has not done so, and it is not for me to formally determine the lawfulness of the existing balcony. However, the Council conceded that it is likely to be immune from enforcement action. My own observations of the apparent age of the balcony are consistent with that view and the Council has not taken any action. In these circumstances it is appropriate for me to judge the impact of the appeal scheme against the impact of the existing balcony.
9. Whilst the proposed balcony would extend to a width that would cover the whole of rear elevation of the appeal property, it would provide obscured glazed screens at either end of the balcony. This would improve the existing

situation, where no screening is currently provided. It would mitigate the current level of overlooking, thus helping protect the privacy of adjoining neighbours by channelling views from the balcony towards the end of the gardens rather than into the immediate rear garden areas. Furthermore, although the floor area of the balcony would be increased, I have been provided with no compelling evidence that the intensity of its use would be any greater than at present or that this would result in a material level of harm to the occupants of the adjoining dwellings. Accordingly, I do not consider that the proposal would result in a materially harmful loss of privacy for the occupiers of adjoining dwellings.

10. I conclude, therefore, that the proposal would accord with policies QD14 and QD27 of the Brighton and Hove Local Plan 2005 and the Supplementary Planning Document 12 - Design guide for extensions and alterations, 2013, which amongst other aims, seek to ensure that developments are well designed in relation to the property and the surrounding area and would not result in a significant loss of privacy to neighbouring properties.
11. I am mindful that planning permission has recently been granted in 2013 (ref BH2013/02218) and in 2001 (ref 2001/01320/FP). However, I have not been presented with drawings or further details of these schemes and how they relate to the present appeal. I am, therefore, only able to afford these earlier permissions limited weight in the determination of the present appeal.

Conditions

12. I have had regard to the advice in Circular 11/95. It is necessary that the development should be carried out in accordance with the approved plans for the avoidance of doubt and I have imposed a condition accordingly. Given that the proposed drawings detail the materials proposed, which would differ from those of the existing dwelling, a matching materials condition is not necessary.

Conclusion

13. For the reasons given above, I conclude that the appeal should be allowed.

Cullum J A Parker

INSPECTOR