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# Appeal Decision

Site visit made on 12 November 2013

**by Chris Preston BA (Hons) BPI MRTPI**

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

**Decision date: 7 January 2014**

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## **Appeal Ref: APP/Q1445/A/13/2202046**

### **41a Port Hall Road, Brighton BN1 5PD**

- 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 Laurence Hill against the decision of Brighton & Hove City Council.
  - The application Ref BH/2013/01198, dated 10 April 2013, was refused by notice dated 14 June 2013.
  - The development proposed is: Create roof terrace on existing flat roof (Retrospective application for works already completed – amendment to existing approved application BH/2012/01392).
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### **Decision**

1. The appeal is dismissed.

### **Main Issues**

2. The main issues are the effect of the proposal on the living conditions of neighbouring residents, with regard to privacy, and the effect on the character and appearance of No 41a Port Hall Road and the surrounding area.

### **Reasons**

#### *Living Conditions*

3. The planning application was submitted retrospectively and the development has already been completed in line with the details shown on the plans submitted with the application, including the erection of timber fencing surrounding the terrace and the enlargement of the second floor window to provide access.
4. Number 41a Port Hall Road is a three bedroom maisonette which occupies the first and second floor of an end terraced property. Access into the property is via an entrance door in the gable end which opens onto Port Hall Street. The ground floor of the building contains a single flat – No 41 Port Hall Road. The surrounding area is entirely residential in character, with a notable consistency in the appearance of dwellings and the grid pattern on which the streets are laid out. As a consequence of this pattern, the rear gardens are enclosed and not readily visible from the street.
5. Clear views from the terrace are available into first and second floor windows within the rear elevation of the neighbouring dwelling at 43 Port Hall Road, particularly when stood towards the end of the terrace looking back at the rear

of the building. At the time of my visit, it appeared that the second floor room was utilised as a home office, with a bedroom at first floor level. In any event, both of these rooms form part of the habitable living space in the dwelling within which a reasonable level of privacy could be expected.

6. Due to its close proximity to these windows, and the limited height of the timber screen along the eastern boundary, I consider that the use of the terrace will result in a significant loss of privacy for neighbouring residents at No 43. Although a degree of overlooking is common within densely populated streets, the terrace sits less than 10 metres from the rear habitable room windows at first and second floor level and the level of overlooking, at such close proximity, is greater than could reasonably be expected, even taking account of the context of the site.
7. I note that a letter of support for the planning application was submitted by the residents of No 43. However, occupancy of the dwelling may change in the future and there is no certainty that any future residents of the dwelling would share these views. In determining this appeal, I must consider the proposal on its merits and, as set out above, the proximity of the terrace to rear facing first and second floor windows, allied to the height of the fence, enables clear views into the neighbouring dwelling, reducing privacy to a level below that which residents may reasonably expect to enjoy.
8. Although views are possible into ground floor windows to the rear of No 43, the angle of view is relatively steep and the timber railings provide some screening when looking down at this angle. Two side facing windows are located at first floor level within the extension to the rear of No 43. One is obscured and the other is narrow in proportion, restricting any views from the roof terrace. Consequently, I am satisfied that privacy in rooms served by these windows has not been unduly affected by the development.
9. Given the arrangement of buildings within the block, the level of privacy within the rear gardens of Nos 41 and 43 Port Hall Road is already limited as a result of overlooking from adjacent windows. In this context, I do not consider that overlooking from the terrace at No 41a would substantially reduce levels of privacy. In addition, the angle of view from the terrace into these gardens is steep and largely restricted by the timber fencing surrounding the perimeter of the terrace. Consequently, I am satisfied that the level of privacy within neighbouring gardens has not been severely impaired.
10. Nonetheless, this does not outweigh my concerns relating to overlooking into rear facing windows at first and second floor level which has an unacceptably harmful effect on the living conditions of residents at No 43. In view of this I consider that the proposal is contrary to Policies QD14 and QD27 of the Brighton and Hove Local Plan (2005), which seek to protect residential amenity.
11. I have considered whether the loss of privacy could be mitigated through the use of a condition to secure a taller screen fence along the boundary between the two properties. However, I note that such a condition has not been suggested by either party. The erection of a screen would amount to an act of development and, in the absence of any specific details, I cannot be certain that any solution would not have a negative impact upon the street scene or the outlook from neighbouring dwellings. Given the proximity to No 43, I consider that the residents of that dwelling ought to be consulted on any

amended means of enclosure. Taking these factors into account, I do not consider that it would be reasonable for me to impose a condition in this case.

### *Character and Appearance*

12. The surrounding area is characterised by attractive, generously proportioned, terraced properties, predominantly faced with painted render. I noted that a number of dwellings within the surrounding area have two storey out riggers at the rear, this feature being particularly common in the end terraced units so that the side wall of the rear extension directly abuts the back edge of the pavement. The appeal site is an example of this pattern.
13. The roof terrace sits on top of the two storey flat roofed extension to the rear of the property. As a result of its location, the timber screen is visible from public vantage points at Port Hall Street and the junction with Port Hall Road. I noted that similar terraces have been created on flat roofed rear extensions to the rear of No 39 Port Hall Road and No 36 Exeter Street, which are in close proximity to the site and visible from the street. The terrace to No 39 is enclosed by metal railings and timber screening of a similar appearance to that used at the appeal site is evident at No 36 Exeter Street.
14. Whilst the Council state that they have no record of planning permission being granted for the terrace at No 39, I note that they consider the development to be immune from enforcement action as a result of its age. Therefore, in the context of the roof terraces in the surrounding area and the variety of fencing styles used, the timber screen does not look unusual or incongruous.
15. In any event, the screen is not unduly dominant as a result of its height above street level and the horizontal rails relate well to the form of the flat roofed rear extension – in effect, the it reads as a relatively small addition to the existing structure, extending in line with the existing parapet wall. The increase in height is not excessive in proportion to the scale of the rear extension and the fence panels sit comfortably below the eaves of the main building.
16. In view of the above, I consider that the design of the timber panelling surrounding the terrace does not cause any harm to the character and appearance of the building or the surrounding area and that the proposal complies with the design objectives of Policy QD14 of the Brighton and Hove Local Plan (2005) in this respect.

### *Other Matters*

17. The appellant and the Council have referred to an extant planning permission for the creation of a roof terrace (Council reference: BH/2012/01392). Detailed plans of this scheme have not been submitted in relation to this appeal, which does not enable any detailed comparison between the two proposals. Nonetheless, it is clear from the description of the development that the proposals in that case were substantially different to the development before me, particularly in relation to the design and location of the screen panels. Therefore, I have considered this appeal on the merits of the development, as proposed, and the presence of the extant consent has not had any specific bearing on my decision in this matter.
18. I also note that the proposal provides a usable outdoor space for the occupants of No 41a, enhancing the practical enjoyment of the property. However, I do

not consider that these benefits are sufficient to outweigh the significant loss of privacy for neighbouring residents at No 43.

### **Conclusions**

19. As set out above, I conclude that the proposal would not have a significantly detrimental effect on the character and appearance of the surrounding area and that levels of privacy within neighbouring gardens would not be substantially effected. However, these matters do not outweigh my concerns relating to the loss of privacy and harmful impact on living conditions as a result of overlooking into first and second floor windows to the rear of No 43 Port Hall Road.
20. In view of the above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Chris Preston*

INSPECTOR