
Appeal Decisions

Site visit made on 26 April 2016

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 06 June 2016

Appeal A: APP/Q1445/C/15/3133132

146 Waldegrave Road, Brighton, East Sussex BN1 6GG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Rhys Pritchard against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2015/0128.
- The notice was issued on 21 July 2015.
- The breach of planning control as alleged in the notice is: 'Without planning permission the construction of a dormer window to the rear of the property'.
- The requirement of the notice is: 'Completely remove the unauthorised rear dormer and make good the roof with tiling to match'.
- The period for compliance with the requirement is six months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction.

Appeal B: APP/Q1445/W/15/3133127

146 Waldegrave Road, Brighton, East Sussex BN1 6GG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
- The appeal is made by Mr Rhys Pritchard against the decision of Brighton & Hove City Council.
- The application ref no BH2015/02178, dated 6 June 2015, was refused by notice dated 3 August 2015.
- The development is described on the planning application form as an 'as built' dormer window to the rear.

Summary of Decision: The appeal is dismissed.

Procedural matter

1. The Appellant has confirmed that an appeal against the enforcement notice on ground (c), to the effect that a breach of planning control has not occurred, is not being pursued. However, notwithstanding this, the Appellant takes issue in his grounds of appeal with the accuracy of the alleged breach of planning control set out in the notice, contending that planning permission has been obtained for the targeted development. This contention falls to be considered in the manner of a ground (c) appeal.
 2. The contention is incorrect. Planning permission was granted by the Council for a rear dormer at the appeal property on 2 September 2014 under ref no
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BH2014/02270. However, the development thus approved was markedly different in both design and materials to that targeted by the enforcement notice. Indeed, the latter has been refused planning permission, which decision is now the subject of Appeal B. Accordingly, there is no question that a breach of planning control has occurred.

The notice

3. The enforcement notice requires those complying with it to 'make good' the roof. This is a vague term open to wide interpretation and is not sufficiently precise for the purposes of planning enforcement. I will therefore correct the notice at section 5 so as to require restoration of the roof to its condition before the breach took place. No injustice to any party arises as a result.

Main issues

4. The main issues in determining these appeals are:
 - whether the development as built preserves or enhances the character or appearance of the host property and the Preston Park Conservation Area, within which the property is located; and
 - the effect of the development on the living conditions of neighbouring residents, with particular regard to privacy.

Planning policy

5. The development plan includes the Brighton & Hove City Plan Part One (CP), adopted in March 2016, and certain policies in the Brighton & Hove Local Plan 2005 (LP) which were saved following a Direction made by the Secretary of State in 2008 and remain saved in the wake of the CP's recent adoption. Paragraph 215 of the National Planning Policy Framework (the Framework) records that due weight should be given to relevant policies in existing plans according to their degree of consistency with it.
6. I find no significant conflict with the Framework in respect of the development plan policies cited in this case. Accordingly, I will give them full weight so far as they are relevant to the appeal. Reference is also made to the Council's Supplementary Planning Document entitled *Design Guide for Extensions and Alterations* (SPD12).

Reasoning

7. Planning permission ref no BH2014/02270 provides the Appellant with a lawful fallback position. It is highly likely that the existing permission would be implemented should the current appeals be dismissed. It is therefore an important material consideration to which I must give substantial weight in determining them.
8. The approved and existing dormers are very similar in terms of location, size and proportions. However, they differ in several other respects. The approved drawings show a glazed two pane window which fills the east-facing elevation of the dormer, leaving no significant surround beyond its frame. However, the dormer as built features a far smaller window which is surrounded top and bottom and on either side by substantial areas of cladding.
9. The design and access statement for the approved scheme stipulates that the dormer would feature slate tiled cheeks and a decorated softwood sash

window. The latter requirement is reinforced by condition 4 of the planning permission, whilst condition 5 imposes obscure glazing and window-opening restrictions. By contrast, the dormer as built features a clear-glazed 'dummy sash' with an outward opening pane and cheeks and window surrounds clad in grey glass-reinforced plastic (GRP).

10. The enforcement notice and the Council's appeal submissions refer to the window having been constructed in uPVC. However, the window I viewed during my visit was made from white painted softwood. The Appeal B planning application was silent on the materials of the window and I do not know whether an initial uPVC installation has been replaced since the notice was issued. Notwithstanding this, I shall determine both appeals on the understanding that the existing timber window is intended to remain in place. No injustice to any party arises in doing so.

Character and appearance

11. I found this part of the conservation area to be characterised by terraced housing arranged in long parallel rows, exhibiting a high degree of uniformity in design and appearance and dating for the most part from the late 19th/early 20th century. Dwellings are predominantly two storey, some with roof conversions. The latter generally feature rooflights, with front dormers a rarity. Rear dormers are more numerous but, on the evidence before me, by no means commonplace or typical of the locality.
12. The appeal property is mid-terrace and set several doors down from the northern end of Waldegrave Road. A similar unbroken row of dwellings in Chester Terrace backs onto the site. Consequently, views from the public highway of the subject dormer are limited to a partial glimpse through vegetation from Preston Drove. However, the dormer is visible from the rear gardens and upstairs windows of several properties to the immediate east. Whilst it is not the purpose of the planning system to safeguard individual private views, those that take in the subject dormer are so numerous that, in essence, they equate to a significant perception of the conservation area.
13. These views also encompass a box dormer on the rear of an adjacent dwelling. However, this is distinguishable from the appeal development by reason of its larger window and comparatively modest cladded surround. In this context the unauthorised structure draws the eye as a further incongruous and unsightly addition to the roofscape, rather than being subsumed by established features of similar design. The window's small size and surrounding cladding emphasise rather than minimise the visual massing of the structure, directly contrary to advice contained in SPD12.
14. This adverse impact is exacerbated by the use of a utilitarian modern material such as GRP, which reads as an alien feature even in relation to the concrete tiled surround in which the dormer is set. I acknowledge that replicating the concrete of the main roof would not be acceptable. However, the Appellant's original selection of slate would, as a natural and traditional material, have been a far better, more sympathetic choice than GRP.
15. I conclude that the use of an inferior cladding material and unduly small window has resulted in a development markedly more harmful to the character and appearance of the host property and the conservation area than the approved dormer would be. The appeal scheme is therefore contrary to saved

LP Policies HE6 and QD14, SPD12 and the relevant provisions of the Framework.

Living conditions

16. The Council contends that the absence of obscure glazing and the fact that the window can be opened facilitate invasive views over adjacent rear gardens. Certainly the elevated position of the dormer is such that, potentially, the window could provide more extensive views than would otherwise be available from the appeal property, thereby eroding the privacy of neighbouring residents.
17. Any valid concerns in this regard are mollified to a degree by the fact that, at present, the dormer serves a wet room rather than habitable accommodation. However, it would be unreasonable to limit this part of the roof conversion to that specific use by means of a condition and the internal layout of the top floor may otherwise be changed without the need for planning permission. Consequently, there is future scope for overlooking from the window as installed, whereas in the fallback position this would be precluded by use of obscure glazing and restrictions on the extent to which the window could open.
18. I give little credence to the Appellant's suggestion that a smaller window reduces potential for overlooking. Clearly, any clear-glazed window below eye level can facilitate an outward view. This being so, I conclude that the development is potentially harmful to the living conditions of neighbouring residents and thus contrary to saved LP Policies QD14 and QD27 and the relevant provisions of the Framework.
19. Having said this, it is readily apparent that full mitigation could be secured through a condition of the kind attached to the existing planning permission. This issue does not therefore in itself give grounds for dismissing the appeals. However, harm to the character and appearance of the host property and conservation area is of overriding importance and for this reason alone the development should not be allowed to remain.

Other matters

20. I have considered all the other matters raised. The Appellant has referred me to other rear dormers in the locality which he considers comparable to development at the appeal property. However, each scheme falls to be considered primarily on its own merits and I do not know the full circumstances associated with those other schemes. In any event, some of the examples drawn to my attention are clearly of superior design to the appeal development, whilst others are not worthy of replication.
21. Whether the Council has been inconsistent in its decision making is not a matter for me and falls to be pursued, if necessary by means separate from the planning appeal process. Therefore, neither these nor any other considerations are of such significance as to outweigh those that have led to my conclusions on the main issues.

Conclusion

22. For the reasons given above I conclude that the appeals should not succeed. I will uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

Formal decisions

Appeal A: APP/Q1445/C/15/3133132

23. The enforcement notice is corrected by, in section 5, the deletion of the words 'make good the roof' and the substitution therefor of the words 'restore the roof to its condition prior to the breach'.
24. Subject to this correction the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/Q1445/W/15/3133127

25. The appeal is dismissed.

Alan Woolnough

INSPECTOR

