
Appeal Decision

Site Inspection on 7 December 2018

by Graham Self MA MSc FRTPI

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

Decision date: 11 January 2019

Appeal Reference: APP/Q1445/C/17/3190937

Site at: 1 Abbotsbury Close, Saltdean, Brighton BN2 8SR

- The appeal is made by Mr J Edwards under section 174 of the Town and Country Planning Act 1990 against an enforcement notice issued by Brighton and Hove City Council.
- The council's reference is 2014/0578.
- The notice is dated 19 October 2017.
- The breach of planning control alleged in the notice is: "Without planning permission the construction of (i) an unauthorised timber structure at the rear elevation of the dwelling extending from first floor level and (ii) an unauthorised raised garden terrace".
- The requirements of the notice are:
 1. Remove the timber structure that extends out from the rear elevation of the dwelling at first floor level and adjoins an area of raised garden at the rear.
 2. Return the rear garden ground levels to those prior to the unauthorised engineering works as shown on drawing 10161-12a, date stamped 13/01/2016, submitted as part of application BH2016/00164.
- The period for compliance is three months.
- The appeal was made on ground (a) as set out in Section 174(2) of the 1990 Act. An application for planning permission is deemed to have been made under Section 177(5) of the Act.

Summary of Decision: The appeal succeeds and planning permission is granted for the development enforced against.

Background History

1. As noted above, the enforcement notice was issued in October 2017. This followed the refusal of an application for planning permission in September 2017. The development was evidently described in the application as "works to rear garden"; but the council's refusal referred to "the creation of a terrace at first floor level to rear garden with steps from ground floor and associated alterations".
2. An appeal was lodged against that refusal. The appeal was decided in February 2018. In her decision, the inspector adopted the council's description of the development and stated that this was more accurate than the description in the application. The inspector also recorded that at the time of the site inspection, "the terrace and hardstanding had been installed", although the details did not entirely tally with the details in the application plan. From what I saw, it appears

that the main differences were the use of gravel instead of permeable block paving for surfacing part of the garden terrace as shown on Drawing Number 10059-2b (the application plan considered by the previous inspector as mentioned above), and the existence of a concrete-surfaced slope where concrete steps are labelled on the drawing. The inspector allowed the appeal and granted planning permission.

3. In 2015 an inspector dismissed an appeal seeking planning permission for the conversion of the house into a flat and maisonette. That proposal also included a raised terrace: I have no evidence about the dimensions of the structure then proposed, but the 2015 inspector apparently judged that it would provide a much more usable space than others along Abbotsbury Close, and therefore be likely to cause loss of privacy through overlooking. The 2018 inspector judged that the terrace and patio she was considering - which as explained above appears to be the same as now exists apart from some surfacing material - "would not provide a much more usable space than the majority of other gardens".

The Appeal on Ground (a) and Deemed Application

4. This appeal raises two main issues: the effect of the development on the appearance of the area; and the effect on the privacy or other amenity of neighbouring residents. These issues have to be considered in the light of relevant planning policies, and having regard to the planning history mentioned above.
5. On the first issue, the council refer to the "overly dominant" appearance of the terrace and the change in ground levels. During my inspection I saw that most of the houses in this terrace have some form of raised terrace or walkway at the rear, where the ground level slopes down from the road to the lower ground floor level of the houses. Some of these are larger or more prominent than that at the appeal site. There are also various changes in land levels along the terrace. Taking these factors into account, I judge that the development is not overly prominent in the street scene and has not materially harmed the appearance or character of the area. I note that policy QD14 of the Brighton and Hove Local Plan aims to ensure that new development is well designed in relation to its setting. I consider that the development does not conflict with that policy.
6. As for the neighbours' privacy and amenity, I saw a table on the timber structure and some folding chairs nearby. The structure is wide enough to use for sitting-out as well as for access to the house, so the council's concern about loss of privacy and possible disturbance is understandable. However, as was noted by the previous inspector in 2018, there is considerable mutual overlooking at the rear of these dwellings and the rear plots are overlooked from the adjacent road. The 2018 inspector found that the development would not lead to a significant increase in the perception of being overlooked for the occupiers of the adjacent property at No 2 and would provide some privacy for the occupiers of No 1A. I see no reason to disagree with that assessment. There are no objections by neighbouring occupiers.
7. I conclude that the development would not materially harm the privacy of neighbouring residents or lead to significant disturbance through noise. Thus the development does not conflict with Local Plan policies for safeguarding the amenities of adjacent occupiers.

Other Matters

8. I have referred to the previous inspector's decision because it is a material consideration. Indeed, if I were to dismiss the appeal and uphold the enforcement notice, it would be of no, or very limited, effect because of the February 2018 planning permission.¹ Taking into account the small areas involved, the differences between what was permitted on appeal and what is subject to the enforcement notice as described in paragraph 2 above are not so significant as to be "material" for planning purposes. Thus what has happened here is that after the enforcement notice was issued, planning permission has been granted for development virtually the same as that enforced against. The council has not withdrawn the enforcement notice; the appellant has not withdrawn the appeal against it.
9. In the last paragraph of their statement, the council refer to "the cessation of the unauthorised use". This appears to be a mistake, since the enforcement notice is directed at operational development (works of construction), not a change of use. (A "leisure-type" activity such as sitting-out in the garden or plot of a dwelling would normally be incidental to the residential use of the planning unit, not a use in its own right, and there is no suggestion that the residential use of the property should cease.) Nevertheless I have considered the possibility of granting planning permission subject to a condition to prevent the use of the timber structure for any purposes other than a means of access - the aim being to prevent its use for activities which could cause disturbance for neighbours. But such a condition would be unenforceable, since the appellant or any other owner could claim to have implemented the February 2018 permission, which did not have any restrictive use conditions.

Conclusion

10. In summary, I do not see sound or clear-cut reasons for refusing planning permission. Therefore I am allowing the appeal on ground (a). Neither the council nor the appellant's agent appears to have considered the issue of possible conditions and have not suggested any. I shall attach a condition aimed at clarifying what is being permitted.

Formal Decision

11. The appeal is allowed; the enforcement notice is quashed and planning permission is granted in response to the application made under Section 177(5) of the 1990 Act as amended, for the construction of a timber structure at the rear elevation of the dwelling extending from first floor level and a raised garden terrace at 1 Abbotsbury Close, Saltdean, Brighton BN2 8SR, subject to the following condition:

This permission relates to the development shown on Drawing No 10059-2b (titled "Proposed Alterations to Garden") except for the substitution of gravel surfacing and a concrete-surfaced slope in place of, respectively, the tegule permeable block paving and concrete steps shown on the drawing.

G F Self

Inspector

¹ This refers to Section 180 of the 1990 Act, under which where planning permission is granted after an enforcement notice is issued, the notice shall cease to have effect insofar as inconsistent with that permission. It is also relevant to note that in the case of *London Borough of Havering v Secretary of State for the Environment* [1983] JPL 240, the High Court ruled that a planning permission would be effective under Section 180 to override an enforcement notice notwithstanding that the permission did not precisely match the matters covered by the enforcement notice.

