



Appeal Decision

Site visit made on 6 August 2008

by **Alison Lea MA(Cantab) Solicitor**

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

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Decision date:
22 August 2008

Appeal Ref: APP/Q1445/A/08/2069270 23 Tennis Road, Hove, East Sussex BN3 4LR

- 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 and Mrs Kenward against the decision of Brighton & Hove City Council.
- The application Ref BH2007/02529, dated 3 July 2007, was refused by notice dated 24 August 2007.
- The development proposed is a balcony to the first floor rear bedroom, doors to replace existing window and access stair.

Decision

1. I dismiss the appeal.

Main issue

2. The main issue in this case is the effect of the proposal on the living conditions of the occupiers of neighbouring properties, with particular reference to overlooking, noise and disturbance and outlook.

Reasons

3. The appeal property is a first floor flat within a mid-terrace property. The appeal proposal would introduce a balcony at first floor level with a spiral staircase to provide access to the rear garden area. A window would be converted into glazed doors to provide access to the balcony.
4. The balcony would be about 1.2m in depth. Although I note the appellants' view that the balcony would not be an extensive seating area, nevertheless it would be large enough to sit out on and given its proximity to the rear garden of No 21, its use would provide opportunities for extensive overlooking of that garden, which in my opinion would be considerably in excess of those currently afforded by the existing first floor windows and dormer windows which overlook the garden. Furthermore, I agree with the Council that use of the balcony could lead to unacceptable levels of noise and disturbance in close proximity to a bedroom window in No 21.
5. I note that the current occupiers of No 21 have stated that they have no objection to the proposal. However, that may not be the position with regard to any future occupiers of the property and is insufficient reason to permit otherwise unacceptable development. Furthermore, the appellants have referred to a balcony on a neighbouring property which they state overlooks

their garden. However, due to the distance between the properties the situation is not comparable. Similarly although reference has been made to other balconies within the vicinity of the appeal property, I do not have any details of them or the basis upon which they may have been permitted and in any event have considered this appeal on its own merits.

6. The access stair would lead into the rear garden of No 23 and would be in close proximity to a window in the downstairs flat. Although I agree with the appellants that due to its siting and the materials proposed it would not have a significant impact on light to or the outlook from that window, nevertheless its use by the occupants of the first floor flat could lead to significant levels of noise and disturbance to and overlooking of occupiers of the ground floor flat. Although I accept that overlooking could occur through any use of the rear garden by occupiers of the first floor flat it appears that at present access can only be gained through the ground floor flat and with the permission of the occupier of that flat.
7. I acknowledge that the ground floor flat is currently occupied by a close relative of the appellants and that the proposal is required in order to avoid accessing the garden through the ground floor flat. I accept that the current arrangement is unsatisfactory. However, the ground floor flat may not always be occupied by a relative and if the 2 flats were independently occupied I consider that the impact on the occupiers of the ground floor flat would be unacceptable.
8. I note that the appellants are concerned about the manner in which the Council dealt with the planning application. However, this is not a matter for me to comment on as part of this appeal.
9. I conclude therefore that the proposal would cause significant harm to the living conditions of the occupiers of No 21 Tennis Road and of the ground floor flat at No 23 and would be contrary to Policies QD14 and QD 27 both of which seek to protect the living conditions of the occupiers of neighbouring properties. I have taken into account the benefits of the proposal to the appellants including that it could be used as an alternative access in case of fire, but these are insufficient to outweigh the harm which would be caused.

Alison Lea

INSPECTOR