



Appeal Decision

Site visit made on 28 September 2010

by **John Millard DipArch RIBA FCI Arb**

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

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Decision date:
19 October 2010

Appeal Ref: APP/Q1445/A/10/2122419 80 Peacock Lane, Brighton BN1 6WA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr J and Mrs S Richardson against the decision of Brighton and Hove City Council.
- The application (Ref BH2009/02484), dated 13 October 2009, was allowed on 9 December 2009 subject to conditions.
- The development permitted is the erection of a single storey timber framed glazed orangery.
- The first of the conditions in dispute is No 3 which states: *The west and east side facing windows of the conservatory extension hereby permitted shall not be glazed otherwise than with obscured glass and thereafter permanently retained as such.*
- The reason given for the condition is: *To safeguard the privacy of the occupiers of the adjoining property and to comply with policies QD14 and QD27 of the Brighton and Hove Local Plan.*
- The second of the conditions in dispute is No 4 which states: *Notwithstanding the submitted drawings, the proposed wall along the eastern elevation of the property shall not exceed 1.3 metres in height above the internal finished floor level of the conservatory extension hereby permitted.*
- The reason given for the condition is: *To safeguard the amenities of the occupiers of the adjoining property and to comply with policies QD14 and QD27 of the Brighton and Hove Local Plan.*

Decision

1. I allow the appeal and vary planning permission Ref: BH2009/02484 for the erection of a single storey timber framed glazed orangery at 80 Peacock Lane, Brighton BN1 6WA granted on 9 December 2009 by Brighton and Hove City Council by deleting Condition No 3.

Main Issue

2. The main issue in this appeal is the effect of removing Conditions 3 and 4 on the living conditions of the occupiers of No 82 Peacock Lane, with particular reference to outlook and privacy, and of No 78 Peacock Lane, with particular reference to privacy.

Reasons

3. The appeal property is a modern two storey detached dwellinghouse occupying a relatively narrow but deep plot on the south side of Peacock Lane. Neighbouring houses are of similar age and character and, whilst plots are

more or less consistent in shape and size, there is not a common building line. The land falls from north to south and from east to west so that the back garden of No 80 is lower than the ground floor of the house, whilst No 82 is at a higher level than No 80 and No 78 at a lower level.

4. There is a raised patio at the rear of No 80 upon which the orangery is to be constructed. On the west side of this patio, facing No 82, is a decorative block screen wall about 1.3 metres high whilst the other two sides of the patio are protected by open metal railings. There is a gap of a little over 1 metre between the screen wall and the plot boundary and a similar gap between the boundary and the flank wall of No 82, which extends much further into the garden than No 80.
5. There is a window in the flank wall of No 82 serving a semi-basement room and facing directly toward the patio screen wall. I estimate that the head of this window is about 500-600mm below the top of the wall, resulting in room which receives only poor daylighting and almost certainly requires the use of artificial lighting when used for its stated purpose as a workshop. The reason for Condition 4 is to minimise any further reduction in the daylight reaching this room, in order to satisfy criterion (b) of Policy QD14 of the adopted Brighton & Hove Local Plan 2005 (LP).
6. I agree with the Council that raising the height of the solid element of the flank wall would be likely to result in a modest but nonetheless unacceptable diminution of light to the neighbouring window and therefore conclude that to removal Condition 4 would cause such harm to the living conditions of the occupiers of No 82, with particular reference to daylight, as to conflict with the objectives of LP Policy QD14.
7. The existing patio is used by the appellants and their family and guests for sitting out and presently offers clear unobstructed views towards both Nos 78 and 82. Erecting the orangery would not increase visibility towards either of the neighbouring properties and, as such, would not materially reduce the level of privacy they currently enjoy. I therefore conclude that the proposal accords with criterion (b) of LP Policy QD14 without the disputed Condition 3 and that the Condition thus fails the test of necessity as set out in DoE Circular 11/95 - *The Use of Conditions in Planning Permissions*.
8. I have considered all other matters raised, including the concern of the occupiers of No 82 that the orangery would reduce daylight to their upper ground floor kitchen window, but have found nothing that changes the balance of my decision that the appeal should be allowed and Condition 3 removed.

John G Millard

INSPECTOR