



Appeal Decision

Site visit made 4 November 2010

by **Doug Cramond BSc MRTPI**

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

Decision date: 18 November 2010

Appeal Ref: **APP/Q1445/A/10/2129553**

11 Albert Mews, Hove, East Sussex BN3 2PP

- The appeal is made under section 79 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr & Mrs Roy & Rita Robinson (Fieldwatch Properties) against the decision of Brighton and Hove City Council.
 - The application Ref BH2009/01793, dated 22 July 2009, was allowed on 1 December 2009 subject to conditions.
 - The development permitted is external alterations to form new door, stairs and gateway access from basement workshop to footpath.
 - The condition in dispute is No 7 which states that: The new external door hereby approved shall only be opened for emergencies and maintenance and for no other purposes whatsoever.
 - The reason given for the condition is: To safeguard the amenities of the occupiers of neighbouring properties and to comply with policies SU10 and QD27 of the Brighton & Hove Local Plan.
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Decision

1. I dismiss the appeal.

Procedural Matter

2. The list of plans on the planning permission decision notice refers to drawing number 708/11 and this plan was included within the appeal papers. It has been confirmed that this plan was erroneously listed and included and formed no intended part of the relevant application. It is not pertinent to the appeal; I shall not include it in my considerations. The relevant floor plan information is on drawing number 708.08 in any event.

Main Issue

3. I consider the main issue to be the effects of the proposal on the living conditions of neighbours.

Reasons

4. Having regard to the content of the condition and its reason and the development plan I shall assess the condition in the context of Circular 11/95: *The Use of Conditions in Planning Permissions*. This Circular sets out at
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paragraph 14, as a matter of policy, six tests which should all be satisfied when conditions are imposed. In brief, conditions should be:

- (i) necessary
 - (ii) relevant to planning
 - (iii) relevant to the development permitted
 - (iv) enforceable
 - (v) precise
 - (vi) reasonable in all other respects
5. The appeal site is a vacant B1/B8 unit served at ground level from Albert Mews a narrow lane to its west. The unit runs under part of the imposing block of flats, Grand Avenue Mansions, and has a basement position with windows only on the eastern elevation below footpath level on Grand Avenue, a busy boulevard forming part of a wider Conservation Area. The approved scheme provides for replacing a window with a door, forming a staircase from the basement up to footpath level and creating a gate in the boundary wall with Grand Avenue.
 6. The appellants are seeking to upgrade the basement premises with the offer of a choice of pedestrian accesses along with improving fire escape options. Their concern is that the tight restriction on use of the doorway, and hence stairs, is such that there would be no real benefit to the premises and thus Condition 7 has been tantamount to refusal of planning permission. There was substantial opposition from some people living in the flats on a range of amenity and other grounds. The Planning Officers concluded there would be no significant loss of amenity; the Planning Committee did not agree and the Council thus applied the condition in dispute.
 7. It is impossible to say what use would be made of the new access not least because the end user of the premises is not tightly defined. There would be no restriction on time of access and no limit to usage whether for staff, visitors or delivery purposes. There could thus be considerable coming and going up and down the steps for this unit, not necessarily all at working day hours. The basement area which includes residential properties would be frequented to a greater degree by strangers and I can see that fear of crime would increase. The prospect of standing almost alongside ground floor windows would increase markedly. There would be greater likelihood of privacy being invaded by people stopping and standing on a landing area closer to windows rather than walking along a footway a little further back and most likely looking at an oblique angle.
 8. Whilst the main road is busy there is generally, from just north of the proposed new gateway southwards, a dividing line that one has moved into an area of attractive solid residential character, with businesses closer to, or on, Church Road to the north. The appeal premises have established access to Albert Mews to the rear and that is entirely appropriate rather than introducing a mix of commercial related activity to the residential frontage which would not preserve or enhance the character of the Conservation Area and would unacceptably diminish the living conditions for neighbours. For my part I consider that the condition in dispute is necessary and that removal would be unreasonable for immediate neighbours.

9. The two Local Plan policies referred to in the reason for the condition, SU10 and QD27, are respectively concerned with seeking to prevent noise nuisance for people and the protection of amenity with regard to matters including privacy and disturbance. To my mind the condition itself and the identification of these particular policies was appropriate in the context and removal of the condition would be contrary to the policies' relevant and reasonable objectives. The condition itself appears well drafted in terms of precision and any breach would be readily apparent and enforceable.
10. I appreciate the appellants' point that the planning permission as it stands could be seen as tantamount to a refusal from their perspective although the advice generally to Councils is to approve schemes if possible with conditions rather than refuse applications. In this case some play was made within the application of forming a fire exit and the approval would at least allow for that. Such very occasional use would not be unduly harmful.
11. I have carefully considered the appellants' wish to enhance the attractiveness of the premises. I am sympathetic to business development but in this instance I have seen no compelling case as to need for unrestricted access and the points raised in support of the scheme do not outweigh the concerns I have over the main issue or dissuade me from the belief that this condition is necessary on this planning permission.
12. I conclude that retention of the condition would be in accord with all the tests in Circular 11/95 and with the relevant Local Plan policies and that removal of the condition would have an unacceptable harmful effect upon living conditions of neighbours. For the reasons given above, and having regard to all matters raised, my overall conclusion is that the proposal to delete the condition in question should be dismissed.

Doug Cramond

INSPECTOR

