

Appeal Decision

Site visit made on 2 August 2016

by **S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI**

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

Decision date: 5th August 2016

Appeal Ref: APP/Q1445/D/16/3151693

8 Princes Square, Hove BN3 4GE

- 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 Rustom Irani against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/00218, dated 21 January 2016, was refused by notice dated 17 March 2016.
 - The development proposed is an increase in the height of the boundary wall between 8 Princes Square and the footpath leading to Westbourne Place.
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Decision

1. The appeal is allowed and planning permission is granted for an increase in the height of the boundary wall at 8 Princes Square, Hove BN3 4GE between 8 Princes Square and the footpath leading to Westbourne Place, in accordance with the application Ref: BH2016/00218, dated 21 January 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The materials to be used to increase the height of the wall hereby permitted shall match those used in the existing wall.
 - 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan: 141010/S100, Block plan: 141010/P100, Existing Plan and Elevation: 141010/S101 and Proposed Plan and Elevation 141010/P101.
 - 4) The development hereby permitted shall not commence until after the tree in the garden of No 8 has been felled in accordance with application Ref: BH2016/000097 and vegetation overhanging the path along No 8's boundary has been removed.

Main Issue

2. The main issue is the effect of the increased height of the wall on public safety on the footpath between Princes Square and Westbourne Place.

Reasons

3. No 8 Princes Square is a large detached house set in a substantial plot enclosed by brick walls. The property is currently being extended following the granting of
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- planning permission, Ref: BH2015/02552. However, at the time of my site visit the garden was partially inaccessible and significantly overgrown.
4. The wall on the northern boundary of the site encloses a public footpath which runs in a straight line between Princes Square and Westbourne Place. The path is approximately 70m in length. Whilst the wall up to the front elevation of No 8 is only 1.3m tall, towards the rear of the site its height increases to 1.7m for approximately 43m. The path's northern side is enclosed by a wall in excess of 2m high, which forms the side boundary to the garden of No 10. It is possible for anyone walking through the passageway to see daylight at the far end. Nevertheless, the path feels enclosed not only in part because of the existing walls, but also because of the extensive vegetation that overhangs it.
 5. The proposal seeks to raise the height of the wall to 2.2m along part of the depth of the house. It would then gradually be increased in height to a maximum of 2.5m at the rear end of the garden. On my site visit I stood at the end of the garden and was able to see that the ground level on the garden side of the wall is above that of the public footpath and in some places it is less than 1m below the height of the wall.
 6. Increasing the height of the wall would reduce the natural light that could reach the path to a limited extent. It would also make the path feel a little more enclosed. However, it already has a tunnel-like appearance due to its restricted width. This is exacerbated by the extensive overhanging vegetation which results in it being almost totally enclosed through a short section.
 7. It would appear that the path is a popular cut-through. A number of local residents have therefore expressed concerns about any additional loss of daylight which could make the passageway less pleasant to use. They fear that this would adversely affect their safety. However, I note that permission has been granted to fell a substantial tree in the rear garden of No 8 which currently overhangs and shades the footpath, Ref: BH2016/00097. It seems to me that any loss of daylight arising from increasing the height of the wall would be adequately compensated for by the increased sense of openness that would be created by the removal of the tree and its associated vegetation. Furthermore, the appellant stated an intention to ensure that the passageway is also cleared of other vegetation that overhangs from his garden.
 8. There was evidence to suggest that there had previously been a fence erected within No 8's garden, adjacent to the wall. This would have resulted in a similar sense of enclosure to that which would occur with the proposal. I am therefore not convinced that the increased height of the wall, if combined with the removal of vegetation, would result in an increased sense of enclosure or a materially harmful loss of light along the path. Consequently, the proposal would not result in a significant threat to the safety of those using the passageway.
 9. There is a lamp column approximately halfway between Princes Square and Westbourne Place. The path is therefore already lit at night and the removal of the excess vegetation would also improve the penetration of light from this lamp into the passageway during the hours of darkness. It has been suggested that a lantern change would also be appropriate, the need for which could be assessed by Council officers following the alterations to the wall. This should ensure that the path would appear safe to users at night.
 10. In considering the proposal I have also had regard to the alternative fallback positions available to the appellant. Firstly, the wall could be increased in height to 2m as permitted development. Secondly, a new wall of up to 2m above the

existing ground levels could be constructed within the garden immediately adjacent to the existing one. It would seem that this could be as high as 2.8m given the rising ground towards the end of the garden.

11. I consider it to be highly likely that the appellant would implement one of these options, given the serious concerns that he has about the security of his property. He provided specific evidence relating to a recent burglary where intruders had climbed into the garden over the wall. There was also evidence of anti-social behaviour resulting in litter being thrown into the garden.
12. In these circumstances, the right of the appellant to protect the safety, privacy and security of his home is a material consideration to which I attribute some weight. It seems to me that the proposal is a proportionate response to the sense of risk that he has experienced arising from the proximity of his property to this public footpath. The appearance of the path would be improved with the removal of vegetation, which the appellant has indicated would be done if the scheme were to proceed. This would benefit everyone using the footpath and could be secured by the imposition of an appropriate condition. I therefore consider that the benefits of the proposal for the appellant would outweigh the understandable perceptions of danger expressed by local people who use this short passageway on a regular basis.
13. I conclude that, subject to the removal of the existing overhanging vegetation, the proposal would not adversely affect public safety on the footpath between Princes Square and Westbourne Place. It would therefore comply with saved Policies TR8 and QD27 of the Brighton and Hove Local Plan which requires development, amongst other things, to provide for the needs of pedestrians by creating short, safe, attractive and direct walking routes.

Other Matter

14. Princes Square lies in the Pembroke and Princes Conservation Area. I therefore have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that Area. The Council is satisfied that the proposal would preserve the appearance of the conservation area. I see no reason to come to a different view, provided that the development is constructed using appropriate materials, which can be secured by condition.

Conditions

15. In addition to the standard time limit a condition specifying the plans is necessary in the interests of certainty. A condition requiring matching materials is justified in order to ensure that the development can be satisfactorily integrated with its surroundings. I have also imposed a condition requiring that the tree and other vegetation which currently overhangs the passageway is removed prior to commencement of the works to increase the height of the wall. This will ensure that the proposal does not result in an additional sense of enclosure along the footpath.

Conclusion

16. For the reasons set out above, I conclude that the appeal should be allowed, subject to conditions.

Sheila Holden

INSPECTOR

