
Appeal Decision

Site visit made on 31 October 2016

by Nicola Davies BA DipTP MRTPI

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

Decision date: 22 November 2016

Appeal Ref: APP/Q1445/W/16/3153131
2 Clarence Square, Brighton BN1 2ED

- 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 & Mrs A M Taheri-Kadkhoda & Mr & Mrs A Abrahams against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/01339, dated 16 April 2016, was refused by notice dated 13 June 2016.
 - The development proposed is described as "proposed rear roof terrace – revision of refusal BH2015/03648".
-

Decision

1. The appeal is allowed and planning permission is granted for a proposed rear roof terrace – revision of refusal BH2015/03648 at 2 Clarence Square, Brighton BN1 2ED in accordance with the terms of the application, Ref BH2016/01339, dated 16 April 2016, subject to the following conditions: -
 1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
 2. The development hereby permitted shall be carried out in accordance with drawing number 1120 05 A.
 3. No development above the roof terrace floor slab level shall take place until details of door and the materials and finish of the parapet/balustrade have been submitted to and approved in writing by the local planning authority. Prior to the first use of the roof terrace the development shall be carried out in accordance with the approved details.

Preliminary Matters

2. I have taken the appellants' titles from the appeal application form, although I note one of these differs on the planning application form.
 3. The description of the proposed development on the Council's decision notice includes, in addition to the creation of a roof terrace, the replacement of an existing window with a new door to access the roof terrace. This is reflected on the submitted plans. I have therefore considered the appeal on this basis.
 4. The site has been the subject of a recent appeal, reference APP/Q1445/W/16/3149148. I note the differences between the two schemes, especially in terms of the reduced roof terrace length and the retention of a section of the existing pitched roof at the flank gable end and I have taken
-

these into account. Both parties have been given the opportunity to comment. I have considered the individual circumstances of this current proposal in light of current national policy and guidance.

Main Issue

5. The main issue is the effect of the proposed development on the living conditions of the occupiers of adjoining properties with particular regard to noise.

Reasons

6. No 1 Clarence Square has windows in the eastern elevation that serve the main habitable rooms. There are also windows in the southern elevation of the projecting outrigger that face the outrigger of No 2 however, these windows do not appear to serve main habitable rooms of the flats within No 1.
7. The previous Inspector commented that "the generous separation distance between the proposed roof terrace and any windows in the eastern elevation of No 1, would, in my opinion substantially limit any harmful effects in respect of noise and disturbance to the occupiers of the flats within No 1". From my observations, I concur with the Inspector on this matter. Although the proposed terrace would face toward the southern elevation of the outrigger, it would be positioned at a higher level to the windows within this elevation. In addition, I am mindful that the roof terrace proposed in this case would be of reduced size and could therefore accommodate fewer people to that of the scheme previously considered.
8. The properties in the terrace further to the south of the appeal site have windows in their eastern elevations. The proposed roof terrace would be set into the roof pitch and be off-set from neighbouring properties by the adjoining outrigger. This would, in my opinion, substantially limit any harmful effects in relation to noise to these adjoining occupiers.
9. I therefore conclude that the proposal would maintain acceptable living conditions for the occupiers of adjoining properties with particular regard to noise. The proposal would therefore comply with saved Policies QD14 and QD27 of the Brighton & Hove Local Plan which seek to respect the amenities of adjoining occupiers including in respect of noise, amongst other matters.

Other Matters

10. In reaching my decision, I have considered the concerns raised by interested parties. I have considered loss of light and potential overshadowing. The Council did not raise any concerns on living conditions on grounds beyond those matters relating to noise. Given the modest height of the balcony enclosure, I am satisfied that the proposal would not cause any undue loss of light or significant overshadowing to adjoining properties.
11. The windows in the southern elevation of the outrigger at No 1 do not appear to serve main habitable rooms and are positioned at a lower level to the proposed terrace. Views toward the main habitable rooms on the eastern elevation of No 1 would be at an oblique angle. There is a generous separation between the proposed roof terrace and these windows and the lower ground patio. Overall, I consider these factors would limit the opportunity for users of the terrace to achieve any significant observation of habitable rooms.

12. I have considered the effect of the proposal on the character and appearance of the area, taking into account that Clarence Square lies on the eastern edge of the Regency Square Conservation Area. The Council has not raised any concerns on these grounds. The proposal would retain the gable end and a short length of the pitched roof which would maintain visual symmetry to the flank elevation of the paired outrigger. The terrace is proposed where the roof has been partly removed in the past. From my observations on site I am satisfied that the proposed terrace would not cause undue harm to the character and appearance of the area or views toward the Conservation Area when viewed from the east.
13. Concern is also expressed about builders accessing the site via the adjoining occupier's property, however this would be a civil matter separate to this appeal.
14. None of these matters alter my conclusion that the appeal should be allowed.

Conditions

15. I have considered the planning conditions suggested by the Council in light of paragraph 206 of the National Planning Policy Framework and the advice in the Planning Practice Guidance. In addition to the standard time limit conditions and in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans. A condition relating to details of the new door and the materials and finish of the parapet/balustrade is appropriate in the interests of the character and appearance of the area. These elements are fundamental to the acceptability of the proposal and are therefore necessary to be agreed before they are installed.

Conclusions

16. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Nicola Davies

INSPECTOR