
Appeal Decisions

Site visit made on 19 May 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2020

Appeal A Ref: APP/Q1445/C/19/3242068

Land at 5 Windsor Close, Hove BN3 6WQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Bulent Ekinci against an enforcement notice issued by Brighton & Hove City Council.
- The enforcement notice, numbered ENF2018/00400, was issued on 11 November 2019.
- The breach of planning control as alleged in the notice is without planning permission the construction of two hip-to-gable extensions, a rear dormer with dormer extension, raised decking and boundary fence exceeding 2 metres in height.
- The requirements of the notice are:
 1. Remove the additional dormer extension (outlined in red in Appendix 1) to the rear and alter the roof to comply with drawing 55(PD)2 C of the approved Lawful Development Certificate BH2017/03835.
 2. Remove the ground floor raised decking from the rear of the property.
 3. Decrease the height of the northern boundary fencing to no more than 2 metres high.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/Q1445/D/19/3241067

5 Windsor Close, Hove BN3 6WQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
- The appeal is made by Mr Bulent Ekinci against the decision of Brighton & Hove City Council.
- The application Ref BH2019/01978, dated 2 July 2019, was refused by notice dated 18 September 2019.
- The development proposed is described as:
 - "Rear dormer amendment – retrospective
 - "Juliet balcony
 - "Timber decking with privacy screen – retrospective
 - "Roof lights – retrospective."

Summary Decision: The appeal is dismissed.

Preliminary Matters

1. Appeal A was originally made on grounds (a), (d) and (g). However, the appeal under ground (d) was subsequently withdrawn.

2. Appeal A relates to an enforcement notice concerning roof extensions, decking and boundary fence. I am required to consider that appeal on the basis of the development at the time the enforcement notice was issued.
3. The planning appeal under appeal B relates to the roof extensions, including windows, and timber decking. I note that the Council included the boundary fence, roof enlargement including side hip-to-gable extensions, alteration of roof tiles and recladding of property and revised fenestration in the development when coming to their decision on appeal B. The appellant has agreed that all those matters, with the exception of the fencing, can be included within the appeal before me. I will deal with appeal B on that basis.
4. As the fencing is included within the description of development and is required to be reduced in height by the requirements on the enforcement notice, I will consider it as part of appeal A.
5. I note that a further appeal has been submitted under reference APP/Q1445/D/20/3252633 that relates to a revised scheme for a rear dormer, Juliet balcony with frosted glazed screening, timber decking with privacy screen and roof lights. That was submitted too late in the process for it to be linked to these appeals, so I have not been able to determine it. Nevertheless, insofar as it is relevant I will refer to it as appeal C in my reasoning.

Appeal A on Ground (a) and the Deemed Planning Application Appeal B

Main issues

6. The main issues are:
 - the effect of the roof extensions on the character and appearance of the existing building and surrounding area; and
 - the effect of the roof extensions, raised decking and fence on the living conditions of neighbouring occupiers of 4 and 6 Windsor Close with particular regard to privacy, outlook and light.

Reasons

Character and appearance

7. Windsor Close comprises a series of bungalows to either side and rises up the hill from Queen Victoria Avenue, with nos. 1-6 lower than the road. The bungalows were originally of consistent appearance that resulted in a regular character and appearance to the road, albeit some houses, particularly on the opposite side of the road to no. 5, have been altered over time. The bungalows on the side of the road of no. 5 are each set slightly further forward than one another proceeding from no. 1 to no. 6. Given the topography and layout of the street, the roofscape of nos. 1-6 is particularly visible, with a rhythm to the roofs of the properties on that side of the road.
8. The development of the roof at no. 5 has broken that rhythm of roofs as the ridge has been significantly widened and extended with a flat roof to the rear. Given the topography and layout of the road, the side elevation of the roof extensions are particularly visible and dominate the dwellings at nos. 1-4 in views up the street. The flat roof extending from the ridge with blank wall

below has an unattractive appearance that further adds to the dominating effect of the roof extensions to the street scene.

9. I note that a Lawful Development Certificate (LDC) under reference BH2017/03835 has been issued for a similar extension to that constructed, confirming that would benefit from planning permission in accordance with the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This constitutes the fall-back position should the appeals be dismissed and the requirements of the notice enable the extensions to be altered to reflect what was proposed in that LDC. I note that the development as built is not significantly larger than that subject of the LDC. Nevertheless, it results in additional harm to the character and appearance of the building and the street scene.
10. My attention has been drawn to changes to external materials on the roof, walls and windows, and that the front door has been moved from the side to the front of the property. It is suggested that these changes do not comprise development requiring planning permission, or they benefit from permission in accordance with the GPDO. I note that the relocation of the front door and changes to fenestration were subject of an LDC granted under reference BH2018/03805. Nevertheless, these changes have provided a more individual appearance to the property that stands out in the regular rhythm and appearance of the street.
11. The rear elevation is visible in more limited views from the car park outside the flats at the end of Windsor Close and surrounding gardens. From these directions, the flat roof of the main extension and rear projection, as well as the sloping side roof to the projection, are visible. These result in a convoluted roofline and substantial, boxy appearance to the building that is at odds with the neighbouring houses. Taking all of the above into account, the resulting building appears incongruous within this area.
12. I note that other houses in Windsor Close have been extended and some of these may be of similar size or larger than that at no. 5. However, these houses are in less prominent positions in the road, or the extensions are less prominent in views from the street scene.
13. For these reasons, I conclude that the development, as built, harms the character and appearance of the existing building and surrounding area. Consequently, it is contrary to Policies QD14 and QD27 of the Brighton and Hove Local Plan (LP) that seek extensions and alterations to be well designed in relation to the property to be extended, adjoining properties and the surrounding area. In addition, the extension conflicts with advice contained within Supplementary Planning Document 12 (SPD12): Design Guide for Extensions and Alterations, including that roof alterations should not be excessively bulky and that they should respect the scale, continuity, roofline and general appearance of the street scene, including its topography.

Living conditions

14. The roof extension contains windows in the rear projection that face down the rear garden and a full height glazed door that opens out onto the flat roof adjacent to that rear extension.

15. The windows on the rear projection face down the garden and are not unusual on properties, such that they do not materially add to overlooking from the original rear windows on the property.
16. The door opening onto the flat roof is located close to the boundary with 6 Windsor Close. The location of the window next to the wall of the rear projection directs views over that neighbouring property. Views into that neighbouring garden from that window are blocked to some extent by the flat roof beyond and the neighbouring property that is set further back on its plot than the house at no. 5. I note that a substantial window was provided in a similar location in the proposal subject of the LDC. Nevertheless, the size of that window, particularly its height, does result in overlooking of the neighbouring garden.
17. The decking to the rear extends from the living room in the ground floor, providing an area of outdoor seating at the same level as the internal floor level. As the property is built on sloping land, it is significantly higher than the ground level in the garden. A side screen was provided on the edge of the decking closest to the boundary with 4 Windsor Close that restricts views to the area immediately to the rear of the neighbouring property. Similarly, the tall fence on the boundary with no. 6 restricts views to the garden immediately to the rear of that property. Nevertheless, the height of the decking means that it does enable views into and over neighbouring gardens.
18. I note that other properties in the vicinity may have large decking or balcony areas. However, these will have different relationships with their neighbouring properties and I have limited information as to the history of these properties. As a result, this factor does not alter my conclusion on this matter.
19. The tall fence on the boundary with no. 6, due to its height on the boundary between the properties, dominates the outlook from the part of that garden closest to the boundary toward the house at no. 5. Although it restricts views into the neighbouring garden, it causes material harm to the living conditions of those neighbouring occupiers.
20. The roof extensions are substantial and bring the ridge of the roof closer to neighbouring properties, albeit not significantly larger than that subject of the LDC. Nevertheless, the extensions result in further shadowing from the building and means it is more visible from neighbouring properties. Nevertheless, the location of the extensions and separation from the boundaries of the property mean that they do not result in material overshadowing and loss of light to neighbouring properties. As such, taking account of the fall-back position, this does not result in additional harm to the living conditions of neighbouring occupiers in terms of loss of light or outlook.
21. For these reasons, I conclude that the rear glazed door in the roof extension and decking has resulted in additional overlooking of neighbouring properties and the fence dominates the outlook of occupiers of no. 6 in some views. As a result, these elements of the development harm the living conditions of occupiers of neighbouring properties. As such, the development is contrary to Policies QD14 and QD27 of the LP that extensions should not result in significant loss of privacy or cause material nuisance or harm to living conditions of adjacent residents.

Other matters

22. I note the appellants desire to provide space for their growing family. This is not an uncommon scenario and, while I have sympathy to the circumstances described, they are not sufficient to outweigh the harm and policy conflict identified.
23. The issue of impact on property values has also been raised. It is a well founded principle that the planning system does not exist to protect private interests such as value of land or property.

Conclusion

24. For the reasons set out above, I conclude that on balance the development does not accord with the development plan. The appeal on ground (a) therefore fails.

Appeal B

25. Appeal B relates to a planning application for an alternative form of development. The alterations proposed in the planning application comprise the installation of a screen in front of the first floor doors to create a Juliet balcony, amendments to the roof of the rear projection to provide a gable end and remove the flat roof, and provide privacy screens to both sides of the decking.
26. These changes have not altered the depth and shape of the main roof extension that I have concluded causes harm to the character and appearance of the building and area. Nevertheless, there would be a significant improvement to the appearance of the rear projection, but this, even taking into account the fall-back position set out above, would not outweigh the harm that I have found. Consequently, the proposals in appeal B would harm the character and appearance of the building and area contrary to Policies QD14 and QD27 of the LP and advice contained within SPD12.
27. The proposed pitched roof of the rear projection adjacent to the Juliet balcony would not direct views toward the neighbouring property in the same way as the existing wall. The views would be restricted to some extent by the proposed screen on the Juliet balcony. Nevertheless, as the proposed screen does not appear to be solid, I consider that the harm to the living conditions of occupiers of the neighbouring property would not be wholly overcome. My attention has been drawn to another appeal decision¹ relating to a Juliet balcony but I have limited information on that scheme and its relationship with surrounding properties. As a result, I am not sure that it is directly comparable to the development before me and give it little weight in coming to my decision.
28. The privacy screens to the sides of the decking reduce views over the area of garden closest to both neighbouring gardens, although would not restrict views over the remainder of those gardens. The steps down from the decking are located close to the boundary with no. 6 and lowering of the fence on the boundary would allow views over the section of that garden closest to the house from the decking and steps. Whilst the screen would, therefore, reduce overlooking of that neighbouring property, it would not overcome it entirely.

¹ Appeal reference APP/Q1445/D/18/3215990

29. For these reasons, the harm to living conditions of occupiers of neighbouring properties would remain. As such, the proposed development would be contrary to Policies QD14 and QD27 of the LP.
30. For these reasons and taking account of all other matters raised, the proposals set out in appeal B would not overcome the conflicts with development plan policy that I have identified above.

The Appeal on Ground (g)

31. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
32. Since appeal A was submitted, appeal C has been received that provides an alternative form of development. If that were to be allowed, the appellant should have the opportunity to proceed with that development as an alternative to that approved under Lawful Development Certificate BH2017/03835 as required by the notice. I also note that the restrictions regarding Covid-19 have slowed the progress of appeals, including these, and may have other implications relating to development work proceeding and access to other properties should this be required whilst work proceeds. Nevertheless, the time for compliance was given as six months.
33. I note that the appellant suggests that this is the minimum period required to be able to comply with the requirements, although has suggested a period of 12 months should be applied taking account the effects of Covid-19.
34. On balance, and taking into account all these matters, I consider that a period of compliance of six months is reasonable.
35. For these reasons, I conclude that the appeal under ground (g) should fail.

Formal Decision

36. Appeal A is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
37. Appeal B is dismissed.

AJ Steen

INSPECTOR