



Appeal Decision

Site visit made on 12 October 2021

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 October 2021

Appeal Ref: APP/Q1445/W/20/3263461

First Floor, 43 Connaught Terrace, Hove, BN3 3YW

- 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 Scott Lunn against the decision of Brighton and Hove City Council.
- The application Ref BH2020/02381, dated 26 August 2020, was refused by notice dated 27 October 2020.
- The development proposed is the erection of single storey first floor rear extension incorporating a recessed Juliet balcony. (Part-retrospective)

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of the application from the Council's decision notice as this more accurately describes the development. This description is also mentioned on the applicant's appeal form.
3. On my site visit the proposal for the recessed Juliet balcony appeared to have been completed. I have therefore made my decision on this basis.
4. During the course of the appeal, the applicant in their Statement of Case (SoC) has submitted amended plans¹ detailing a further option which attempts to overcome the Council's concerns with regards to overlooking. I note comments in the applicant's SoC that these plans were submitted to the Council, however the Council still had concerns over the principle of the rear balcony so made their decision based on the originally submitted plans. In general, the scheme that is considered at appeal ought to be the same one that was considered by the Council. There is no evidence that the amended plans of this further option formed part of the scheme that the Council made its decision on, or that this option has been subject to any form of consultation. In accordance with the 'Wheatcroft Principles',² it would not be appropriate to consider these amended plans within my decision as the acceptance of such would deprive those who should have been consulted on the changed development of the opportunity of such consultation. As such, I will base my decision solely upon the plans that were determined by the Council during the original planning determination.

¹ First floor rear extension Juliet balcony amendments Existing and Proposed, 43-CT-02A, dated 02/10/2020; Privacy arch and sight lines, 43-CT-02views dated 02/10/2020; Existing and Proposed layout plans Site Location Plan Sheet 1 of 2, 43-CT-02 02/10/20, dated 02/10/2020; Pre-existing and proposed elevations Site Location Plan, 43-CT-0, dated 06/11/2020; Juliet balcony amendments, 43-CT-02view, dated 06/11/2020

² Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

Main Issue

5. Taking the above into account, the main issue is the effect of the recessed balcony upon the living conditions of surrounding occupiers, with particular regard to overlooking and privacy to the rear gardens of dwellings along Belfast Street.

Reasons

6. Belfast and Connaught Streets contain perimeter block development of tight knit Victorian terraces with small narrow rear gardens which abut each other. The dwellings take a typical Victorian terraced form with a two storey host building with a smaller two storey rear wing which in most cases is half the width of the host dwelling. Many of the rear wings contain windows to the rear façade and there is also evidence of rear dormer windows projecting from rear roof planes of the host building with traditional opening windows, rather than Juliet Balconies.
7. The appeal building has been constructed so that the rear wing at first floor level contains an inset Juliet Balcony which is full height and would allow the occupant to open both full height doors and utilise the space for sitting, standing or with a table etc. The current situation presents a clear difference in the perception of overlooking and privacy from persons sitting or standing on the recessed balcony for long periods of time as opposed to any overlooking caused, for example, from a rear window which would go largely unnoticed. Given the suburban environment, these changes to the perception of overlooking and privacy as a result of this development carry a significant impact to the living conditions of surrounding occupiers.
8. The properties adjoining and to the rear are relatively small and narrow, open and whilst rear gardens are residential in nature, there are no areas of overlooking from a first floor level to a similar degree to the appeal site. Whilst I appreciate comments in the applicant's Statement of Case that the opening could be reduced, and that planting/screening could also be introduced, however this would not overcome the principle of such an addition which significantly changes the perception of overlooking as discussed, as well as some of the elements such as additional planting to the boundary being outside the control of the applicant. I also appreciate the rationale behind such a project which is designed to address the in-balance of amenity space for this particular flat, however this would not outweigh the harm which has been caused by this development.
9. In conclusion on this matter, the scheme would cause significant harm to the living conditions of surrounding occupiers, as a result of overlooking and loss of privacy. Consequently, the scheme would be contrary to Brighton and Hove Local Plan 2005 Saved Policies QD14 (which seeks alterations and extensions do not result in significant loss of privacy and amenity to neighbouring properties); and Saved Policy QD27 (which seeks that development not cause a loss of amenity to existing and/ or adjacent residents).

Other Matters

10. There are comments from interested parties which concern matters such as design, noise, and loss of property value. Matters such as design and noise generated by the development have been seen as satisfactory by the Council

and does not feature in their reason for refusal on the Decision Notice. As such, I have no reason to disagree with this assessment. Additionally, the affect on property value is not a planning matter and has therefore not been taken into account within this decision.

11. I note comments within the applicant's SoC that they feel aggrieved by the decision making process with regards to how the application was assessed in that they feel it was biased, did not consider all comments received and did not apply measurement to determine whether the development was contrary to policy. Unfortunately, not all elements of planning policy are measurable, and decisions will come down to an assessment of fact and degree, taking into account the specifics of the site and its context and have subjective views which are based upon theory, policy, guidance and experience. I have seen no evidence to indicate that the Council has failed to properly evaluate the application or consider the merits of the scheme, in which the Council had reasonable concerns about the impact of the proposed development which justified its decision.

Conclusion

12. Taking the above into account, the appeal is dismissed.

J Somers

INSPECTOR