



Appeal Decision

Site visit made on 10th August 2022

by Megan Thomas Q.C. Barrister-at-Law

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 8th September 2022

Appeal Ref: APP/U1430/D/22/3295981

21A Leopold Road, Bexhill, TN39 5PF

- 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 J Davison against the decision of Rother District Council.
 - The application Ref.RR/2021/2942/P, dated 6 December 2021, was refused by notice dated 4 February 2022.
 - The development proposed is a "loft conversion including construction of dormer to rear and addition of rooflight windows to front of dwellinghouse currently being created by conversion approved under extant planning permission RR/2018/1528/P".
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Decision

1. The appeal is allowed and planning permission is granted for a loft conversion including construction of dormer to rear and addition of rooflight windows to front of dwellinghouse currently being created by conversion approved under extant planning permission RR/2018/1528/P at 21A Leopold Road, Bexhill, TN39 5PF in accordance with the terms of the application, ref. RR/2021/2942/P, dated 6 December 2021, 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 strict accordance with the following approved plans: 7030/21/LBP, dated October 2021, 7030/21/1, dated October 2021, 7030/21/EX, dated October 2021 & 7030/21/2, dated October 2021.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing dwelling.
 - 4) The two rear-facing dormer windows shown on drawing no.7030/21/2 in the development hereby permitted shall be glazed with obscured glass and obscured glass shall thereafter be permanently retained.

Main Issues

2. The main issues in the appeal are the effect of the proposed rear dormer structure on the living conditions of the occupants of 98, 100 and 102 Windsor Road in relation to their privacy when in their homes and gardens, and the effect of the proposed rear dormer on the character and appearance of the host dwelling and the wider area.

Reasons

Living conditions of occupants of nos 98, 100 and 102 Windsor Road

3. The appeal site is a two storey building situated on the western side of Leopold Road in the built-up area of Bexhill-on-Sea not far from the town centre. At its rear to the west there is the small rear garden of no.100 Windsor Road which is a two storey terraced house. No.100 is flanked by nos 98 and 102 both of which also have small rear gardens and fenestration in their rear elevations.
4. 21A Leopold Road is a former plumbers' workshop, office and store. Planning permission ref. RR/2018/1528/P was granted in November 2018 for its change of use and conversion to a single residential dwellinghouse. Works have started in respect of the approved conversion to a dwelling pursuant to that planning permission and the appellant now seeks to convert the loft space to provide additional living accommodation for the new dwellinghouse.
5. The proposal is therefore to insert two rooflights in the front roof slope and to construct a dormer structure in the rear roof slope which would have two rear-facing windows and a flat roof.
6. No.21A Leopold Road fills almost the entirety of its plot. At its rear there is a wooden fence on the common boundary with no.100 Windsor Road and this wooden fence is situated extremely close to the ground floor rear elevation of no.21A and the ground floor window in that rear elevation. The window serves a kitchen/living area and is obscurely glazed (which is a requirement of planning permission RR/2018/1528/P). There is also a rear window at first floor level which serves a bedroom. The proposed dormer structure would have two modestly-sized rear-facing windows. These would permit overlooking from a high vantage point of the rear gardens of nos 98, 100 and 102 Windsor Road and also overlooking into upper floor windows of those terraced houses, particularly those in no.100. I have borne in mind that a planning condition could require the glass in the windows of the rear-facing dormer structure to be obscured but whilst this is beneficial to neighbours' privacy, it would not overcome the perception of being overlooked from a high and close vantage point. Whilst this built-up part of Bexhill is close-knit and dense and some mutual overlooking is to be expected, the proposal would exacerbate the loss of privacy in the Windsor Road properties whether or not a condition required obscured glass.
7. As part of the appeal argument, the appellant submits that once he has completed the conversion of no.21A to a dwellinghouse, he would have the benefit of permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to build the same dormer structure development as applied for in this appeal without the need to obtain express planning permission from the Local Planning Authority.
8. Whilst it is not within my remit to decide what precise proposed development might be lawful, on the evidence produced by the appellant it is likely that a dormer structure/loft conversion proposal very similar to the scheme before me could be constructed under Schedule 2 Part 1 Class B and Class C of the 2015 Order. It would have to meet all the tolerances and conditions of those classes of the Order. The proposed rooflights in the front roof slope on a completed dwellinghouse can be inserted under Class C if, amongst other things, they do

not protrude by more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof. The proposed rooflights on the scheme before me would comply with that particular tolerance. Turning to the dormer structure, it would be very similar to one permitted by class B because, amongst other things, it would be lower than the existing roof ridge, the edge of the enlargement closest to the eaves of the original roof would be not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves; no part of the enlargement would extend beyond the outside face of any external wall of the original dwellinghouse; and the increase in volume of the resulting roofspace would not exceed 40 cubic metres.

9. Rear-facing windows in a dormer structure constructed under Class B could be unobscured, larger and more numerous than those proposed in the scheme before me and therefore loss of privacy and perceived loss of privacy for neighbours could be worse than that experienced in the scheme before me, even with a condition obscuring windows.
10. There is no planning condition removing the use of permitted development rights on planning permission ref RR/2018/1528/P and the Council, which is aware of the appellant's contentions, has not drawn my attention to any article 4 direction that restricts reliance on permitted development rights.
11. On this first issue, whilst I find that, notwithstanding the imposition of conditions, there would be harm from the rear dormer structure to living conditions through perceived loss of privacy for the occupants of 98, 100 and 102 Windsor Road, the harm from the fallback development would be likely to be worse. In those circumstances, the loss of privacy to neighbours is outweighed by that material consideration. The likely loss of privacy from the appeal scheme does not therefore provide sufficient reason for refusing planning permission given that I accept that it is highly likely that the fallback development would occur.

Character and appearance

12. The proposed dormer structure is designed so that its roof would be visually lower than the roof ridge of the existing building and it would sit upwards from the eaves of the building by several centimetres. Also, its south facing dormer cheek would not be flush with the southern flank elevation of the main house but would step in by several centimetres. The proposed two windows in it would be modestly-sized and not overly dominant in design terms. Given these design characteristics, the proposal would not be unduly bulky or give a top heavy appearance to the building as a whole. Part of the dormer structure would be glimpsed from Leopold Road but nevertheless it would not be highly visible and whilst dormer structures are not typical in the immediate area the proposed dormer would not harm the character or appearance of the wider area sufficient to warrant refusal of planning permission. I am also mindful that in relation to character and appearance issues, the proposed development would be likely to be no worse than the fallback development that the appellant has in mind.
13. On this second issue, I conclude that the rear dormer structure would not harm the character or appearance of the host dwelling or wider area and would not be

in conflict with policies OSS4 and EN3 of the Rother Local Plan Core Strategy (adopted 2014) insofar as they protect character and appearance, or policy DHG9 (ii) (iii) & (vi) of the Rother Development and Site Allocations Local Plan (adopted 2019).

14. Consequently, whilst the further loss of privacy from the appeal scheme (notwithstanding condition 4) would conflict with development plan policy, there is another material consideration, namely the fallback development, to which I attach significant weight and as such it outweighs policy conflict and privacy harm and leads me to conclude that conditional planning permission should be granted in this appeal. I deal with conditions below.

Conditions

15. I have considered the imposition of planning conditions in the light of advice in National Planning Practice Guidance. The Council suggested 3 conditions in the event that the appeal was successful and a third party suggested another. A condition which ties the built development to the approved plans is necessary in the interests of certainty. In order to protect the character and appearance of the host dwelling and its surroundings a condition requiring the dormer structure to match the existing materials of the dwelling is necessary. A time limit in which to implement the planning permission is also a necessary condition. I have imposed a condition requiring the rear facing windows in the dormer structure to be obscurely glazed as I consider this is necessary to reduce the instances of actual overlooking into neighbours rooms and gardens although it does not remove harm from the perception of being overlooked.

Overall Conclusion

16. Having taken into account all representations made, for the reasons given above, I allow the appeal and grant planning permission subject to conditions.

Megan Thomas Q.C.

INSPECTOR