



Appeal Decision

Site visit made on 27 August 2025

by Philip Willmer BSc Dip Arch RIBA

an Inspector appointed by the Secretary of State

Decision date: 26 September 2025

Appeal Ref: APP/Q1445/D/25/3369889

Land to the rear of 77 and 79 Dyke Road Avenue, Hove, BN3 6DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs E Raggio against the decision of Brighton and Hove City Council.
 - The application Ref is BH2025/00975.
 - The development proposed is erection of guard rail at first floor level.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the living conditions of the residents of Hill Brow in terms of its potential to result in an actual or perceived overlooking leading to a loss of privacy.

Reasons

3. The appeal property 77A Dyke Road Avenue is a two-storey detached dwelling. It is one of two new, contemporary houses built on a back land plot to the rear of Dyke Road Avenue, which in turn back onto the rear gardens of the properties in Hill Brow at a lower level.
4. Due to the design of the dwelling, there are a number of flat roof areas, however this appeal relates solely to a sedum planted flat roof, at the rear of the house, and accessed from the master bedroom at first floor level.
5. The Council when granting planning permission, Ref: BH2024/03092 included two conditions, (numbered condition 15 and 16). Condition 15 being to control the use of the flat roof areas. The condition states that: *Access to the flat roofs on the dwelling hereby approved shall be for maintenance or emergency purposes only and no flat roof shall be used as a roof garden, terrace, patio or similar amenity area.* Condition 16 required the sedum roof to be permanently maintained.
6. The appellant wishes to erect a 1.1 metre high clear glazed balustrade as a guard rail around two sides of the roof to allow safe access for maintenance of the sedum roof, window cleaning etc. Although the design would be appropriate to the style of the house it would give the flat roof the appearance of a roof terrace.

7. Notwithstanding conditions 15 and 16 the Council when considering the planning application, now at appeal, were concerned that the installation of the proposed balustrade guard rail would result in the potential for the condition to be breached. Thereby resulting in the roof being used for amenity purposes. In these circumstances it felt it would be difficult to enforce the condition.
8. Due to the size of the roof, its location, views to the south west and its convenient access from the master bedroom I consider that it would be tempting for both current and future occupiers to utilise it as a roof terrace. As the roof is located at the rear of the dwelling and as it may only be used intermittently, I concur with the Council that conditions 15 and 16 would in this case be onerous to enforce.
9. The large, glazed corner window in the south-west and south-east elevations currently allows overlooking of the rear gardens of the dwellings in Hill Brow. Nevertheless, due to its elevated location if the flat roof were used as a terrace, it would give rise to a significant increase in overlooking. Further, if there were a gathering of people on the roof there would also be the potential to disturb the quiet enjoyment of the residents in Hill Brow resulting in further harm to living conditions.
10. As I saw the master bedroom does not have an openable window or alternative means of ventilation. Therefore, the door onto the roof is the only means of ventilation to the bedroom. As it is neither of a tilt and turn or sliding design it cannot currently be locked in a position to allow ventilation without access to the roof. Further there is no guarding to the door opening. Accordingly, there is the risk of the unwary wandering on to the flat roof and possibly falling 4.5 metres or so to the garden below. However, I believe that there are a number of ways this concern could be addressed without the erection of a balustrade and guard rail proposed or thereby impacting on architectural styling of the property.
11. Further the maintenance of flat and even sloping roofs always requires safe access for maintenance and repair and there are a number of alternative standard design solutions that could be adopted to allow trades people to work safely at height, as they will have to on the other flat roofs here, without the need for the fully enclosing balustrade proposed. Moreover, therefore I am not persuaded that the objective of safer access to the roof could not be achieved by other means.
12. I conclude in respect of the main issue that notwithstanding condition 15 there is the very real prospect that if the balustrade as designed were to be erected this roof could be used as a roof terrace or as a general amenity space. This in turn would result in harm to the living conditions of the occupiers of the residential properties in Hill Brow. To allow the development would therefore be contrary to the objectives of Policy DM20 of the Brighton and Hove City Plan Part Two (Adopted October 2022), which aims to ensure, amongst other things, that development does not cause harm to residential living conditions.

Other Matters

13. In reaching my determination I am aware that the original approved design allowed for a larger roof terrace to serve the master bedroom on the rear elevation of the house. However, I have no detail of that proposal and what measures were incorporated to protect the residential living conditions of neighbouring occupiers. In any event, given the current configuration of the house as built this is not a

realistic fall back position. I have therefore given this consideration very little weight in my deliberations.

Conclusion

14. Accordingly, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Philip Willmer

INSPECTOR