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## Appeal Decision

Site visit made on 8 August 2018

by **Timothy C King BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 October 2018

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### **Appeal Ref: APP/Q1445/W/18/3199306 40-42 Portland Villas, Hove BN3 5SB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Kevin Grice against the decision of Brighton & Hove City Council.
  - The application Ref BH2017/02994 was refused by notice dated 28 November 2017.
  - The application sought planning permission for the variation of condition 1 of planning application BH2016/05746 (Demolition of existing garages and erection of 1no three bedroom house) to allow amendments to approved drawings for the creation of second floor balcony to the front elevation & enlarged rear dormer without complying with a condition attached to planning permission Ref BH2016/05746, dated 4 October 2017.
  - The condition in dispute is No 1 which states that: *'The development hereby permitted shall be carried out in accordance with approved drawings.'*
  - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the variation of condition 1 of planning application BH2016/05746 (Demolition of existing garages and erection of 1no three bedroom house) to allow amendments to approved drawings for the creation of second floor balcony to the front elevation & enlarged rear dormer at 40-42 Portland Villas, Hove BN3 5SB in accordance with application Ref BH2017/02994 without compliance with condition no 1 previously imposed on planning permission BH2016/05746, dated 4 October 2017, but subject to the following conditions:
  - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No PL01 Rev R.
  - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no development under Schedule 2, Part , Classes A – E shall be carried out unless approved by way of a planning permission granted.
  - 3) The development hereby permitted shall not be occupied until full details of refuse and recycling storage facilities have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 4) The development hereby permitted shall not be occupied until full details of secure cycle parking facilities have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

### **Preliminary Matters**

2. Although the application form requested that the approved drawing PL01 be replaced with PL01 Rev R the drawing approved under planning permission BH2016/05746 is labelled PL01 Rev S. As such, for the purposes of this appeal the variances between Revs S and R are central to the proposal. At my site visit I noted that construction of the approved dwelling was virtually complete.
3. The application form also makes no mention of the requested removal of Condition 12, imposed on planning permission ref BH2013/02388, from which BH2016/05746 is derived. This requires for the reinstatement of the redundant vehicle crossover outside of the site. The appellant has provided a correspondence trail whereby this matter is raised by the appellant in an e-mail dated 9 October 2017 to the Council. In a response dated 18 October the Council representative comments that, following a response from the local highway authority, it is understood that such a proposal would only be allowed in exceptional circumstances. Apart from a subsequent e-mail where the appellant makes some further points in support of the proposal no further mention is made of the vehicular crossover. There is no reference to it in the Council's case report nor its decision notice.
4. It would appear that the Council did not formally address this matter as it did not form part of the application at the time it was submitted, and was not mentioned in the proposal's description nor the consultation letter dispatched to neighbouring occupiers. In the circumstances, as neither the local highway authority nor any interested parties have had the opportunity to comment formally on this particular aspect of the proposal I do not intend to deal with it as part of this appeal. Accordingly, it would need to be the subject of a new application to the Council.

### **Main Issue**

5. The main issue is the amended proposal's effect on the character and appearance of the area.

### **Reasons**

6. The extant planning permission allows for accommodation within the roofspace and the submitted plan Rev R shows the proposed inclusion of second floor glazed doors and a glass balustrade enclosing a shallow balcony between. At the rear the small existing dormer window would be enlarged to cover more of the roof plane. It would appear from the Plan R that the ridge height would increase marginally and the roof would be widened slightly, although the eaves height would remain the same.
7. The Council considers that these alterations would be out of character with the surrounding area. However, the appellant has drawn my attention to two properties along the street (Nos 11 and 14), both recently built or renovated, which have a similar external arrangement at second floor level overlooking the street. At my site visit I observed both these developments and noted that each integrates well into the streetscene.

8. From standing in the appeal site's rear garden I observed the approved dormer window in situ. Policy CP12 of the Brighton and Hove City Plan Part One (CP), amongst other things, seeks to raise the standard of architecture and design, locally and, in cross referencing the proposed plan, I see no reason why exhibiting the use of the second floor, by the means proposed, would be at odds with the policy's objective. Indeed, I find that the alterations would provide greater visual interest from the street whilst the enlargement of the dormer would merely result in a common feature in dwellinghouses. The latter would still represent a subordinate addition to the roof. Advice within the Council's Supplementary Planning Document SPD12 'Design Guide for Alterations and Extensions' (SPD) would not be compromised by the proposed modifications.
9. I have had regard to the planning history of the site and also the representations received from interested parties who object to the proposal. The comments made relate to both the dwelling's height and design and also potential overlooking and loss of light. As mentioned, the proposed height would vary little from that already approved, there would be little appreciable difference in any overlooking from the enlarged dormer, and the shallow balcony at the front would look out towards the street. Besides, overlooking of rear gardens from neighbouring first floor windows is a common widespread arrangement. No loss of light would occur from the proposed design changes and a Party Wall Agreement is not a material consideration in the determination of planning applications, being subject to different legislation.
10. I have reached my decision on the basis of the planning merits and impacts involved, and I conclude that the proposed revisions to the approved plan and its substitution with Drawing No PL01 Rev R would not be harmful to the character and appearance of the area. Nor would there be any material conflict with either the design objectives of CP Policy CP12 or the Council's SPD.
11. In terms of conditions those I now impose will only remain relevant providing they are subsisting and still capable of taking effect. As the development is almost completed, save for the intended modifications, it is not necessary for me to re-impose a number of the conditions attached to the original planning permission. However, in the interests of certainty I have imposed a condition requiring that the development be carried out in accordance with the newly approved plan. The external materials to be used are annotated on this plan and will ensure an appropriate appearance. I also impose conditions relating to refuse and cycle storage to ensure a satisfactory form of development. Finally, in view of the site's constraints I have re-imposed the condition removing normal householder permitted development rights.
12. For the above reasons, and having had regard to all matters raised, the appeal succeeds.

*Timothy C King*

INSPECTOR

