



Appeal Decision

Site Visit made on 13 October 2008

by **David Harmston FRICS DipTP MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
16 October 2008

Appeal Ref: APP/Q1445/A/08/2077526

Site to the rear of 188 Surrenden Road, Brighton, East Sussex BN1 6NN

- 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 Ms L Mackenzie against the decision of the Brighton and Hove City Council.
- The application (Ref: BH2007/04086), dated 2 November 2007, was refused by notice dated 2 June 2008.
- The development proposed is the demolition of the existing garage and the erection of a part single, part two-storey house with an integral garage.

Decision

1. I dismiss the appeal.

Main Issue

2. The main issue is whether safe, practical and convenient pedestrian and vehicular access can be provided to the development without causing undue harm to the living conditions of the occupiers of the surrounding dwellings or unacceptable hazards to pedestrians and motorists using the rear access road.

Procedural Matter

3. During the course of the application an amended location plan was submitted, dated 'April 2008' and numbered 10/08. This defines the full extent of the application site as including a strip of land between Nos 188 and 190 Surrenden Road to provide a pedestrian means of access to the proposed house directly to Surrenden Road as well as land comprising a section of the rear service road providing vehicular access to the site from Hollingbury Copse. I have taken the appeal site to be the totality of the land shown as being within the red line area on that drawing.

Reasons

4. There is considerable planning history to this site which I have studied. This includes a decision of April 2005 dismissing an appeal against the Council's refusal of permission for the conversion and extension of the existing garage on the land to form a single residential unit with all access (both pedestrian and vehicular) being direct to the rear service road and thus into Hollingbury Copse. In that case the Inspector concluded that the dwelling to be formed by the conversion and extension of the garage 'would not have an access of a suitable standard' and that to rely on the rear lane for sole access was 'contrived, inconvenient and unsafe'. The Council has refused permission for the latest proposals (the appeal development) for two reasons. These relate

- to the means by which the new dwelling would be accessed – by both pedestrians and car users – and the effects therefrom of the proposals on the residents of the proposed dwelling itself, on the amenities of the neighbours and the users of the rear access road.
5. The Council acknowledges that it is important to make the best use of suitable previously developed land for housing purposes where appropriate and it does not oppose the development on design grounds. It also considers that its effects on neighbouring properties in terms of overlooking, overshadowing and loss of privacy (excluding the impact on No 190 Surrenden Road arising from the proposed footpath) to be acceptable. Whilst some neighbours who object to the development raise concerns about the suitability of the site for a new house in principle because of its impact on their amenities and privacy, this issue is not raised by the Council as an objection to the development except as it is relevant to the main issue which I have set out above. It is also the case that many expressions of support to the scheme have been made.
 6. The appellant has attempted to overcome the objections levied at the previous scheme by providing a dedicated means of pedestrian access to the proposed dwelling by the provision of a one-metre wide footpath leading from the footway in Surrenden Road, running between Nos 188 and 190 directly to the appeal plot. To the rear, only the vehicular access to the proposed garage is proposed, with no other means of entry into the house except through the garage itself. As the existing garage is currently in use and serves the host dwelling, no additional vehicular movements to the site via the rear service road from Hollingbury Copse of any significant number would be generated.
 7. Although the appellant queries whether the previous Inspector (and the Council) appreciated that Nos 5 and 6 Hollingbury Copse gained access from the service road, his assessment of the site and its access arrangements remain materially correct in describing the current position. There has been no change in circumstances of which I have been made aware and from my own site inspection I conclude that his conclusions are as valid now as they were in 2005. He stated that the restricted width of the access road for the first 28 metres of its length leading from Hollingbury Copse was insufficient to allow two vehicles to pass and that it would be extremely difficult for a car to safely pass a pedestrian or a cyclist. In that case the proposal was for all access to the dwelling – both pedestrian and vehicular – being from the rear. In that situation he concluded that the arrangements proposed were inconvenient and unsafe, falling below an acceptable standard for a new housing development.
 8. In response to this criticism, the current proposals rely on the presumption that pedestrians visiting the site would only use the proposed footpath access to the new dwelling and, in any event, there would be no traditional doorway entrance to the house from the rear service road. The postal address of the property would be 188A Surrenden Road and it would be clearly identified in that road. The appellant considers that it is reasonable to expect that the residents of the house itself, their visitors and their service providers would only use the 'front' entrance as they would have no incentive to use (or knowledge of) the possibility of an access to the house being available on foot via Hollingbury Copse, the service road and the garage entrance. Access to the house would only be possible by opening the garage door.
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9. I accept that it is unlikely that the number of vehicular movements taking place in the rear service road would be materially different from the position now as a result of this development. For that reason, I do not consider that there are any objections to the proposals in respect of the use of the road by cars visiting the new house, as some local residents fear. The crux of this matter, in my opinion, is whether or not pedestrians visiting the proposed dwelling – whether residents or visitors – would be likely to use Hollingbury Copse and the rear access road on a regular and ‘normal’ basis to gain access to the dwelling as opposed to the Surrenden Road access via the new footpath. If that were the case then the situation is materially the same as that considered by my colleague in 2005 when he concluded that such an arrangement was unacceptable on the grounds of safety and convenience.

10. In my conclusion it is most unlikely and unrealistic to expect that the proposed footpath would in practice and over a period of time be used as the primary source of pedestrian access to the dwelling. This is for a number of reasons. Firstly, its length, width and gradient are powerful dissuasive features to such a practice if an easier alternative is available. Secondly, and bearing in mind that a wide grass sward exists to the front of the host property in Surrenden Road, the actual walking distance from a parked vehicle to the new dwelling would be substantially increased. Thirdly, the shortest and quickest walking and cycling route to many of the local services and amenities from the new dwelling would be by way of the service road and Hollingbury Copse. Fourthly, regular visitors to the house would soon become aware of these considerations and would choose to use the service road for pedestrian access, perhaps after parking their vehicles in Hollingbury Copse. Local tradesmen and delivery drivers with packets or parcels would be most unlikely to use the new path, in my opinion, if a more direct and much shorter access on foot was available. The garage door would become the ‘entrance’ in these circumstances.

11. Efforts have been made by the appellant through design to forestall such events but in my conclusion human nature would be likely to prevail. Conditions aimed at controlling the access arrangements would be difficult to draft and very difficult to enforce. In these circumstances I conclude that the development would be unacceptable because it would be impossible to prevent pedestrians using the service road in association with the development. I agree with my colleague’s conclusions and the reasons for them concerning safety and convenience. A new dwelling should not have to rely on its sole means of pedestrian access via a long and intimidating pathway as is proposed. I do not believe, however, that the use of the path would create undue harm to the neighbours’ amenities bearing in mind its likely level of usage and the proposed 1.83-metre high fence enclosing it. However, the proposals are in conflict with Policies TR7 and QD27 of the Brighton and Hove Local Plan for the reasons I have given. I have considered all other matters raised, including references to comparable developments elsewhere. Nevertheless, each case falls to be assessed on its individual planning merits and nothing alters my conclusions above and the reasons for them.

David Harmston

Inspector
