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## Appeal Decisions

Site visit made on 21 November 2018

by **John Morrison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 December 2018

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### **Appeal A Ref: APP/T1410/W/18/3207813** **Minster House, York Road, Eastbourne BN21 4ST**

- 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 InsituSCP against the decision of Eastbourne Borough Council.
  - The application Ref PC/171171, dated 22 September 2017, was refused by notice dated 24 January 2018.
  - The development proposed is described as a loft conversion/extension to form new dwelling, including dormer constructions and roof terraces to front and rear. Additional roof terrace to front at third floor level. Front elevation amended to remove part pitched roof and replaced with flat roof, with amended window configuration. Tower removed on front elevation.
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### **Appeal B Ref: APP/T1410/W/18/3207816** **Minster House, York Road, Eastbourne BN21 4ST**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by InsituSCP against the decision of Eastbourne Borough Council.
  - The application Ref PC/171170, dated 22 September 2017, was approved on 24 January 2018 and planning permission was granted subject to conditions.
  - The development permitted is the insertion/enlargement of windows to North-West, North-East and South-East elevations. Patio doors to North-West elevation, leading to Yard formed by erection of 1.8m close-boarded fence. Installation of smoke ventilation rooflight above existing stair core.
  - The condition in dispute is No 3 which states: *Notwithstanding the approved drawings the replacement and new windows in the rear elevation (north east facing Bath Road) and side elevation (south East facing York Road) shall be obscure glazed and fixed shut; and the replacement and new windows in the side elevation (north west facing Grove Road) shall be obscure glazed and fixed shut unless the parts of the window/s which can be opened are more than 1.7 metres above the floor of the room in which the window is installed, and thereafter permanently retained as such unless agreed in writing by the Local Planning Authority.*
  - The reason given for the condition is: *To safeguard the privacy of the occupiers of the adjoining property.*
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### **Appeal C Ref: APP/T1410/W/18/3208281** **Minster House, York Road, Eastbourne BN21 4ST**

- 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 InsituSCP against the decision of Eastbourne Borough Council.
- The application Ref PC/180395, dated 19 April 2018, was refused by notice dated 14 June 2018.
- The development proposed is described as alterations to roof of existing building to

provide 'mansard' roof extension housing two new dwellings. Alterations to front elevation consisting of provision of roof terrace at third floor level, removal of 'tower' and part of pitched roof.

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## **Decisions**

1. Appeals A, B and C are dismissed.

## **Main Issues**

2. The effect of the proposed development on the character and appearance of the area is the main issue in respect of appeal A and one of the main issues in appeal C. The effect of the proposed development on the living conditions of existing neighbouring occupiers is the main issue in respect of appeal B and the second main issue in appeal C.

## **Reasons**

### *Character and Appearance*

3. The appeal building is of a substantial scale which is belied to some extent by its relatively narrow presentation to York Road. It has an attractive front elevation with a number of tall narrow arch topped windows set into deep reveals with stone banding that contrasts with the rendered exterior. To the rear the building extends the full depth of its plot up to the rear boundaries of dwellings that face Bath Road. The full scale of the building can be appreciated from views of it in comparison to the modest two storey dwellings it is attached to on York Road and Bath Road where it towers over the street scenes. Views of the rear are more glimpses from fixed points on Bath Road albeit the visually looming presence it has on York Road would also be felt by occupiers of abutting dwellings on Bath Road.
4. In the case of appeals A and C the crux of the Council's objections in regard to this main issue concerns the alterations to the roof which are the addition of some dormer windows and a mansard respectively. The schemes also include some changes to windows and the removal of the tower which the Council do not seem to object to and indeed, in terms of the latter, now has the benefit of planning permission.
5. The roof scape is relatively simple and indicates the evolution of a former commercial building in a rearward extension built to serve a functional purpose. It creates a valley between two pitched sections. As opposed to the front, the rear elevation is largely featureless save for a high level window in the third floor and some rainwater goods.
6. The narrowness of the plot somewhat emphasises the overall height of the building and the addition of further height in the shape of the mansard would exacerbate this effect, particularly how it looms over surrounding residential dwellings which are mostly two storey. The infilling of the valley roof would increase the mass of the roof scape and, in the same way as the mansard, make the building appear top heavy.
7. The rear dormer would be large and bulky, occupying a substantial proportion of the slope and contain a window formation not indicative of the building. Despite being cut slightly into the roof slope they would be large and obvious and appear as almost a sole feature which, given how plain the rear elevation

is, would draw the eye to it. Being off set to one side of the slope would also result in an awkward and contrived appearance, emphasising how the exterior appearance has been driven by the internal layout.

8. In the case of the dormers to the front, these too would be off set and whilst seeking to replicate an arch top a la the existing front windows their width results in a design which would appear squat and out of place. Views might not be as obvious on the front slope due to how set back the main roof shape is from the elevation but would they would be discernible from York Road and Grove Road sufficiently so to make them noticeable.
9. With the above in mind, the proposed alterations to the roof in the case of appeals A and C would be harmful to the character and appearance of the area. Such that it would lead to conflict with saved Policies UHT1 and UHT4 of the Local Plan<sup>1</sup> and D10A of the Core Strategy<sup>2</sup>. Amongst other things and along with section 12 of the Framework<sup>3</sup>, these policies seek to ensure that new development is of a high quality and contextually appropriate design and appearance that respects local distinctiveness and does not harm visual amenity.
10. The appeal site is within an Area of High Townscape Value (AHTV). Since I have found that harm would be caused to the character and appearance of the area as a result of the appeal schemes, I can make no other conclusion that this would translate to the AHTV. Thus the appeal schemes would also be contrary to saved Policy UHT16 which seeks to ensure that AHTVs are protected.

### *Living Conditions*

11. The Council have expressed concern in respect of the effect of appeal schemes B and C in regard to this main issue. The crux of the matter is that they would overlook neighbours and lead to a loss of privacy. Taking B first, this would arise from the lack of obscure glazing and fixed windows to the north east, south east and north west elevations as per that which condition 3 of planning permission PC/171170 restricts. In the case of C this would arise from the new and replacement windows shown on the proposed plans but not part of the description of development as they would occur on the north west elevation (existing side wall and mansard) north east and south east elevations.
12. Taking appeal B first, the Council imposed a condition requiring new and replacement windows on the named elevations to be obscure glazed and fixed shut unless (in the case of the side/Grove Road elevation) openable sections are more than 1.7 metres above the internal floor level. From the evidence and my findings on site, the imposition of such a condition has reasonable grounding. Views from the new and replacement windows on the north west elevation particularly would be of the rear elevation and windows to upper floors of buildings that face Grove Road. It appears these are residential uses above ground floor commercial premises. Views from the new and replacement windows into the neighbouring uses would differ depending on the angle at which they would face these other uses but there seems little doubt in my mind that they would offer clear lines of sight into them. Not only would

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<sup>1</sup> Eastbourne Borough Plan (2001-2011) 2007

<sup>2</sup> Eastbourne Core Strategy Local Plan 2013

<sup>3</sup> The National Planning Policy Framework 2018

this have the potential to impinge on the privacy enjoyed by occupiers but it would increase, vastly due to the number of openings and the proximity of the elevation, the sense of being overlooked for neighbouring occupiers.

13. In the case of the north east elevation, these windows would comprise enlarged openings which, whilst at a much steeper angle relative to the rear elevations of Bath Road dwellings, would also increase the sense of being overlooked for users of the gardens of these dwelling specifically. Especially given the elevation historically has no windows that would afford a view inserted. It equally seems to be the case that the windows that would be inserted and altered in the side elevation that would face the rear gardens of York Road dwellings would have a view thereof. In this case there would be actual lines of site therefrom which would affect, detrimentally, the privacy enjoyed by users.
14. The limited opening, according to the Council, is a further means to address any concerns associated with noise disturbance. I would be inclined to understand this concern given the total number of new residential uses that would be part of the building and thus concentrated in the same place. I appreciate that noise from general occupation and comings and goings may not be dissimilar to a conventional dwelling but nonetheless they would be in very close proximity to other private residential uses which would have been historically used to a commercial office use which conventionally would have been operating mainly during business hours. In any event the condition on opening affects only part of the window which could be openable above the requisite height of the internal floor level and refers to the majority of new windows which would be on the Grove Road elevation.
15. I have similar concerns in respect of the second main issue of appeal C since the windows are shown in broadly the same place as appeal B. I acknowledge the appellant's assertion that the location of the windows has been approved as part of a previous planning permission (that in respect of appeal B) however the glazing and opening is restricted accordingly. It was correct of the Council to acknowledge their insertion as part of appeal C could cause harm in the same way that it was identified and mitigated against in the case of appeal B but in the same regard, it strikes me that if appeal C were allowed a similar condition could be used that would overcome any overlooking concerns.
16. In regard to this main issue therefore, I consider the condition imposed on the scheme in respect of appeal B to be justified and necessary as well as reasonable given its context. It therefore remains so and ensures the appeal scheme would comply with saved Policy HO20 of the Local Plan and Policy B2 of the Core Strategy. Together, amongst other things and along with the relevant guidance contained in the Framework, these policies seek to ensure that new development is not harmful to residential amenity. In the case of appeal C, as I have set out above, such perceived harm could be overcome through the use of planning conditions in broadly the same way as B such that it would ensure compliance with the aforementioned policies.

### **Other Matters**

17. The appellant has drawn my attention to a scheme that granted planning permission for the conversion and extension of the former police station building which is located relatively close to the appeal site on Grove Road. This scheme also includes a mansard over the existing roof. However, there are

differences between this and the scheme before me. In the case of the former police station this is a much larger and wider building where the mansard was part of a number of alterations that are more identifiable as a whole. Minster House is, as I have said, a very narrow building and the mansard in this case would increase the bulk of the roof and make it appear top heavy. In addition, it would appear retrofitted and thus somewhat out of step with the other more modest changes to the building's exterior. I am not therefore persuaded that the granting of a planning permission for a mansard in the case of the police station building means I should do the same here.

18. I acknowledge that prior approval has been granted for the change of use of the building to residential. The internal layout was not, as far as I can gather on what is available to me, fixed in the same manner as the schemes before me which has had an effect on demand for windows. I appreciate that future occupiers should be entitled to a reasonable view and thus it would not be appropriate to have all windows into the new units as obscure glazed. Having said that, regard has to be had to just how close the external elevations of the appeal building are to neighbouring residential units and gardens.
19. There is nothing compelling before me to say that the internal layout could not be adjusted, or the quantum of units changed in an effort to overcome these concerns. It may or may not be the case that existing clear glazed openings could be used to facilitate the implementation of the prior approval scheme and whether or not new windows could be put into existing openings with clear glass, as implied by the appellant, in the implementation of the prior approval scheme is a matter for the appellant and the Council's planning enforcement function to resolve.
20. Ultimately however, the granting of a prior approval follows consideration as to whether a given development benefits from a deemed planning permission, itself subject to criteria set out by the order which, in the case of Part 3 and Class O are the transport and highway impacts, land contamination and flood risks. The consideration of an application for express planning permission extends to broader matters of planning merit and effect, including the living conditions of neighbouring occupiers.
21. There does not appear to be any debate between the parties that the Council are unable to demonstrate the supply of housing sites as required by the Framework. If I were to therefore consider the appeal schemes in light of the so called tilted balance set out by paragraph 11 of the Framework and treat the most important policies accordingly, I would make the following conclusions.
22. The provision of new housing would be positive to any undersupply but given the limited amount that would be provided through each relevant scheme (one more net new dwelling in the case of appeal A and net two more in the case of appeal C) the benefits associated with them, as well as their provision, would be limited in the grand scheme. For this reason, and weighed against the totality of the harms that I have found, I would consider them to be significantly and demonstrably outweighed. The relevant schemes would not therefore be sustainable development for which paragraph 11's presumption in favour applies.

**Conclusion**

23. For the reasons I have set out above, and whilst having regard to all other matters raised, the appeals are dismissed.

*John Morrison*

INSPECTOR