
Appeal Decision

Site visit made on 12 September 2016

by Grahame Gould BA MPhil MRTPI

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

Decision date: 23 September 2016

Appeal Ref: APP/Q1445/W/16/3152104

27 Preston Park Avenue, Brighton BN1 6HL

- 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 Jon Woodfine against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/00456, dated 9 February 2016, was refused by notice dated 13 May 2016.
 - The development proposed is the demolition of an existing house with proposed replacement new build two storey, three bedroom house.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Jon Woodfine against Brighton and Hove City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The address of the appeal site is variously given as 27 or 27A Preston Park Avenue in the application and appeal documentation and on the Council's decision notice. As the references to No 27 are in the majority and the appellant has not objected to this I have used it in the banner heading above and in my reasoning below. The application was amended prior to its determination by the Council and I have only had regard to the drawings that were considered by the Council, as listed on its decision notice.

Main Issue

4. The main issue is the effect of the development on the living conditions of the occupiers of Whistler Court and Flat 7 of Park Court (Flat 7), with particular regard to privacy and outlook.

Reasons

5. No 27 is a two storey, flat roofed, detached dwelling and its habitable accommodation is on the first floor. This property is situated between two substantial blocks of flats, Park Court and Whistler Court, which have multiple floors of accommodation on split levels, the latter being due to the topography within this part of Preston Park Avenue, with the land rising upwards from the road. No 27 is within the Preston Park Conservation Area (the CA), which is residential in character at this point.
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6. The appeal development would involve the demolition of No 27 and its replacement with a two storey dwelling, which would be of greater depth and height, with the increase in height being stated to be between 0.9 and 1.3 metres by the various parties to the appeal.
7. Notwithstanding: the close proximity of the site to the neighbouring blocks of flats, with those blocks having multiple windows in their side elevations; and the differences in levels within No 27's plot and between it and the adjoining blocks, the submitted application is rather lacking in detailed survey and contextual information. In particular the siting of the windows in the southern elevation of the new dwelling relative to the window openings in Whistler Court's side elevation is not depicted, while the screen planting in Whistler Court's grounds is not shown on the proposed block plan. Some details of the position and height of the existing boundary walls are shown, although the intentions with respect to their retention, removal or supplementation are far from clear.
8. From comments included within the appellant's case, it would also seem that the appellant's architect has limited knowledge of the internal layout of the flats within both of the neighbouring blocks, with it for example not being appreciated that the door in Flat 7's side elevation provides access to and illumination for a kitchen.
9. Given the aforementioned contextual shortcomings of the application submission, most particularly the limited information relating to Whistler Court's boundary planting and any new boundary treatment arrangements, it is difficult to be certain as to whether any actual or perceived unneighbourly overlooking would be experienced by the occupiers of Whistler Court, most particularly lower level Flats 1 and 6. Of particular concern is the potential for unneighbourly overlooking from the patio door opening in the southern elevation of the kitchen and the terrace in front of that opening. While I appreciate that the doors to be installed in that opening would have obscure glazing that treatment would only provide privacy screening when the doors were closed and given these doors siting relative to the terrace it is reasonable to expect that there would be occasions when the kitchen and terrace would be used mutually, with the result that the doors would be open.
10. I am mindful of the fact that No 27's existing kitchen window is closer to the boundary with Whistler Court, however, that window has a smaller glazed area than the proposed doors and the siting of the existing window relative to Whistler Court's boundary planting limits the views of the neighbouring flats that are possible.
11. The means of enclosure along the shared boundary between No 27 and Whistler Court could be bolstered through, for example, the installation of fencing or raising the wall, as mitigation for the potential for unneighbourly overlooking to arise when the kitchen doors were open and/or the terrace was in use. However, for any such screening to be effective it might need to be of a height that would have an overbearing presence, which in turn might create its own adverse effects upon the living conditions for the occupiers of Whistler Court. On the available information I am therefore of the view that it would be inappropriate for me to impose a planning condition requiring the submission of boundary treatment details for the Council's approval, because

of the uncertainty as to whether this would result in unintended harm to the living conditions for the occupiers of Whistler Court.

12. There might be some potential for overlooking to arise via the first floor windows facing outwards above the courtyard, with it being unclear from the notation on drawing D.002 REV. A and the appellant's written submissions precisely which of these windows, if any, would be obscure glazed. However, given the distances and/or the obliqueness of the views involved, I am of the opinion that any outward overlooking from these first floor windows would be at a level that would not lead to an unacceptable loss of privacy for Whistler Court's occupiers.
13. While it has been suggested that the presence at ground floor level of the glazed link and courtyard would give rise to a loss of privacy for the occupiers of Whistler Court, I consider that would not be the case, given that the views from the glazed link would be quite confined, having regard to the building's shape, and the ground level of the courtyard relative to the adjoining flats.
14. It is contended that the occupiers of Whistler Court would experience a reduction in the receipt of natural lighting. On the basis of: my observations of the site; the scale and siting of the new dwelling; and the presence of the boundary planting within the grounds of Whistler Court, I am of the opinion that the replacement dwelling's presence would not give rise to any unacceptable reduction in the receipt of light to the interior of Whistler Court.
15. With respect to the development's effect upon the occupation of Flat 7, I viewed the interior of this property, along with those of Flats 8 and 11. Flat 7 has three rooms (kitchen, bathroom and bedroom) with glazed areas facing towards No 27. The kitchen is illuminated by a glazed door and side lights, however, that glazing is obscured to a height of around eye level and net curtains are in use and given those arrangements and allowing for the additional height that the replacement dwelling would have, I find that the new dwelling's presence would not cause an unacceptable reduction in the outlook from Flat 7's kitchen. The bathroom window is fully obscure glazed and because of that I find that no unacceptable loss of outlook would arise from within this room.
16. Flat 7's bedroom is to the front and it is served by a large window in the front elevation and a much smaller side window. The principal outlook from the bedroom is therefore through the front window and I consider that any loss of outlook via the side window would not be harmful to the living conditions for any occupiers of Flat 7.
17. While I recognise that there might be some reduction in the receipt of natural light within Flat 7, I consider that this would be at a level that would not cause material harm to the living conditions for the occupiers of this property.
18. Flat 8 has a floor layout that is similar to that of Flat 7, albeit that it has a single aspect bedroom facing towards No 27. While there would be some potential for a reduction in the outlook from that bedroom, I consider that this would not be at a level that would be harmful to the living conditions for the occupiers of Flat 8.
19. Concern has been raised that the use of the courtyard and terrace areas could give rise to noise disturbance being experienced by the occupiers of the

neighbouring flats. The appeal site is currently occupied by a single family sized dwelling and it would continue to be occupied as such. On that basis I consider it unlikely that the appeal development would result in any significant intensification in the use of No 27's external areas. I am therefore of the opinion that this development would not cause any harmful noise disturbance for the occupiers of the adjoining flats.

20. For the reasons given above I conclude that the occupiers of Whistler Court could experience actual or perceived losses of privacy from the southern kitchen doors and the adjoining terrace, when compared with the prevailing situation, and that this would be harmful to the living conditions of those residents. On this basis I find there would be conflict with retained Policy QD27 of the Brighton and Hove Local Plan of 2005, insofar as the development would be harmful to the living conditions of neighbouring residents.

Other Matter

21. The existing property is of no particular architectural merit and while the replacement dwelling's appearance would not be to everyone's taste, I consider that its design would be appropriate within a street scene where it is evident that there have been various episodes of building. I therefore find that the appeal development would preserve the character and appearance of the CA and is therefore unobjectionable in this respect.

Conclusion

22. On the available evidence and for the reasons given above I conclude that the appeal development would be harmful to the living conditions of the occupiers of Whistler Court. The appeal is therefore dismissed.

Grahame Gould

INSPECTOR