The Planning Inspectorate

Appeal Decision

Site visit made on 31 October 2016

by Nicola Davies BA DipTP MRTPI

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

Decision date: 22 November 2016

Appeal Ref: APP/Q1445/W/16/3153186
Rowan Close, Portslade, Brighton & Hove BN41 2PJ

- 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 Kenneth Elliott of Rowan Close Limited against the decision of Brighton & Hove City Council.
- The application Ref BH2015/04679, dated 29 December 2015, was refused by notice dated 18 May 2016.
- The development proposed is described as "proposed construction of 2no. 3 bedroom detached properties on vacant land off Rowan Close, Portslade, East Sussex".

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Brighton and Hove City Plan Part One has been adopted since the appeal was submitted. However, the policies referred to in the Council's decision notice have been saved.

Main Issues

3. The main issues raised in respect of the appeal are the effect of the development on: -

   (a) The living conditions of adjoining and future occupiers in relation to, privacy, outlook, noise and disturbance; and

   (b) Whether the proposed dwellings would provide satisfactory private outdoor space for occupiers.

Reasons

The living conditions of adjoining and future occupiers

4. The appeal site is surrounded by existing residential development which I observed comprises flats and terraces of two and three-storey dwellings, although there is a detached dwelling to the north of the appeal site's access. The proposal would place 2 two-storey dwellings within close proximity to existing dwellings that surround the appeal site. The plans reference the proposed dwelling to the west of the appeal site as 'Property 1' and the dwelling to the east as 'Property 2'. For consistency I shall also use the same references.

5. Both Properties 1 and 2 have been designed to incorporate a narrow vertical window, a vertical corner window and a Juliet balcony at the first floor bedroom that would provide outlook toward the three-storey development of Hillcourt Mews to the north. In addition, Property 1 also has outlook to the flat development of Rowan House to the west. Hillcourt Mews has an extensively glazed frontage and includes glazed balconies at first floor and small patio areas to the front at ground floor.

6. The first floor bedrooms of both proposed dwellings would be positioned in close proximity to the northern boundary with Hillcourt Mews. The respective first floor window-to-window relationship would be extremely close. Direct observation from the first floor bedrooms into the first floor habitable rooms of Hillcourt Mews would inevitably take place. Similarly, direct observations from these habitable rooms of the proposed first floor bedrooms would occur. Although the first floor balconies and ground level patio areas are open to general observation at present, overlooking of these outdoor amenity areas would intensify as a result of the proposed development. I therefore consider the degree of mutual overlooking would cause harmful loss of privacy to the occupiers of Hillcourt Mews and to the future occupiers of the proposed dwellings.

7. The bedroom Juliet balcony and corner window of Property 1 would create first floor outlook toward Rowan House. However, the separation between these respective developments and oblique outlook from these openings to that of the nearest flats at Rowan House would not give rise to significant overlooking of habitable living space. I therefore consider this relationship to be acceptable.

8. In terms of outlook, Property 1 would be positioned in direct line of sight of the properties in Hillcourt Mews. Given the proximity of the proposed first floor to habitable rooms and balconies in Hillcourt Mews, the size and scale of the proposal would be clearly and directly visible and would significantly erode their open outlook. Although the proposed dwellings would be close to the rear boundary of properties in Rowan Close, the proposed first floor elements would be off-set from the boundary and would not unduly harm the outlook from these properties.

9. The main areas of useable outdoor space relating to the proposed dwellings would be positioned in close proximity to surrounding residential development. The first floor flat at the eastern end of Rowan House has windows and a balcony which would clearly overlook the outdoor space of Property 1. The main outlook from the habitable living space and balconies of Hillcourt Mews would directly overlook the outdoor spaces of both proposed dwellings. Whilst the properties at Rowan Close are positioned at a slightly reduced level to the appeal site, they do not have long rear gardens and the first floor rear windows would look over the outdoor space of both proposed properties. As a consequence, those using the outdoor space of the proposed dwellings would experience a perception of being constantly overlooked by the occupiers of surrounding properties. I therefore consider that significant harm would result to the future occupants.

10. The appellant suggest that wherever possible the existing trees along the northern and southern boundaries would be retained to maintain screening. In addition, the appellant suggests that a landscaping scheme, controlled by the

imposition of an appropriate planning condition, could be put in place if the appeal were to succeed. The proposed dwellings would be constructed very close to the north and south boundaries of the appeal site. To my mind, there would be insufficient space for any substantial boundary planting to take place. Furthermore, the longevity of the existing trees would most likely be reduced by construction works and built development taking place in such close proximity to them. Vegetation screening therefore cannot be relied upon to mitigate the impact on outlook and privacy.

11. The Council has raised concern that the proposed development would cause noise and disturbance that would be harmful to the living conditions of surrounding occupiers. The proposed dwellings would introduce outdoor space and on-site car parking that would abut the boundaries of neighbouring properties. I observed that residential gardens that adjoin one-another are a common feature of the area. The proposed outdoor spaces would abut existing gardens, patios or parking areas however, this is not an unusual relationship in this location.

12. The level of activity generated by the occupiers of 2 family sized dwellings would not, in my view, be significant or give rise to comings and goings or outdoor recreational activity substantially greater than would take place within the area already. Furthermore, there are garage blocks and parking forecourts interspersed within the existing development that surrounds the site. I cannot conclude that the pedestrian or vehicle movements generated by the occupiers of 2 further dwellings would give rise to an unacceptable degree of harmful noise and disturbance.

13. Although I consider the likely level of noise and disturbance to be acceptable, I conclude that the proposal would be harmful to the living conditions of adjoining and future occupiers in relation to privacy and outlook. The proposed development would be contrary to Policy QD27 of the Brighton and Hove Local Plan (the Local Plan), which seeks to resist granting development where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers, amongst other matters. The proposed development would also conflict with paragraph 17 of the National Planning Policy Framework which seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

Private outdoor space for occupiers

14. The Council is concerned that given the size of the proposed dwellings the amount of the outdoor amenity areas to be provided would be comparatively small, although note that the proposed associated amenity areas are broadly comparable to garden spaces of neighbouring dwellings. Both dwellings would comprise 3 bedrooms and, as such, would be family homes. I have no substantive reason that would lead me to conclude that the outdoor space proposed for each new dwelling would be of insufficient size to provide a family with useable outdoor space. I am therefore not persuaded on this point.

15. Whilst adequate outdoor space has been provided, for those reasons set out above I do not consider this to be sufficiently private. I therefore consider that the proposal would not provide satisfactory outdoor space for occupants. The proposed development would be contrary to Policy HO5 of the Local Plan, which seeks the provision of private useable amenity space in new residential

development appropriate to the scale and character of the development, amongst other matters.

Other Matters

16. I note the appellant's submission that the site has been subject to fly tipping. This is a matter separate to this appeal. I am not persuaded that the degree of impact of noise disturbance and fly tipping experienced by the residents would justify the proposed development.

17. I acknowledge the appellant's comment that a commercial use of the site would not be appropriate and that they have liaised with the Council and sought to address previous refusal reasons and amended the style to art deco. However, these matters do not outweigh the harm identified in the main issues above.

Conclusions

18. For the reasons given above, and taking into account all matters raised by interested parties and Councillor Peter Atkinson, I conclude that the appeal should be dismissed.

Nicola Davies

INSPECTOR