
Appeal Decision

Site visit made on 9 August 2016

by Alex Hutson MATP CMLI MArborA

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

Decision date: 2nd December 2016

Appeal Ref: APP/Q1445/W/16/3149441

Ground Floor Flat, 46 St Andrews Road, Portslade, Brighton and Hove BN41 1DE

- 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 Dr Farzin Sobhanpanah – Park Avenue Estates Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2015/03071, dated 20 August 2015, was refused by notice dated 15 February 2016.
 - The development proposed is conversion of ground floor flat into 2 flats (one 1-bed flat and one 2-bed flat) and replacement of fence with new wall.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of ground floor flat into 2 flats (one 1-bed flat and one 2-bed flat) and replacement of fence with new wall at ground Floor Flat, 46 St Andrews Road, Portslade, Brighton and Hove BN41 1DE in accordance with the terms of the application, Ref BH2015/03071, dated 20 August 2015, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: TA 910/01; TA 910/02; TA 910/03; TA 910/04; TA 910/05A; TA 910/10A; TA 910/11; TA 910/12; and TA 910/13.
 - 3) Prior to the occupation of the development hereby permitted, details of secure cycle parking facilities shall be submitted to and approved in writing by the local planning authority. Secure cycle parking facilities shall be implemented in accordance with the approved details prior to the occupation of the development hereby permitted and shall be retained and made available for cycle parking thereafter.
 - 4) Prior to the occupation of the development hereby permitted, the refuse facilities indicated on the approved plans shall be provided. The refuse facilities shall be retained and made available for their intended use thereafter.
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Preliminary matters

2. Subsequent to the date of the Council's Decision Notice, the Brighton and Hove City Plan Part One (City Plan) was formally adopted by the Council in March 2016. Nevertheless, the saved policies of the Brighton and Hove Local Plan 2005 (Local Plan) referred to in the reasons for refusal have not been superseded by the policies contained within the City Plan and therefore continue to form part of the development plan for the City. I am therefore satisfied that the adoption of the City Plan does not materially alter the reasons for refusal as set out on the Council's decision notice and I have determined the appeal on this basis.
3. The appellant claims that the appeal property is currently in use as a House in Multiple Occupation (HMO). I observed that the room identified as a dining room on the submitted plans is currently being used as a bedroom. Nevertheless, I have not been provided with any substantive evidence to demonstrate that the current tenants are not members of the same family, that the use of the dining room as a bedroom is not a temporary arrangement or that the use of the appeal property as a HMO is its current lawful use. Moreover, the description of the proposed development provided by the appellant makes reference to the conversion of a flat rather than a HMO. I have therefore considered the appeal on the basis of the submitted plans which show the appeal property to comprise a three bedroom dwelling suitable for family accommodation.

Main issue

4. The main issue is the effect of the proposal on the provision of family living accommodation within the City.

Reasons

5. The appeal property comprises a three bedroom flat on the ground floor of 46 St Andrews Road, a three storey corner property located within a wider residential area. The Council sets out that there is a high demand in the City for smaller units of accommodation suitable for family occupation and it is important to retain this housing stock as a result.
6. Part of the proposal seeks to replace an existing fence with a new wall. The Council's delegated report and decision notice indicate that the proposed wall is not a matter of contention for the main parties and no other parties have commented on this element of the proposal. I also consider that the proposed wall would be an appropriate addition to the appeal property.
7. The proposal also seeks to convert the existing flat into one, one bedroom self-contained flat and one, two bedroom self-contained flat. Saved Policy HO9-Residential Conversions and the Retention of Smaller Dwellings, of the Local Plan, seeks to resist conversions which would involve the loss of smaller dwellings suitable for family accommodation. However, saved Policy HO9 allows for the conversion of dwellings into smaller units of self-contained accommodation, subject to a number of criteria. The Council accepts that the proposal would meet most of the criteria of saved Policy HO9, including a criterion to provide a two bedroom flat that would provide a unit suitable for family accommodation. I have no substantive reasons that would lead me to conclude otherwise.

8. However, the Council considers that criterion (a), of saved Policy HO9, would not be met. This criterion stipulates that the conversion of a dwelling is acceptable provided that the original floor area is greater than 115 square metres (sqm) or the dwelling has more than 3 bedrooms as originally built. Footnote 1, of saved Policy HO9, excludes later additions such as extensions, garages and loft conversions from the original floor area.
9. There is no dispute between the main parties that the dwelling originally contained three bedrooms. The dispute between the main parties arises in respect of the original floor area. The appellant asserts that the original floor area equates to 118sqm, including some extensions and an area of basement. The Council considers that the original floor area falls short of the 115sqm threshold, even if the extensions could be included in the floor area, given that the area of basement is not a habitable room and should not, in their opinion, be included as floor area calculations as a result.
10. The planning history of the appeal property does not tell me when the extensions were constructed, though the appellant alleges they were constructed in 1966, prior to the conversion of No 46 into flats. Without any substantive evidence to the contrary, I have no substantive reasons to consider this is incorrect. Indeed, it was clear from my observations that the extensions were not recent additions to the appeal property. In addition, Footnote 1 of saved Policy HO9, whilst excluding later additions, does not exclude basements from the overall floor area, whether they comprise habitable rooms or otherwise. Therefore, based on the evidence before me, I have no substantive reasons to conclude that the appellant has not reached a reasonable and accurate conclusion in respect of the size of the original floor area of the appeal property.
11. As a result, I conclude that the proposal would not have a harmful effect on the provision of family accommodation in the City and would comply with saved Policy HO9, of the Local Plan.

Other matters

12. At the time the Council determined the original planning application, it was unable to demonstrate a five year supply of housing land. The appellant considers that, notwithstanding the adoption of the City Plan, the Council's housing land supply situation has not materially changed. The Council has not provided any substantive evidence to contradict the appellant's claim on this matter. If this is indeed the case, the proposal would make an important, albeit limited, contribution to housing supply in the City, which would weigh in favour of the proposal. On the other hand, even if the Council can now demonstrate a five year supply of housing land, this matter would not be a sufficient reason for withholding planning permission for a development that would otherwise comply with the development plan as a whole. Moreover, it would assist with maintaining a high quality supply of housing in the City in a location with a good level of access to local services and facilities.
13. I acknowledge the concerns of a third party in respect of parking stress and adding additional height to the building. However, the proposal does not seek to add any additional height to the building. With regard to parking stress, the Council's Highway Department raised no concerns in this regard. Based on the evidence before me, I have no substantive reasons to take a different view.

Conditions

14. The Council has not provided any suggested planning conditions. I have therefore imposed the planning conditions that I consider are necessary. I have sought the views of the main parties in respect of these conditions and have considered any comments received.
15. In addition to the statutory time limit condition, a condition specifying the relevant drawings is necessary as this provides certainty. A condition relating to cycle parking is necessary in the interests of sustainable transport. A condition relating to refuse storage is necessary in the interests of efficient waste disposal.
16. Whilst I note that the Council's Environmental Health Officer recommended a contaminated land condition, given that the proposal would not involve any significant ground works, I do not consider that such a condition is necessary in this instance.

Conclusion

17. For the reasons set out above and having regard to all other matters, I conclude that the appeal should be allowed.

Alex Hutson

INSPECTOR