
Appeal Decision

Site visit made on 5 December 2016

by S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI

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

Decision date: 16th December 2016

Appeal Ref: APP/Q1445/W/16/3155279
68A, St George's Road, Brighton BN2 1EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr John Blake of Sussex Property investments Ltd against Brighton & Hove City Council.
 - The application Ref BH2016/00816, is dated 4 March 2016.
 - The development proposed is reconstruction of a building approved for use as a residential dwelling under application BH2014/0077.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. The Council wrote to the appellant with a revised description of the proposal at the time the application was received and this amended description has been used on the appeal form. It described the development as 'demolition of existing office building and erection of 1no three bedroom dwelling (C3) to rear of site (part retrospective). I consider that this is a more accurate description of the proposal and have determined the appeal accordingly.
3. If the Council had determined the application, it has indicated that it would have refused it for three reasons. These related to the proposal's effect on the East Cliff Conservation Area, its effect on the living conditions of occupiers of adjoining dwellings and the quality of accommodation that would be provided in the new dwelling.
4. I am aware that the Council gave prior approval for a scheme to convert the building into a dwelling in 2014, Ref: BH2014/00776, (not Ref: BH2014/0077 referred to in the application form). However, the building has subsequently been demolished and this prior approval cannot now be implemented, regardless of the reasons for the demolition. Consequently, the prior approval carries little weight in my determination of the appeal proposal.

Main Issues

5. I therefore consider the main issues in this appeal are:
 - a) whether the proposal would preserve or enhance the character or appearance of the East Cliff Conservation Area;
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- b) the effect of the proposed development on the living conditions of the occupants of the adjoining properties in relation to privacy.
- c) whether the proposed dwelling would provide satisfactory living conditions for future occupants in relation to outlook.

Reasons

Character and appearance

- 6. The appeal site lies within the East Cliff Conservation Area. In assessing the proposal I therefore have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that Area. As heritage assets are irreplaceable, any harm to them requires clear and convincing justification. The National Planning Policy Framework (the Framework) also advises that any harm that is less than substantial must be weighed against the public benefit of the proposal.
- 7. The appeal site is located on the southern side of St George's Road and is accessed through an undercroft opening between Nos 68 and 69. No 68 has accommodation that spans the site entrance. A two-storey office building that previously occupied the southern part of the site has been demolished and a new two-storey, pitched roof building has been partially erected in its place. There are existing buildings adjoining the eastern and southern sides of the site. Immediately to the west of the appeal site are two new dwellings which are accessed from Eastern Street, a narrow twitten that runs between St George's Road and Marine Parade. The site is therefore largely enclosed in a densely-developed neighbourhood of Brighton.
- 8. At present the site is hidden by an unsympathetic, metal, roller shutter, which has a harsh, utilitarian appearance. This was, in all probability, open during working hours when the site was in use as a vehicle repair garage. It would therefore not have appeared out of place in the context of the mix of commercial and residential uses in St George's Road. However, it would appear that entrance to the proposed dwelling would continue to be through this shutter and it could therefore remain shut for much of the time. The plans did not indicate any changes to the existing arrangement, as the site entrance is not shown on the submitted drawings. This shutter is not only an incongruous feature in an historic street, but in my view would be totally inappropriate as an entrance to a residential dwelling. Furthermore, if it remained closed for significant periods of time, its appearance would be detrimental to the wider appearance of the street.
- 9. If the shutter was open, the front elevation of the proposed dwelling would be viewed through the area beneath No 68. It would be the same width and height as the historic building that has now been demolished. Part of the ground floor previously appears to have been a partially open workshop. This area would effectively be filled in and a new ground floor front elevation constructed with an entrance door and a single window. On my site visit I saw that this wall was already in place, but the elevation was otherwise unfinished and partially obscured by scaffolding. However, the upper floor projects beyond the new wall. This gives the building an awkward appearance and makes the lower parts appear especially enclosed.

10. This combination of factors leads me to the view that the proposal would be harmful to the character and appearance of the building and the East Cliff Conservation Area, although in terms of the Framework this harm would be less than substantial. I acknowledge that the proposal would provide an additional dwelling which would make a minor contribution to the city's housing need. However, this small public benefit would be outweighed by the harm to the Conservation Area, a heritage asset.
11. I therefore conclude that the proposal would be harmful to the character and appearance of the East Cliff Conservation Area, which would not be preserved. It would therefore fail to comply with Policy CP15 of the Brighton & Hove City Plan Part One (City Plan) and saved Policy HE6 of the Brighton & Hove Local Plan (Local Plan). These policies, amongst other things, seek to preserve and promote the city's heritage assets by requiring development to demonstrate a high standard of design and detail and, where possible, seek to secure the removal of unsightly and inappropriate features.

Living conditions of neighbours

12. The ground floor patio doors, the external terrace and the windows in the first floor of the proposed dwelling would all look towards the habitable rooms in the rear of Nos 11 and 12 Eastern Street. This would result in a harmful loss of privacy for the occupants of these recently constructed dwellings, particularly given the close proximity of the buildings to one another.
13. Whilst there would have been some overlooking towards these dwellings from the former office, this was with fewer and smaller windows and associated with a different use. A residential use on the site would bring about occupation and overlooking during the evenings and at weekends, just when most people are expecting an increased degree of privacy.
14. Any use of the proposed external terrace in such close proximity to the rear of Nos 11 and 12 is also likely to give rise to unacceptable levels of noise and disturbance. The area between the buildings is not only small but also very enclosed. This would tend to exacerbate the harmful effects of any noise nuisance. In this context, I note that a number of local residents have raised concerns about existing noise levels associated with the use of Nos 11 and 12 for short term holiday lettings. This adds to my concern that further intensification of uses on this enclosed site within a densely-developed area would be likely to cause disturbance to existing and future residents in the immediate vicinity of the site.
15. I note that the Council has considered the possibility of screening to prevent harmful overlooking. However, this would restrict the light and outlook of both buildings and is therefore unlikely to be a suitable means of mitigation. In any event it would not address the issue of noise and disturbance.
16. I conclude that the proposed dwelling would be harmful to the living conditions of the occupants of Nos 11 and 12, as a result of an unacceptable loss of privacy and potentially harmful noise and disturbance. The proposal would therefore be contrary to Policies QD14, QD27 and SU10 of the Local Plan. All these policies, amongst other things, seek to protect the amenity of the city's residents.

Living conditions of future occupants

17. The outlook from the proposed dwelling would be predominantly to the west. This elevation would have patio doors serving the living room and windows for each of the bedrooms. These windows would all have restricted outlook due to the proximity of Nos 11 and 12. The lack of separation distance combined with the height and bulk of these buildings would make the proposed dwelling feel both dark and enclosed. There would be limited natural light and any sunshine would be restricted to short periods in the afternoon.
18. In addition there would be direct overlooking from the rear of Nos 11 and 12 towards the habitable rooms of the new dwelling. This would result in a lack of privacy for the occupants and is not a matter that could be mitigated through the use of obscure glazing without further reducing the outlook. The window in the north elevation would have a restricted outlook towards the street through the undercroft, increasing the sense of enclosure. In addition, any light reaching this area and the undercroft would be reduced by the projection of the first floor of the building beyond the front elevation at ground floor level.
19. Taking all these factors into account, I conclude that the proposal would provide unsatisfactory living conditions for future occupants, arising from lack of daylight, restricted outlook and lack of privacy. It would fail to comply with policy QD27 of the Local Plan, which seeks to protect the living conditions of future occupants of development. It would also be contrary to the core principle of the Framework to provide a good standard of amenity for all existing and future occupants of land and buildings.

Planning Balance and Conclusions

20. The Government is seeking to significantly boost the supply of housing and requires applications for housing development to be considered in the context of the presumption in favour of sustainable development. Since this application was submitted the Council has adopted the City Plan. Its approach to providing much needed housing in the city, including its approach to assessing the five-year land supply was found to be sound. In any event, footnote 9 of paragraph 14 of the Framework indicates that development may be restricted when there are unacceptable effects on heritage assets. The benefits that would accrue from the provision of an additional house therefore attract little weight in this case, notwithstanding the similarities between the scale of the previous building on the site and the proposed replacement.
21. In addition, I have found that the proposal would fail to preserve the East Cliff Conservation Area, would be harmful to the living conditions of occupants of Nos 11 and 12, and would provide unsatisfactory accommodation for future occupiers. These are all matters which carry significant weight.
22. I therefore conclude that the proposal would be contrary to the City Plan and Local Plan and there are no material considerations that outweigh this conflict with the development plan. The proposal would not be a sustainable development and for this reason, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

Sheila Holden

INSPECTOR