The Planning Inspectorate

Appeal Decision

Site visit made on 20 December 2016

by Thomas Bristow BA MSc MRTPI

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

Decision date: 24 January 2017

Appeal Ref: APP/Q1445/W/16/3158279
39 Old Shoreham Road, Brighton BN1 5DQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Clapham Properties (Brighton) Ltd against Brighton & Hove City Council.
- The application Ref BH2016/01934 is dated 25 May 2016.
- The development proposed is described on the application form as to 'remove existing single/two storey side extension and replace with a new two storey extension in order to facilitate conversion of the building from a single dwelling house to 6 flats'.

Decision

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

Main Issues

2. The appeal is against the Council's failure to determine application Ref BH2016/01934 within the relevant statutory period. However the Council have explained at appeal that, had they been in a position to do so, they would have refused permission for the development proposed for. Consequently on the basis of the information before me the main issues in this case are:

   1) the effect of the proposal on the character and appearance of the area, and

   2) whether or not the proposal makes appropriate provision for affordable housing.

Reasons

Character and appearance

3. No 39 is a grand three-storey double-fronted end of terrace property within an area of Brighton where properties share common historic origins. Although the urban grain is more mixed in the wider area, properties to the south of Old Shoreham Road in the immediate vicinity of the appeal site are typically large semi-detached and terraced properties commonly featuring intricate architectural detailing.

4. The topography steps down from Old Shoreham Road towards the south such that the lower ground floor of No 39 leads out level with its rear garden. The property currently features a modest two storey side extension which abuts the common plot boundary with No 41, and which therefore consequently appears only as a single storey as viewed from the carriageway. Although there is no definitive information before me as to the origins of this extension, the presence of a timber sash window and the brick construction used indicates that it has been present for some considerable time.

5. Whilst there is some variety in their width, the spaces between properties to the south of Old Shoreham Road lend a consistent rhythm to the streetscene and clearly set properties apart from one another. Whilst several properties have been extended to the side,[1] it appeared to me that these extensions are likely chiefly historic features of the area rather than recent additions. Moreover such extensions are generally limited in width relative to their host properties and set back substantially from the line of the principal elevations thereof, features which limit their prominence.

6. Policy CP12 'Urban Design' of the Brighton & Hove City Plan Part One adopted on 24 March 2016 (the 'City Plan'), briefly stated, sets out various requirements as to how development should integrate appropriately with its surroundings, including in respect of the urban grain of an area. Similarly saved policy QD14 'Extensions and alterations' of the Brighton & Hove Local Plan adopted originally in 2005 (the 'Local Plan') requires that residential extensions are designed appropriately with reference to the character of adjoining properties.

7. The Councils' Design guide for extensions and alterations supplementary planning document, adopted on 20 June 2013 (the 'SPD'), provides guidance as to how such development should integrate with its surroundings, including in respect of proportions and detailing. It establishes as a benchmark that 'a minimum 1m gap should be left between the site boundary and extension' where a two storey extension is proposed, having acknowledged that a 'sense of space and separation' may be important to the rhythm of a street.

8. The National Planning Policy Framework (the 'Framework') sets out that planning should always seek to secure high quality design, and that it is proper to seek to reinforce local distinctiveness. The Planning Practice Guidance (the 'Guidance') further explains that the design of proposals should ensure that new and existing buildings relate well to each other based on an understanding of the prevailing pattern of development.[2]

9. Therefore whilst saved policy QD14 of the Local Plan is of some vintage, it is nevertheless consistent with the approach in the Framework and the Guidance. Consequently I accord substantial weight to it in this decision.[3] Notwithstanding that it does not form part of the development plan, the approach in the SPD as to how development can be appropriately designed with regard to its surroundings appears to be similarly in line with that of the Framework and the Guidance. Accordingly I accord the SPD substantive weight.

[1] Including Nos 43, 51 and 55 Old Shoreham Road.
[2] In particular reference ID: 26-024-20140306.
[3] With reference to paragraph 215 of the Framework.

10. The proposal is to demolish the existing two storey side extension and to replace it with a significantly larger three storey extension which would similarly extend to the common plot boundary with neighbouring No 41.[4] Various design features of No 39 would be emulated within the extension, including brick arches over windows and accentuated quoins and string courses.

11. However some of the finer detailing currently present around certain windows of No 39, notably lintels with decorative keystones, would not be replicated. Moreover the wall-to-window ratio of the proposed extension would be greater than that the main element of No 39 at present. Collectively the design of the proposal would therefore be incongruous with that of the host property. I cannot, as the appellant has suggested, address this issue through the imposition of an associated condition as to do so would be to render the development substantially different to that which has been proposed in conflict with the approach in the Guidance.[5]

12. The extension proposed would be set back approximately 1.4 metres from the line of the principal elevation of the main element of No 39, reach a maximum height approximately 1.6 metres lower than that of the main ridgeline of the property, and be lesser in width than half that of the existing property. Thus the extension would have a degree of subservience to the host property.[6]

13. Nevertheless the extension would extend approximately 3.5 metres forward of the existing side extension and reach a maximum height approximately 3.5 metres higher than that of the existing roof thereof. Thus it would result in a substantial increase in bulk to the existing property and would be set hard-up against the common plot boundary with neighbouring No 41, notwithstanding that No 41 is set on a slightly higher ground level and is larger in overall scale.

14. In my view given this substantial increase in scale and bulk of the proposal compared to the existing side extension, the proposal would significantly enclose the space between Nos 39 and 41 Old Shoreham Road. As explained above this space is valuable in establishing a consistent rhythm to the streetscene in the area immediately around the appeal site.

15. In both scale and proximity to the principal elevation of No 39 the proposal would furthermore be jarringly out-of-keeping with the prevailing form of side extensions where present in the area, a relationship which would be exacerbated by the difference in design of the extension compared with that of No 39 as described above. Moreover given that the side extension to No 39 and others nearby are in my view likely to be historic features of the area, their presence does not serve to justify unacceptable development in the present.

[4] I note here that the changing topography from Old Shoreham Road to the rear of No 39 accounts for the description of the extension proposed as two-storey by the appellant, whereas in actually it would comprise three storeys of accommodation and I have therefore referred to it as such.
[5] Reference ID: 21a-012-20140306.
[6] Figures in paragraph 2.01 of the appellant's appeal statement, notwithstanding that in final comments submitted at appeal the maximum height of the roof of the extension proposed is given as 1.3 metres lower than that of the main ridgeline of the property.

16. For the above reasons I therefore conclude that the proposal would result in a significant detrimental effect to the character and appearance of the area, thereby conflicting with the relevant provisions of policy CP12 of the City Plan, policy QD14 of the Local Plan, and with relevant elements of the SPD, the Framework and the Guidance.

Affordable housing

17. Policy CP20 'Affordable Housing' of the City Plan, briefly stated, establishes that for development of between 5 and 9 (net) new dwellings the Council will seek to require a contribution towards affordable housing provision amounting to 20 per cent of the units proposed. No contribution towards affordable housing provision is made as part of the proposal to which this appeal relates.

18. However the adoption of the Local Plan on 24 March 2016 pre-dates changes to the Guidance as to where such contributions may be sought.[7] These changes were made pursuant to the Court of Appeal judgement handed down on 11 May 2016 in Secretary of State for Communities and Local Government v West Berkshire District Council & Anor.[8] This judgement gave legal effect to the Ministerial statement of 28 November 2014, [9] which was not in force at the time the Council adopted the City Plan.

19. The Guidance sets out that contributions for affordable housing should not be sought from developments of 10-units or less. It indicates that a lower threshold may be set in designated rural areas, however there is no flexibility therein in respect of other areas. The Ministerial Statement explains that this approach has been arrived at given the 'disproportionate burden of developer contributions on small scale developers'.

20. The Council's approach in policy CP20 of the City Plan is explained in supporting paragraph 4.217 thereof as resulting from a pressing need for affordable housing. The Council have further explained at appeal that they are of the view that policy CP20 continues to have currency for this reason, given the constraints on housing land supply, and as a significant proportion of housing delivery in Brighton & Hove results from small-scale sites. These are clearly important dynamics in respect of housing delivery within the Council's administrative area, and it is therefore appropriate to accord the approach in policy CP20 significant weight.

21. However, as set out above, policy CP20 of the City Plan is inconsistent with the most recent position set by the Government in this respect, a position which does not allow flexibility for urban areas and is clearly premised on the disproportionate burden that requiring contributions for affordable housing in respect of small-scale sites entails. Whilst the statutory basis of decision-taking is that decisions must be taken in accordance with the development plan unless material considerations indicate otherwise, in this context I cannot conclude other than that the Guidance and policy within the Ministerial Statement referred to above carry more weight than that of policy CP20 of the City Plan.[10]

[7] Reference ID:23b-031-20160519.
[8] EWCA Civ 441.
[9] Official record Ref HCWS50.
[10] A finding consistent with that of the inspector in appeal Ref APP/Q1445/W/16/3152366 which has been brought to my attention by the appellant.

22. Accordingly I conclude that the absence of a financial contribution towards affordable housing provision in connection with the proposal is not unacceptable. Nevertheless that the proposal is not unacceptable in this respect is essentially a neutral factor in the overall planning balance rather than one which serves to outweighs the harm that I have identified would result in respect of the first main issue.

Other Matters

23. Saved policy HO9 'Residential conversions and the retention of smaller dwellings' of the Local Plan accords support in principle to the conversion of dwellings into smaller self-contained accommodation. The Council therefore do not object in principle to the use proposed in this context, nor with regard to the provisions of policy CP1 'Housing Delivery' of the City Plan which seeks to focus new housing development within accessible areas of the City.

24. The proposal would result in 5 additional homes, re-use previously developed land, and entail some economic and social benefits in supporting employment during construction and as future occupants would make use of nearby services and facilities. I also accept, subject to associated conditions, that the proposal would result in no unacceptable effects in respect of transport matters or energy efficiency (or indeed in other respects).

25. However whilst the development plan and the Framework are supportive of new housing and social and economic benefits of development in general terms, both are clear that this should not be at the expense of securing good design. I would note in this context that there is no robust evidence before me to indicate that the scheme proposed is the only way of securing such benefits, which further reinforces my view that I can give such benefits only moderate weight.[11]

26. It appears not to be disputed that the Council are presently able to demonstrate a five year land supply of deliverable housing sites, with reference to the approach in paragraphs 49 of the Framework. Indeed, and for the avoidance of doubt, there is no information before me in respect of this matter.

27. However for the sake of clarity even were the Council unable to demonstrate a five year land supply, the adverse effects of the proposal would in my view significantly and demonstrably outweigh the benefits for the reasons given above. Consequently neither the benefits of the proposal, nor any other matter, are sufficient to outweigh or alter the considerations that have led to my conclusion in respect of the main issues in this appeal.

Conclusion

28. For the above reasons, and having taken all other maters raised into account, the proposal conflicts with the development plan taken as a whole and with the

[11] In particular the appellant has clarified in paragraph 3.01 of his appeal statement that permission has been granted, although not implemented, for a three storey rear extension and dormer which would provide for significant additional floorspace.

approach in the Framework. I therefore conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR