



Appeal Decision

Site visit made on 16 July 2019

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2019

Appeal Ref: APP/Q1445/W/19/3227209

14 Haig Avenue, Brighton, BN1 9EQ

- 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 J Walker against the decision of Brighton & Hove City Council.
 - The application Ref: BH2018/01817 dated 6 June 2018, was refused by notice dated 23 October 2018.
 - The development proposed is the erection of a 3-bedroom 2-storey dwelling to form a terrace of 3 properties.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing garage and erection of a two storey, three bedroom dwelling (C3) including parking & new crossover at 14 Haig Avenue, Brighton, BN1 9EQ in accordance with the terms of the application Ref: BH2018/01817 dated 6 June 2018, subject to the conditions set out in the attached schedule.

Procedural matter

2. The description of the proposed development in the banner heading is taken from the application form. On the Council's decision notice, the description reads "Demolition of existing garage and erection of a two-storey, three-bedroom dwelling (C3) including parking & new crossover". The appellant has confirmed in evidence that the description was altered by the Council without the appellant's formal agreement, but as it extensively describes the same development the appellant has no issue with the amended description. I have therefore used the revised description in my decision.

Main Issues

3. The main issues are:
 - i) the effect of the proposed development on the character and appearance of the area
 - ii) the living conditions of the current and future occupiers, with particular regard to the provision of adequate external amenity space and
 - iii) whether the proposed development benefits from the presumption in favour of sustainable development.

Reasons

Character and appearance

4. Haig Avenue is part of an established residential area nestled in the Coldean valley. The dwellings are principally 2-storey terraced and semi-detached with a mixture of brick and rendered walls and pitched, tiled roofs with hips or gables. The houses are set

back from the road with front gardens which, together with small open grassed areas and side gardens predominantly at road junctions and the views between and beyond the houses to higher ground, provide relief from the built form and are important in defining the character and appearance of the area.

5. The appeal site is located on the corner of Haig Avenue and Hawkhurst Road. The appellant contends that the primary characteristic of corner plots and road junctions in the area is dwellings fronting onto junctions and draws my attention to a number of examples. I consider that the gardens or other spaces in front of the dwellings also contribute significantly to the open character of the junctions and of the overall area. The appeal site reflects this characteristic openness at road junctions in the area, and therefore contributes positively to the overall character and appearance of the area.
6. However, the proposed development would only encroach into this open area to a limited extent. A substantial open area would remain to the west of the proposed dwelling which I consider would be sufficient to retain a satisfactory level of openness on this corner. The proposed dwelling would respect the pattern of development along both Haig Avenue and Hawkhurst Road and the design of the proposed dwelling would reflect that of 14 Haig Avenue (No. 14).
7. The proposed development would be close to the side / rear boundary given the configuration of the plot. However, there are existing examples of corner properties being close to their side / rear boundaries in the vicinity, including at the junctions of Beatty Avenue with Haig Avenue and The Charltons. I do not consider therefore that such a layout would be harmful to the character and appearance of the area.
8. Accordingly, I conclude that the proposed development would not conflict with Policies CP12 and CP14 of the Brighton and Hove City Plan Part One (BHCP) which require development proposals to respect character. I also find no conflict with Policy HO5 of the Brighton & Hove Local Plan (BHLPP) in respect of character and appearance as this policy relates to the provision of private amenity space, which I consider below.

Living conditions

9. The proposed development includes the subdivision of the existing rear curtilage of the appeal property to provide a rear garden for the proposed dwelling whilst retaining a separate rear garden for the existing dwelling. The appellant contends that these would be approximately 34 m² and approximately 47 m² respectively. However, there is some slight confusion in the figures as the appellant gives only 74 m² as the existing total of private usable amenity space located to the rear of the existing dwelling.
10. The area retained for the existing dwelling would be an awkwardly-shaped plot on its north side. The garden area would be private and self-contained and physically capable of allowing the drying of clothes, sitting out and play. However, although there are views to the higher land to one side, trees in the rear gardens of neighbouring properties give a sense of confinement. Overall, due to its restricted size, awkward shape and restricted outlook, I consider that the retained garden area would not provide a high standard of amenity as required by paragraph 127 of the National Planning Policy Framework (the Framework).
11. The appellant refers to the use of the existing dwelling as a C4 small HMO. I have no evidence if the property is still in use as such but in any event, all occupiers should have access to satisfactory external amenity space and the existing dwelling could be capable of family use again in the future. I acknowledge that there is a recreation ground and play area within walking distance of the dwelling, but this does not outweigh my conclusion that the retained garden area would be unsatisfactory.
12. For the proposed dwelling, the private area to the rear would be a narrow and awkward space due to the proximity of the rear boundary. However, I consider that the land to

the side of the proposed dwelling would provide adequate and satisfactory external amenity space for the occupiers of the proposed dwelling.

13. Nevertheless, I conclude that the proposed development would conflict with Policy QD27 of the BHLP which requires development not to cause material loss of amenity to adjacent occupiers. However, given my conclusion on the acceptability of the proposed garden area for the new dwelling, I find no conflict with Policy HO5 of the BHLP which requires the provision of private useable amenity space in new residential development.

Presumption in favour of sustainable development

14. It is common ground that the Council cannot demonstrate a 5-year supply of deliverable housing land. This lack of a 5-year supply invokes footnote 7 of paragraph 11 of the Framework such that the policies which are most important for determining the application cannot be considered to be up-to-date.
15. However, this does not mean that they carry no weight. Indeed, as Policies CP12 and CP14 of the BHCP and Policies QD27 and HO5 of the BHLP are consistent with the Framework's policies on achieving well-designed places and ensuring a high standard of amenity for existing and future occupiers, they should be accorded full weight in the determination of this appeal. I have concluded above that the proposed development would be contrary to Policy QD27.
16. Nevertheless, they may still be outweighed by material considerations such as the presumption in favour of sustainable development as set out in paragraph 11 of the Framework. The presumption requires planning permission to be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
17. The Framework recognises the Government's objective of significantly boosting the supply of land for housing. Local planning authorities are required to support the development of windfall sites and to give great weight to the benefits of using suitable sites within existing settlements for homes. Planning decisions should support development that makes efficient use of land.
18. The Framework also requires that account be taken of the desirability of maintaining an area's prevailing character and setting, including residential gardens. Planning decisions should ensure that developments will add to the overall quality of an area and are sympathetic to local character and create places with a high standard of amenity for existing and future users.
19. On balance, I do not consider that the harm I have identified to the future living conditions of the occupiers of No. 14 due to the restricted size of the retained garden area, when assessed against the policies in the Framework as a whole, significantly and demonstrably outweigh the benefit of the provision of an additional dwelling given the acknowledged need for housing in the city.

Other matters

20. The proposed development has given rise to a number of concerns being expressed by the occupiers of nearby dwellings covering a range of matters. I have addressed some of the concerns raised above. One of the other concerns expressed is that the proposed dwelling would be used as a C4 HMO with consequent disturbance. However, this use would require a separate grant of planning permission as the Council has removed permitted development rights for the change of use of single dwelling houses (C3) to houses in multiple occupation (C4) in the ward in which the appeal site is located.
21. No objections to the proposed development have been raised by the Highway Authority in respect of traffic or parking. The Council considers that the proposed dwelling would

not result in any significant harm to the living conditions of the occupiers of neighbouring dwellings through noise or loss of daylight, sunlight, outlook or privacy and I have no reason to disagree with that conclusion. It is a well-established principle that the planning system does not exist to protect private interests such as the value of property or views.

Conditions

22. Conditions 1 and 2 are necessary in the interests of certainty. Condition 3 is necessary in the interests of the character and appearance of the area. Condition 4 is necessary to reduce the risk of flooding and pollution. Condition 5 is necessary to ensure the satisfactory provision of homes for people with disabilities and to meet the changing needs of households. Condition 6 is necessary to encourage travel by means other than the private car. Condition 7 is necessary to ensure the provision of satisfactory facilities for the storage of refuse. Conditions 8 and 9 are necessary in the interests of making efficient use of water and of energy. Condition 10 is necessary to safeguard the amenities of the occupiers of nearby properties and the character and appearance of the area.

Planning balance and conclusion

23. I have concluded that the proposed development would be in conflict with Policy QD27 of the BHLP. However, I consider this limited conflict with the development plan to be outweighed by the presumption in favour of sustainable development given the acknowledged need for new dwellings in the city.
24. I therefore conclude that, for the reasons given above and having had regard to the other matters raised, the appeal should be allowed, and planning permission granted subject to conditions.

Martin Small

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in strict accordance with the following approved plans: 1763 EX.01 Existing plans and elevations and 1763 PR.01 Proposed plans and elevations.
- 3) Notwithstanding the description of the materials on the approved plans, no development above ground floor slab level shall commence until details / samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 4) The hard surface hereby approved shall be made of porous materials and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the property.
- 5) The dwelling hereby permitted shall not be occupied until it has been completed in accordance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) and shall be retained as such thereafter. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application or Building Notice or Initial Notice to enable the building control body to check compliance.
- 6) The dwelling hereby permitted shall not be occupied until details of secure cycle parking facilities for the occupants of, and visitors to, the development shall have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.
- 7) The dwelling hereby permitted shall not be occupied until a scheme for the storage of refuse and recycling shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in full as approved prior to the first occupation of the development and the facilities shall thereafter be retained for use at all times.
- 8) The dwelling hereby permitted shall not be occupied until it has achieved a water efficiency standard using not more than 110 litres per person per day maximum indoor water consumption.
- 9) The dwelling hereby permitted shall not be occupied until it has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) no extension, enlargement or alteration of the dwelling hereby permitted or provision within the curtilage of any building as provided for within Schedule 2, Part 1, Classes A, B, C or E shall be carried out.

End of Schedule