
Appeal Decision

Site visit made on 9 September 2019

by Rajeevan Satheesan BSc PGCert MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2019

Appeal Ref: APP/Q1445/W/19/3231995

4 Rochester Gardens, Hove BN3 3AW

- 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 & Mrs Michael Marsland & Oliviera Aline against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/03811, dated 10 December 2018, was refused by notice dated 24 May 2019.
 - The development proposed is described as: Property conversion of 3no. units to 5no. units with internal changes throughout to suit and extension works to the rear.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal was amended following submission to the Council but prior to the determination of the application. The revised drawings include the drawing Nos PR01, 02, 03, all revision A. These drawings numbers are referred to in the Council's decision notice and I am satisfied that the amendments do not materially change the proposal and that no party would be prejudiced were I to take them into account. As such, I have determined the appeal on the basis of these amended drawings which were before the Council when they made their decision.
3. It has also been put to me that the proposal would not meet the Government's Nationally Described Space Standards. However, the Written Ministerial Statement of 25 March 2015 makes it clear that such standards can only be applied where there is a relevant current local plan policy. In this case there is no relevant current local plan policy and consequently, the Nationally Described Space Standards is not a matter which in itself carries any significant weight against the proposal. Any assessment of the size of the proposed flat is therefore a matter of judgment.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the supply of smaller dwellings in the Borough suitable for families;

- The living conditions for future occupiers of the ground floor flats with particular regard to floorspace and layout; and
- Whether the proposals would preserve or enhance the character or appearance of the Brunswick Town Conservation Area (CA).

Reasons

Supply of smaller dwellings in the Borough suitable for families

5. The appeal site comprises a three storey mid-terraced property situated within a residential area. The appellant states the building is located between similar residential properties which all contain multiple flats¹. The site is currently in use as one two-bedroom flat on the ground floor with sole access to the rear garden, with the upper floors each containing a three-bedroom flat.
6. The National Planning Policy Framework, 2019 (the Framework) confirms that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
7. Brighton and Hove Local Plan, 2005 (LP) Policy HO9 in relation to 'residential conversions and the retention of smaller dwellings' states that "planning permission will be granted for the conversion of dwellings into smaller units of self-contained accommodation when:

(a) the original floor area is greater than 115 sq.m or the dwelling has more than 3 bedrooms as originally built;

(b) at least one unit of accommodation is provided which is suitable for family occupation and has a minimum of two bedrooms".
8. The supporting text for this policy explains that there remains a high level of demand for smaller dwellings suitable for family accommodation and it will continue to be important to retain the existing stock of these dwellings (i.e. those where the original floor area is less than 115sq.m). This is supported by Policy CP19 of the Brighton and Hove City Plan Part One, 2016 (City Plan) which highlights the needs for a good housing mix and choice of housing (in terms of types and sizes of accommodation). In addition, the Annual Monitoring Report for Residential Development 2017-2018² demonstrates that the proportion of smaller units suitable for family accommodation being delivered year-on-year is reducing. Whilst the LP is of some age, I therefore attach significant weight to Policy HO9 of the LP.
9. With regards to criterion (a), the policy does not refer to the property as a whole. Furthermore, the policy is entitled "Residential conversions and the retention of smaller dwellings". There is no planning history for this site, and therefore it is inconclusive on the evidence before me whether the building was originally built as flats or whether it was a single dwelling. As such, based on the lack of conclusive evidence regarding the original layout of the building it is necessary to consider the proposal against the existing layout as shown and criterion (a). All of the existing flats each have a floor area of less than 115 sq.m and contain two or three bedrooms. Therefore, the proposal to convert the existing flats would be in direct conflict with criterion (a).

¹ Taken from paragraph 2.1 of the appellant's appeal statement.

² Shown on Chart 4, Page 6.

10. In relation to criterion (b) the policy requires that at least one unit is suitable for occupation by a family. However, the policy does not provide specific details about how the suitability of any unit will be assessed. Therefore, each case therefore has to be determined on its own merits. The proposed two bedroom unit would have acceptable layouts and floor space, with good levels of light and outlook. However, the proposed two bedroom unit would be on the first and second floors of the building, and therefore has no access to private amenity space.
11. Saved Policy HO5 of the LP, requires all new residential development to provide private useable amenity space. The existing ground floor two bedroom family unit benefits from a modest sized rear garden. However, it is proposed that the rear garden would be solely available to the occupiers of the ground floor one bedroom unit, rather than the larger family unit. This would be far from ideal for the proposed two bedroom family unit where there would be no outdoor space for occupiers to sit outside and relax and for children to play. This would feel oppressive for future occupiers of the family unit and would not be a pleasant environment for children. Whilst the property is in proximity to nearby open space and the beach, I do not consider that this would compensate for the lack of sufficient on-site private amenity space for this family sized unit. Consequently, I find that the proposed two bedroom unit would not provide accommodation suitable for occupation by a family.
12. I therefore conclude that the proposed development would have a harmful effect on the supply of smaller dwellings in the Borough suitable for families. The proposal would therefore fail to comply with saved Policy HO9 criterion (a) and (b) of the LP, which seeks to protect against the loss of smaller dwellings suitable for family accommodation and requires conversions to provide at least one unit of accommodation suitable for a family.

Living conditions for future occupiers of the ground floor flats with particular regard to floorspace and layout

13. The ground floor one bedroom flats would have an overall floor space of 50sq.m and 42sq.m³ respectively. Both of the flats would have a reasonably proportioned open plan living/dining/kitchen and apartment 1 would also benefit from large bi-folding doors providing access to the private rear garden. The living area for Apartment 2 would also benefit from the large front bay window providing good levels of light and outlook for future occupiers. The bedrooms for both flats would be a reasonable size and there would also be sufficient space within these units for circulation and storage space.
14. Accordingly, I find that both ground floor units would provide satisfactory living conditions for future occupiers with regard to floorspace and layout. In this respect the development complies with saved Policy QD27 of the LP which seeks to protect the living conditions of proposed occupiers of development. This policy is consistent with the Framework which also seeks to protect the amenity of existing and future users and therefore I attach significant weight to this policy.

³ Sizes of flats taken from Drawing No PR01 Rev. A

Conservation Area

15. The site is within the Brunswick Town Conservation Area (CA). Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. Paragraph 193 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 194 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset, should require clear and convincing justification.
16. The Brunswick Town Conservation Area Character Statement explains that Brunswick Town is described as one of the finest examples of Regency and early Victorian planning and architecture in the country. It is further states that the character and appearance of this CA is of a planned C19 estate where architecture and uses have been developed and controlled in a manner creating formality and order. Therefore, the significance of the CA largely derives from its architectural and historic interest.
17. During my site visit I noted that the existing building is well designed and contributes positively to the character and appearance of the CA. Furthermore, the rear gardens in the terrace provide relief in an existing built up area and contributes to the existing sense of openness between the buildings on Rochester Gardens and Palmeira Avenue. In this respect, the existing rear gardens in the area plays a vital role in preserving the character and appearance of the CA and therefore also makes a positive contribution to the significance of the CA.
18. The appeal property forms part of a small terrace of similar three storey properties and appears to have been previously extended with a ground, first and second floor rear extension almost the full width of the property. A number of properties in the terrace⁴ also have three storey back additions. However, the existing three storey back addition of the appeal site is already wider and bulkier in appearance than most other three storey extensions in the terrace. The current proposal seeks to extend the building further with a part single, part three storey rear extension. The part three storey extension would project in line with the existing back addition at No 3 Rochester Garden. However, the part single storey rear extension would encroach further into the rear garden than any of the neighbouring properties in the terrace, bringing the built form of the development closer to the rear elevations of properties on Palmeria Avenue. In this respect, the proposals would occupy a disproportionate area of the rear garden and would harmfully erode the openness of the rear garden which contributes to this part of the CA.
19. The proposed extensions, despite the use of matching materials and fenestration, when combined with the existing three storey back addition, would extend the building considerably and would be dominant. There are no other similar sized extensions to neighbouring properties, and in this regard, the proposed height, bulk and scale of the extensions would introduce a visually discordant and incongruous element. I note that the proposal would not be widely visible within the wider public realm, however, the development would be clearly apparent and in close proximity of several surrounding residential properties. The effect of the scheme would be to diminish

⁴ Nos 1, 2 and 3 Rochester Gardens.

- unacceptably the integrity, character and appearance of the host property. Consequently, the proposal would also fail to preserve or enhance the character or appearance of the CA and would lead to harm to its significance.
20. In the terms of the Framework and paragraph 196, the harm that the proposal would cause to the significance of the designated heritage asset, that is the CA, would amount to less than substantial harm. Accordingly, this should be weighed against the public benefits of the proposal. The proposal would deliver two additional residential units in an accessible residential area, close to local amenities and the seafront, thereby making a small but positive contribution towards boosting the supply of housing in the area. The appellants also contend that the development would be built to modern Building Regulations standards which would improve the thermal performance of the property and would make more efficient use of the site. However, the harm to the character and appearance of the CA would not be outweighed by these benefits.
21. On balance, the proposal would be harmful to the character and appearance of the CA as a whole. As such, it would fail to preserve or enhance the character or appearance of the CA, contrary saved Policies HO9 criterion (g), QD14 and HE6 of the LP, and Policies CP12 and CP15 of the City Plan. Together these require development to be well designed and to conserve or enhance the city's built heritage and its settings. Whilst the LP policies of are some age they are broadly consistent with the design and conservation policies of the Framework and therefore I attach significant weight to them.

Other Matters

22. I have also considered the effect of the development on the settings of the nearby listed buildings at Rochester Mansions, 7 Church Road (Grade II); Palmeira Mansions, 9-15, Church Road (Grade II); Palmeira Avenue Mansions, 17-19, Church Road (Grade II); Palmeira Avenue Mansions, 21-23, Church Road (Grade II); Palmeira Mansions, 25-31, Church Road (Grade II); and Palmeira Mansions, 33 Church Road (Grade II*). However, in light of the separation distances from these heritage assets and the position of proposal in relation to these assets, I find no harm in these respects. For the reasons outlined above, I consider that the proposals would preserve the setting of these nearby listed buildings, having regard to Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
23. With regards to LP Policy HO9 criterion (a) the appellants have referred to a pre-application advice letter for an alternative site, where it was considered that the original dwelling had a floor area greater than 115sq.m and therefore was in accordance with criterion (a). However, I do not have full details of that site and therefore cannot be certain that the circumstances of that site and proposal are directly comparable to the appeal proposals before me. Furthermore, any pre-application advice provided by the Council is given without prejudice and is not binding. Therefore, I have determined the appeal based on the merits of the case, and in accordance with local and national policy. For these reasons, I give this pre-application advice for an alternative site little weight.

Planning balance and conclusion

24. Applications for planning permission must be determined in accordance with the development plan, unless material considerations, which include the

Framework, indicate otherwise. I recognise that there are policies in the development plan and the Framework that are supportive of the provision of additional housing. However, I have identified that the proposed development would be in conflict with Policies HO9, QD14, and HE6 of the LP and Policies CP12 and CP15 of the City Plan. It would therefore be contrary to the relevant policies, and the development plan as a whole.

25. There is no dispute that the Council cannot currently demonstrate a five year supply of housing land, and the Council state that there is a shortfall of 576 net dwellings (4.5 years supply). However, the 'tilted' balance within Framework paragraph 11 d ii would not apply because the application of policies within the Framework that protect heritage assets provide clear reasons for refusing the development proposed. A presumption in favour of sustainable development does not apply. There are no material considerations of sufficient weight or importance that determine that the decision should be taken otherwise than in accordance with the development plan and therefore planning permission should be refused.
26. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be dismissed.

R Satheesan

INSPECTOR