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## Appeal Decision

Site visit made on 6 January 2020

**by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 February 2020**

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**Appeal Ref: APP/Q1445/W/19/3231383**

**15 Hillbrow Road, Brighton, BN1 5JP**

- 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 M Standen against the decision of Brighton & Hove City Council.
  - The application Ref BH2017/02693, dated 9 August 2017, was refused by notice dated 8 May 2019.
  - The development proposed is the erection of 3 bedroom detached dwelling to rear garden of existing dwelling with new vehicular access.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is (1) the effect of the development on the character and appearance of the area, including the impact to existing trees; (2) the effect of the development on protected species; and (3) the effect on living conditions of neighbours to the site.

### Reasons

#### *Character and Appearance*

3. No 15 Hillbrow Road is a semi-detached house with a long rear garden with a pronounced slope downhill towards the rear boundary. The proposal is to demolish the side garage and form an access to a new dwelling towards the rear of the garden.
4. Hillbrow Road is made up of primarily two storey detached dwellings with generous size gardens, which front the road. However, the proposal would result in a dwelling with no street frontage and a relatively small garden. It would therefore appear at odds with the character and form of residential development in the surrounding area, where the vast majority of dwellings have a frontage facing the road and set in generous plots. As such, this development would not respect the established and distinctive pattern of development within this area and be a discordant and cramped form of development within the street.
5. It is likely that the proposed house in this location would be apparent from the gap between houses along Hillbrow Road and would also be visible from other

areas with views to the side of this hill where the site is located, despite its 'dug in' proposal and surrounding trees. In this location, it would appear incongruous against the prevailing pattern of housing in this area as it would be clearly a house in a mature rear garden setting.

6. The appellant has drawn my attention to the dwellings at examples such as 1-3 Wellsbourne Rise behind No 9 Hillbrow Road. However, I do not have full details of this development or any other, or the circumstances that led to it having planning permission. In any case, whilst the similarities with the proposed dwelling location are noted, this does not change the prevailing character and pattern of built development in this area, where there is a clear predominance of dwellings with as street frontage.
7. In conclusion, whilst there has been no objection to the contemporary design of the dwelling, as proposed it would appear cramped and be an incongruous addition within this street scene, and thereby harmful to the character and appearance of the area. As such, the proposal is contrary to policy CP12 of the Brighton and Hove City Plan Part One. This policy seeks to require development to, amongst other things, respect the diverse character and urban grain of neighbourhoods. The proposal would also be contrary to the National Planning Policy Framework where it considers design and layout of proposed development.

#### *Trees*

8. I note that the proposal would result in loss of some mature trees in the area of the proposed house to make way for the development. It is my understanding that these trees are not protected in any way and so could be felled by the appellant. I also note the Council comments that tree T7 is not in a poor condition and does not need to be felled as a result of this.
9. In my opinion, whilst these trees do have some value in their appearance, they are not particularly prominent to the wider area from their location in the rear garden of No 15. From the evidence submitted, if these trees were removed to make way for the development this would not have a significant adverse effect to the character and appearance of the area. Furthermore, whilst there would be other trees close to the proposed house if built, I am not satisfied that there is substantive evidence that this would necessarily result in pressure to cut back or fell more trees.
10. The proposal is therefore in accordance with policies QD15 and QD16 of the Brighton and Hove Local Plan, which seek to require development to retain trees and hedgerows as far as practicable, amongst other things.

#### *Ecological Impacts*

11. The site is a rear garden which is currently quite overgrown in places. To address the issue of whether the proposal would impact any reptile population the application was supported by a 'Reptile Proposal Report' (Architectural Outsourcing Services). This includes proposing a reptile survey and then if there are reptiles discovered on site then there is some suggested mitigation to address this.
12. However, the Council consider that there needs to be further information and surveys of reptiles (due to the possible presence of Slow Worms), and that

currently there is insufficient information to demonstrate that reptiles would not be adversely affected by the proposed development.

13. Furthermore, there is no bat survey submitted, although there is evidence that the trees to be felled could accommodate bat roosts. The Council has concluded that the trees offers potential roosting, foraging and commuting habitats, but this has not been sufficiently addressed with the appellant's evidence and information.
14. I see no reason why it is not possible to provide more information by this point and have a clearer perspective on the ecological factors for this site, with full ecological surveys completed to accompany the proposals. Without full information of surveyed protected species populations, including reptiles and any other potential protected species that may be affected at the site, it is not possible to be confident the proposal would not have an adverse effect in this regard or that the mitigation suggested would be sufficient.
15. As the surveys have not been conducted at this time, despite the identified possible presence of protected species, a condition would be needed to require these to be completed. However, Government Circular 06/2005 (Biodiversity and Geological Conservation and their Impact within the Planning System) suggests that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted. This is a material consideration and must be addressed in making the decision. Therefore, it has not been adequately shown that there would not be harm in relation to this issue.
16. Accordingly, from the evidence before me there is a reasonable likelihood of protected species on the site, but I cannot be satisfied that the appeal proposal would not harm or disturb the protected species, or that suitable mitigation measures could be undertaken to protect those species during clearance and construction. In line with the advice in the Circular, I consider that it would not be appropriate to seek to overcome this by the imposition of a condition. I do not regard there to be any substantive circumstances why an exception should be made in this case, based on the information before me.
17. Therefore, the appeal proposal would be contrary to the National Planning Policy Framework in so far as it seeks to protect, conserve and enhance the natural conservation resource by ensuring that development proposals provide mitigation works to safeguard protected species. Furthermore, in this regard the proposal is contrary to policy CP10 of the Brighton & Hove City Plan Part One and policy QD18 of the Brighton and Hove Local Plan, which seek to conserve, restore and enhance biodiversity; and to require an appropriate site investigation if a species or habitat could be affected by the development, amongst other things.

#### *Living Conditions*

18. The proposed house is in a residential location, with other houses nearby. Being towards the rear of the garden of No 15, it would be close to the rear connecting garden of the houses at Valley Drive (such as Nos 42 and 44), which are also at a lower ground level. However, there would be a significant distance between the proposed house and the nearest neighbour at Valley

Drive. At this distance, there would be no significant impact to privacy, overshadowing or overbearing impact to the neighbours when in their houses.

19. The proposed house would be close to the rear of these neighbours' gardens, but these gardens are large, and the house would be set off the boundary. Therefore, the level of impingement to the living conditions of neighbours' living conditions as a result of this would be minimal in my view.
20. A dwelling in this location, of the design and scale proposed, would not have a significant adverse effect to living conditions of the neighbours who live at Valley Drive or elsewhere near the site. As such, the proposal is in accordance with policy QD27 of Brighton and Hove Local Plan, which has regard to the amenities of neighbours to proposals.

### **Planning Balance**

21. The Council has acknowledged that it cannot demonstrate a 5 year housing land supply. Paragraph 11 of the National Planning Policy Framework (the Framework) sets out that decisions should apply a presumption in favour of sustainable development and that, under criterion d) where the policies which are most important for determining the application are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Given the lack of a five year housing land supply, paragraph 11 d) of the Framework is engaged.
22. In the context of the Development Plan I have found that the proposed development would be contrary to policies of the Development Plan. For this appeal, I have found these policies to be generally consistent with the relevant aims of the Framework.
23. I recognise that the proposed development would provide a dwelling in an accessible location which would contribute towards housing land supply in Brighton and increase the range on offer. There could be increased tax revenue possible for the Council as a result. However, whilst this could be regarded as efficient use of a small site, it would only result in a single dwelling and so the benefits in this regard would be limited.
24. The proposed dwelling would be designed and constructed using materials which the appellant states would be a clear benefit and be built to high environmental standards. It is stated that the appellant would be seeking to self-build the development, which is encouraged in the Framework. I also note and have considered the letters of support for this proposed dwelling.
25. However, the harm to the character and appearance of the area and the lack of evidence to demonstrate a harmful impact to protected species could be avoided as identified would be significant. When assessed against the policies in the Framework taken as a whole the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

### **Conclusion**

26. For the reasons given and considering all other matters raised, the appeal should be dismissed.

*S. Rennie*

INSPECTOR