



Appeal Decision

Site visit made on 7 January 2020

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

an Inspector appointed by the Secretary of State

Decision date: 21 February 2020

Appeal Ref: APP/Q1445/W/19/3232699

Land to the rear of 94-96 Lewes Road, Brighton BN2 3QA

- 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 Wrennall against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/02538, dated 6 August 2018, was refused by notice dated 18 April 2019.
 - The development proposed is the erection of a two-storey building with a basement to provide two self-contained residential units (Use Class C3) and a retail unit (Use Class A1/A2) with cycle parking and waste storage and associated works.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on (1) the character and appearance of the area, (2) the living conditions of neighbours and (3) the living conditions of future occupiers of the proposed development.

Reasons

Character and Appearance

3. The site is set within a mixed area of retail and residential, with busy roads. There is a supermarket opposite and a filling station to the side. There is also a mix of houses and blocks of flats in the area.
4. The proposal for flats with a small ground floor retail unit would be on land to the rear of Nos 94-96 Lewes Road. The variety of different height, scale, type and design of developments, including those with flat roofs, means the proposed modern building would not appear incongruous in this mixed setting. Therefore, whilst of a distinct and differing architectural style to some of the surrounding buildings it would not be a discordant addition to the built environment. There is a sufficient amount of detailing included, with use of conditions possible for more control over certain aspects of the proposal and its design and materials.
5. Currently, the land is undeveloped with a covering of thick overgrown vegetation. The site has an irregular shape due to the curved boundary with the public footway. The proposed building on this constrained site would be

tight to the boundaries, but this is an area of high density development and I would also regard the proposal as an efficient use of a site which currently serves as little value to the visual amenities of the street. I do not regard the proposal as being overly contrived in fitting with the site space and shape available. The loss of the current vegetation at the site would not result in any significant detriment to the street scene.

6. The site is close to the rear of Nos 94-96 Lewes Road, but this existing neighbouring building would be taller and would not be dominated by the proposed new building, which would be subservient in this visual relationship.
7. The proposal would not allow for much space around the new building for landscaping, but this is a fairly common characteristic for this area, where many buildings are built up to the highway boundaries at the front. As such, the lack of landscaping or open space would not have a significant adverse impact to the visual amenities of the area and is suitable in this case.
8. Overall, the proposal would not constitute overdevelopment of the site and is of a design and scale that I regard as suitable for this setting. Therefore, the proposal is in accordance with policies CP12 of the City Plan – Part One, and policy QD15 of the Brighton and Hove Local Plan. These policies seek to, amongst other things, require suitable levels of open space and landscaping with development and be of a quality of architecture that would raise the standard for the city.
9. Furthermore, I do not conclude that the proposal with regards to character and appearance would be contrary to policy HO5 of the Brighton & Hove Local Plan, which relates to the provision of amenity space. The issue of amenity space provision is addressed in the section on future occupants living conditions below.

Living Conditions - Neighbours

10. To the rear of Nos 94-96 Lewes Road there are basement level windows serving residential flats. The proposed building would be to the rear of these flats and would be visible to some extent from these windows. However, there would be a significant separation distance and also the nearest section of the proposed building will be single storey with a flat roof.
11. As such, the proposed building would not appear overbearing or oppressive when viewed from these neighbouring basement flats. The proposed building would be part of the outlook from neighbouring properties at Nos 94-96 Lewes Road, but it would not be significantly detrimental in this regard.
12. The basement windows in the current circumstance would likely only receive limited direct sunlight and might have restricted daylight. The proposed building being near to these windows could have a further impact. The appellant has submitted a 'Daylight, Sunlight and Overshadowing Assessment' (Herrington Consulting Limited) dated March 2015 to address this issue.
13. This report was produced in connection with a previous scheme, where it determined that the loss of light to windows at 94-96 Lewes Road would be generally negligible. Having now seen some of the plans of the previous scheme it differs from that proposed now, although there are some similarities. The main difference is that the new proposal is a lower building. The proposed

building with this appeal also has a stepped design approach, setting the upper floor further away from these neighbouring basement windows.

14. Considering the difference between the proposals, I conclude that the appeal proposals would have less of an overshadowing impact than the previous scheme that was subject to the 2015 assessment. Based on the evidence before me and my observations on site, there would be no significant loss of light for any residential occupants within 94-96 Lewes Road.
15. Overall, the proposal accords with policy QD27 of the Brighton & Hove Local Plan on this issue, which seeks to, amongst other things, prevent development which would result in a loss of amenity to existing residents.

Living Conditions – Future Occupiers

16. The proposal includes a basement level, which includes such rooms as bedrooms and sitting rooms for the flats for example. Being at basement level there are no conventional windows, with a reliance generally on lightwells and skylight windows.
17. The amount of light possible through these lightwells and skylights may be limited due to, for example, their position between the proposed building and Nos 94-96 Lewes Road, which is a tall building in close proximity. This would likely make the area between these buildings relatively gloomy with limited direct sunlight for the lightwells and skylights on this eastern side of the proposed building. I also note that the basement area is quite a large area that would need good level of natural light.
18. To address this the submitted 'Daylight, Sunlight and Overshadowing Assessment' (Herrington Consulting Limited) dated March 2015 covers the issue of light to the basement area. However, as stated in the section above, this assessment is based on a previous scheme which had a different basement layout and differing position and size of lightwells and skylights. It therefore is not known whether the conclusions from the 2015 assessment would be the same for this latest proposal. As such, I give the conclusions of this report limited weight.
19. Based on the orientation and layout of the proposed building, I would conclude that some areas of habitable rooms in the basement would be generally dark and gloomy, even on bright days. The situation would be such that it would likely result in a dependency on artificial lighting at most times within a large part of the flats at basement level, to supplement the low level of natural light. This strongly indicates a poor quality living environment for future occupants, which could be of detriment to the health of those living here in the long term. I do not regard there to be sufficient evidence to demonstrate the contrary to this conclusion I have made.
20. In terms of amenity space, I note this is a confined site quite close to the centre of Brighton. There are some relatively small patios proposed, which would provide some outdoor space for future occupiers. In this circumstance, in an area where there is other outdoor public amenity space provision also, I regard there to be sufficient levels of amenity space provision for the flats proposed.
21. I recognise that there would likely be some difficulty for people with mobility problems or in a wheelchair to access the proposed flats. The appellant states

that due to the restricted nature of the site and the lack of space to provide any disabled parking, the flats have not been designed for wheelchair access. The National Technical Standards do include 'Optional Technical Standards' for enhanced accessibility and wheelchair housing. However, the policies included in the Decision Notice do not include such detailed requirements. It may also be possible to adapt the development in the future if needed, although I recognise this may be difficult to achieve. As such, I do not regard this as a matter which would warrant dismissal of this appeal.

22. Furthermore, outlook from the basement would be limited for future occupiers, but there are upper floor rooms with better levels of outlook. As such, I do not consider the level of overall outlook from the proposed dwellings to be to harmful to future occupiers.
23. However, overall the proposal would be harmful to the living conditions of future occupiers due to lack of natural light and therefore would be contrary to policy QD27 of the Brighton & Hove Local Plan, which seeks to, amongst other things, safeguard the amenities of future occupiers of developments.
24. However, I do not conclude that the proposal would be contrary to policy HO5 of the Brighton & Hove Local Plan, which relates to the provision of amenity space.

Planning Balance

25. The Council has acknowledged that it cannot demonstrate a 5 year housing land supply. Paragraph 11 of the National Planning Policy 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.
26. In the context of the development plan I have found that the proposed development would be contrary to policy QD27 of the Brighton & Hove Local Plan, in regard to harm to the living conditions and amenities of neighbours to the site and future occupants of the development. For this appeal, I have found this policy to be generally consistent with the relevant aims of the Framework.
27. The proposal would contribute two new dwellings within Brighton, towards its housing land supply, making an efficient use of a small site. However, as this would be just two dwellings the benefit would be limited. The proposal would also include a retail unit which would contribute to the retail function and vitality of the area, but this would only be a small unit and so the benefit would be modest.
28. There would be an economic benefit through both the construction process and through future occupants likely to spend locally. However, due to the relatively small scale of this development the benefits would be limited in this regard.
29. Therefore, the harm to the future occupiers living conditions as identified would be significant and as a result sustainable development would not be achieved. When assessed against the policies in the Framework taken as a whole the adverse impacts would significantly and demonstrably outweigh the benefits.

The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

30. For the reasons given above the appeal is dismissed.

S. Rennie

INSPECTOR