
Appeal Decision

Site visit made on 9 June 2020

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

an Inspector appointed by the Secretary of State

Decision date: 24th June 2020

Appeal Ref: APP/Q1445/W/19/3242947

76 Crescent Drive South, Brighton, BN2 6RB

- 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 Filby against the decision of Brighton & Hove City Council.
 - The application Ref: BH2019/00542 dated 22 February 2019, was refused by notice dated 21 October 2019.
 - The development proposed is demolition of existing garage to facilitate construction of new 3-bedroom detached dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on i) the living conditions of the occupiers of nearby dwellings in relation to privacy, height and light and ii) the character and appearance of the area.

Reasons

Living conditions

3. No. 76 Crescent Drive South (No. 76) is a large chalet bungalow with an integral archway which provides access to the rear garden. The appeal site is located at the end of the garden and is currently occupied by a large garage. The garage sits at a substantially lower level than No. 76 and the garden, which is contained by a retaining wall along the access to the garage.
4. The proposed dwelling would be 3-storey, with the top floor contained within the roof space. Although the ground floor of the proposed dwelling would be lower than the existing garage on the site and revised drawings submitted during the course of the application show a reduced ridge height, it would be substantially higher than the garage. Nevertheless, it would be set down sufficiently for only the roof slope to be visible over the boundary fence from No. 76. This, together with the set back from the fence, would mean that the dwelling would not be overbearing for the occupiers of that property.
5. However, it would be close to the front elevations of 1 and 2 Cherry Tree Lane (Nos. 1 and 2), part of a small development of four dwellings accessed via a driveway from Crescent Drive South. Both Nos. 1 and 2 have windows in their front elevation at both ground and first floor level. The proposed dwelling would be at approximately the same ground floor level as Nos. 1 and 2,

- although the ridge height would be slightly lower as shown on the amended plans. Both a ground floor and a first-floor window in No. 2 would look directly onto the proposed dwelling.
6. The upper window currently looks over the existing garage towards the rear elevation of No. 76, although the view is partially obscured by a high-level planter in the rear garden of No. 76. Due to the increase in height of the proposed dwelling relative to the garage the outlook from this window would be of the roof slope of the new dwelling. The increase in height would also be evident from the ground floor window. The area to the front of Nos. 1 and 2 provides access to and parking for the dwellings and the proposed dwelling would be readily apparent from this area, particularly when exiting the front door of No. 2.
 7. The dwelling would present a flank elevation above the fence to the boundary of the site to Nos. 1 and 2. Whilst the ground floor would not occupy a greater footprint than the existing garage, its upper floors would project beyond the ground floor. Given its height and proximity to Nos. 1 and 2, it would be overbearing when viewed from the main ground floor window of No. 2 and from the front of that property. Although not specifically cited in the reason for refusal, the proposed dwelling would also adversely affect the outlook from the main ground floor window in No. 2.
 8. The proposal would not result in any significant overlooking of Nos. 1 and 2, No. 76 or the properties to the east of the site, nor would itself be significantly overlooked. However, the western elevation of the proposed dwelling is shown on the submitted elevational drawings with a substantial area of glazing at both first floor and second floor level, serving the main living areas and a bedroom.
 9. Whilst there would be no significant loss of privacy to the rear elevations of properties on Crescent Drive South to the west of No. 76, these large glazed areas would afford views over the ends of the gardens of No. 74 and the property beyond, 68 Crescent Drive South (No. 68). Given the size of these glazed areas, the extent of view would be substantial. Although these gardens are already overlooked to an extent from No. 2 and other dwellings to the south of the gardens, in my judgement the proposed development would result in a significant additional loss of privacy, both actual and perceived, for the users of these neighbouring gardens.
 10. The large areas of glazing could also allow extensive light spillage, much greater than from the existing smaller windows of Nos. 1 and 2 and the other dwellings to the west, in area where little light pollution would be expected. This would result in disturbance to the occupiers of nearby properties.
 11. I therefore conclude that the proposal would be significantly harmful in respect of being overbearing, loss of privacy and light spillage to the living conditions of the occupiers of Nos. 1 and 2, No. 74 and No. 68. Accordingly, the proposal would conflict with Policy QD27 of the Brighton & Hove Local Plan (2005), which states that permission will not be granted for any development where it would cause material nuisance and loss of amenity to adjacent occupiers. Furthermore, it would conflict with paragraph 127 f) of the National Planning Policy Framework (the Framework) which sets out that planning decisions should ensure that developments create places with a high standard of amenity for existing users.

Character and appearance

12. Crescent Drive South is a mature residential area with a mixture of detached bungalows, chalet bungalows and 2-storey dwellings in the vicinity of the appeal site. Accordingly, there is no consistent architectural style. The pattern of development also varies with gardens of various sizes and some dwellings developed in back land locations, including the properties of Cherry Tree Lane, with accesses off Crescent Drive South. These back land properties also do not have an entirely consistent pattern of development. There are large outbuildings at the ends of the rear gardens of the properties to either side of the appeal site.
13. As noted above, the proposed dwelling would occupy the same footprint at ground floor level as the existing garage but would be substantially higher. It would also be higher than the outbuildings to either side, although these would help mitigate the effect of the proposal. Moreover, it would be no higher than Nos. 1 and 2, in the context of which it would primarily be seen. In addition, given the drop-in land levels to the south, the lowered ground level of the proposed dwelling and its top floor being within the roof space, it would not have an excessive bulk or be obtrusive. The three storey form of the dwelling would not be readily apparent from surrounding properties or Crescent Drive South.
14. The materials and finishes of the upper floors of the proposed dwelling would reflect those of Nos. 1 and 2. Although the design of the western elevation of the proposed dwelling would be at odds with the prevailing forms of fenestration in the area, there is sufficient variation in the design and style of other dwellings in the locality for this to be acceptable in design terms.
15. I therefore conclude that the proposed development would not have an adverse effect on the character and appearance of the area. Accordingly, in this respect, it would not conflict with Policy CP12 of the Brighton & Hove City Plan Part One (2016) (BHCP), which sets out expectations for the design of new development.

Planning Balance

16. It is accepted that the Council cannot demonstrate a 5-year supply of deliverable housing sites. The Council has confirmed that its current supply is 4 years. Accordingly, paragraph 11 d) of the Framework is engaged. From the evidence before me, the policies in the Framework that protect areas or assets of particular importance are not relevant to the proposed development. Thus, in accordance with paragraph 11 d) ii, planning permission should 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 Government is seeking to significantly boost the supply of land for housing. Local planning authorities should support the development of windfall sites and give great weight to the benefits of using suitable sites within existing settlements for homes, making efficient and effective use of land. Policy CP1 of the BHCP sets out the scale and distribution of new housing within the city, including the contribution of small windfall development to the overall housing provision. The principle of residential development on this site is not in dispute.

18. The proposed development therefore gains support from some policies of the Framework and Policy CP1, to which I give significant weight. The construction of a dwelling on this site would have associated social and economic benefits. These are benefits of the proposal, but as a single dwelling these would be very modest.
19. The proposed dwelling would have adequate internal floorspace and external garden area. However, these matters represent an absence of planning harm rather than benefits of the proposal and I have therefore given them neutral weight in my decision.
20. The unacceptable harm to the living conditions of the occupiers of nearby dwellings I have identified above and consequent conflict with Policy QD27 of the BHLP and paragraph 127 f) of the Framework needs to be balanced against the benefits of the proposal. As Policy QD27 is consistent with paragraph 127 f), I accord the conflict with it full weight in the context of and determination of this appeal.
21. On balance, I consider that the adverse impacts significantly and demonstrably outweigh the very modest benefits of the development. Accordingly, paragraph 11 d) ii of the Framework does not indicate that planning permission should be granted in this case.

Conclusion

22. Planning law requires that decisions are made in accordance with the development plan, unless material considerations indicate otherwise. I consider that the clear conflict with Policy QD27 outweighs the general accordance with Policy CP1 and that the proposal is therefore in conflict with the development plan, taken as a whole.
23. In this case there are no material considerations that are sufficient to indicate that a decision should be made other than in accordance with the development plan. Therefore, for the reasons given above, the appeal is dismissed.

Martin Small

INSPECTOR