



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/19/3242970

Site of 20 Tongdean Lane, Brighton, BN1 5JD

- 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 Woods (Klas Properties LLP) against the decision of Brighton & Hove City Council.
 - The application Ref: BH2019/01858 dated 21 June 2019, was refused by notice dated 16 August 2019.
 - The development proposed is conversion of existing redundant buildings to form a three-bedroom four-person private dwelling house and garden.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i) the effect of the proposed development on the character and appearance of the area;
 - ii) whether the proposed development would provide satisfactory living conditions for the occupiers of the proposed dwelling, with particular regard to external garden area; and
 - iii) the effect of the proposed development on the living conditions of the occupiers of Nos. 20 and 20A Tongdean Lane, with particular regard to external garden area.

Reasons

Background

3. There have been a number of refusals of planning permission for the development of a dwelling on the appeal site in recent years, with an appeal dismissed in 2015¹. The current scheme seeks to address the previous concerns. The scheme considered by the previous Inspector included the demolition of the existing buildings on the site and the construction of a 2-storey dwelling in the north-west corner of the site. The proposal before me differs in that it is proposed to convert the existing buildings and to incorporate a lower ground floor.

¹ APP/Q1445/W/15/3029739

Character and appearance

4. No. 20 Tongdean Lane is located on the corner of Tongdean Lane and Colebrook Road. Although now fenced off, the appeal site appears to have formerly formed part of the rear garden of 20 Tongdean Lane which has since been converted into two dwellings, Nos. 20 and 20A. The site fronts and reads as part of Colebrook Road, which is characterised by reasonably large, predominantly detached properties with double-pitched roofs set back from the road in generous plots with a largely regular pattern of development.
5. The exception to this pattern is No. 1A Colebrook Road, which is set further back from the front elevations of other properties along the road, but this is not prominent in the street scene. I concur with the description of Colebrook Road by the Inspector that determined the previous appeal that it has a 'spacious and verdant' character.
6. The appeal site accommodates two buildings, a large workshop to the western end of the site and a single-store brick store building to the eastern end, abutting the footway along Colebrook Road. Both are in a poor state of repair. An application for the variation of condition 2 of the permission for the subdivision of No. 20 showed the site as a communal amenity area for Nos. 20 and 20A². The application was approved and a condition on that permission requires the use and retention of this area for purposes incidental to the enjoyment of the dwellinghouses, although I see no indication that the existing buildings were to be demolished as contended by the Council.
7. The proposed development is the creation of a dwelling through the conversion of the larger building into living accommodation and the construction of a lower ground floor to provide 3 bedrooms. The smaller building would remain in use for storage, with a garden created between the two buildings, incorporating a grassy bank to a small courtyard garden providing light to the bedrooms.
8. The proposal would therefore retain the existing buildings on the site. However, whilst the buildings are not so incongruous and harmful that their replacement would be a significant public benefit, as opined by the previous Inspector, neither are they of such particular architectural or historic merit that they should be retained.
9. There is some uncertainty over the size of the appeal site, with the Council suggesting 135 m², the application form indicating approximately 150 m² and the previous appeal decision stating 168 m². However, even the largest figure is significantly smaller than the prevailing plot sizes in the area - I have no reason to doubt the Council's evidence that plot sizes in the area tend to range from 500 – 700 m². Moreover, the proposed ground floor living accommodation would abut three sides of the plot. It would therefore be result in a cramped form of development, at odds with the characteristic spaciousness of other dwellings on Colebrook Road which have greater space around them.
10. Although No. 1A and No. 22A Tongdean Lane are inconsistent with the predominant pattern of development by being set back further from the roads, their plots are substantially larger than the appeal site and do not therefore, in my view, set a precedent for the proposed development. As a dwelling rather than ancillary outbuildings forming part of a larger plot, I consider that the

² BH2016/02260

proposal would represent overdevelopment of an uncharacteristically small site. Furthermore, whilst there are bungalows and chalet bungalows of varying designs on Colebrook Road and the street scene along Colebrook Road would not be substantially altered by the proposals, the form and appearance of the proposed dwelling would be at odds with the characteristic double-pitched roofs in the area.

11. Accordingly, I do not agree with the appellant that the development would raise the standard of architecture and design in the city. Neither do I believe that the development would create a new sense of place. Tongdean Lane and Colebrook Road already have a strong sense of place with which the proposal would be at odds. Whilst the proposal would result in some improvement in the current appearance of the site through the refurbishment of the buildings and planting, this would be outweighed by the incongruity of the proposed development. Furthermore, the appeal proposal is not necessary to secure the enhancement of the site.
12. I therefore conclude that the proposed development would be harmful to the character and appearance of the area. In this respect, it would conflict with criteria 1 and 2 of Policy CP12 of the Brighton & Hove City Plan Part 1 (2016) (BHCP), which sets out that all new development will be expected to, amongst other things, raise the standard of architecture and design in the city and respect the diverse character and urban grain of the city's neighbourhoods.
13. It would also conflict in this respect with Policy CP14 of the BHCP which sets out that residential development should be of a density that is appropriate to the identified positive character of the neighbourhood or potentially of a higher density if six criteria are met, as it the development would not meet the first two criteria. The Council has not provided any evidence that the proposal would conflict with the other criteria of Policy CP14 but, in any event, the policy requires all six criteria to be met for development to be permitted at higher densities.
14. Although not cited in the reasons for refusal, as the proposal would not represent appropriate innovation or change for the reasons given above, it would also fail to accord with paragraph 127 c) of the National Planning Policy Framework (the Framework) which requires planning decisions to ensure that developments are sympathetic to local character.

Living conditions of the future occupiers

15. The proposed ground level garden area would be adequate in terms of area for sitting out, drying clothes and play. The proposals include a fence along the southern boundary of the site, which sits at a slightly higher ground level than the ground level of Nos. 20 and 20A. Some of the windows facing the site in Nos 20 and 20A are obscure glazed.
16. Nevertheless, the proximity of those existing dwellings to the proposed garden area would result in significant overlooking of that garden from the plain glazed upper floor windows in Nos. 20 and 20A and consequent absence of privacy. Although a degree of overlooking is to be expected in urban areas, I consider this extent of overlooking and consequent lack of privacy would be materially harmful to the living conditions of the occupiers of the proposed dwelling.

17. Furthermore, the garden would be sandwiched between the current vehicular accesses and parking areas for Nos. 20 and 20A and No. 1A. This could result in disturbance to the garden from noise, notwithstanding the proposed boundary fences. Although, from the evidence before me, no objection was raised to the proposal by the Council's Environmental Health team on this basis, this relationship would adversely affect the potential enjoyment of the garden by future occupiers of the dwelling. I acknowledge that the revised parking arrangement approved under the variation to condition 2 of the permission for the subdivision of No. 20 would result in the parking spaces being adjacent to the eastern building on the site, but at the time of my site visit this arrangement had not been implemented.
18. I conclude that, even if the revised parking layout is implemented, the development would not provide satisfactory living conditions for the future occupiers of the proposed dwelling with regard to the quality of the external garden area. The harm to the living conditions would be material and so, in this respect, the proposal would conflict with Policy QD27 of the Brighton & Hove Local Plan (2005) (BHLP), which sets out to protect the living conditions of proposed occupiers of development.
19. I am satisfied that the garden area is an integral element of the overall design approach and would be distinct from the public realm. The proposal would therefore comply with criterion 8 of Policy CP12 of the BHCP. However, whilst private in this respect, the overlooking of the garden would render the proposal in conflict with Policy HO5 of the BHLP, which requires the provision of private useable amenity space where appropriate to the scale and character of the development.
20. Furthermore, although not cited in the reasons for refusal, the proposal would also conflict in this respect with paragraph 127 f) of the Framework, which requires planning decisions to ensure that developments create places with a high standard of amenity for existing and future users.

Living conditions of the occupiers of Nos. 20 and 20A Tongdean Lane

21. Whilst I have concluded that the garden area of the proposed development would be unsatisfactory for use in association with a separate dwelling, I do not agree with the appellant that it is unsuitable for use as a garden area for Nos 20 and 20A, given that it would only be overlooked by those properties and the main disturbance would come from vehicles associated with those properties.
22. However, both Nos. 20 and 20A benefit from reasonably sized private gardens to the rear of the dwellings. I consider that these provide adequate external garden areas for the occupiers of these dwellings. The Council has not provided any evidence to the contrary. Accordingly, in my judgement, any harm to the living conditions of the occupiers of Nos. 20 and 20A from the loss of the appeal site as an intended communal garden area is not sufficient reason to withhold planning permission.
23. I therefore conclude that, in this respect, the proposed development would not conflict with Policy QD27 of the BHLP, which also sets out to protect the living conditions of adjacent occupiers. Neither would it conflict with paragraph 127 f) of the Framework in this respect.

Planning Balance

24. It is accepted that the Council cannot demonstrate a 5-year supply of deliverable housing sites. Although the Committee Report refers to supply of 4.5 years, in respect of another appeal before me in the city³, 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.
25. The Government is seeking to significantly boost the supply of land for housing. Local planning authorities should support the development of windfall sites, support the development of under-utilised land and buildings and give great weight to the benefits of using suitable sites within existing settlements for homes. 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.
26. 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.
27. On the evidence before him, including the existence of the buildings on the site, the Inspector that determined the previous appeal considered the site to be part of the garden of No. 20. Notwithstanding the description of the existing use and last use on the application form for the development before me, I have no substantive evidence that site has been used separately from the residential occupation of No. 20. I am therefore not persuaded that it should be considered as brownfield land as residential gardens in built-up areas are specifically excluded from the definition of previously-developed land in the Glossary to the Framework. I therefore find no support for the proposal in this respect.
28. Whilst paragraphs 117 and 122 of the Framework support the effective and efficient use of land, they also require the environment to be safeguarded and the desirability of maintaining an area's character to be taken into account. I therefore find no support for the proposed development from these paragraphs read as a whole.
29. The proposed dwelling would have adequate internal floorspace and lighting to the lower ground floor rooms. I note that the Highway Authority raised no objection in principle to the proposal. 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.
30. The unacceptable harm to the character and appearance of the area and the living conditions of the future occupiers of the proposed dwelling I have identified above and consequent conflict with Policies CP12 and CP14 of the

³ APP/Q1445/W/19/3242947

BHCP, Policies QD27 and HO5 of the BHLP and paragraphs 127 c) and f) of the Framework need to be balanced against the benefits of the proposal. As these policies are consistent with the Framework, I accord the conflicts with them full weight in the context of and determination of this appeal.

31. On balance, I consider that the adverse impacts significantly and demonstrably outweigh the very modest benefits of the development. Even if the site should be considered as previously-developed land, this would not alter my conclusion. Accordingly, paragraph 11 d) ii of the Framework does not indicate that planning permission should be granted in this case.

Conclusion

32. 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 the policies of the development plan I have identified above outweighs the general accordance with Policy CP1 and that the proposal is therefore in conflict with the development plan, taken as a whole.
33. 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