The Planning Inspectorate

Appeal Decision

Site visit made on 16 June 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 15 July 2020

Appeal Ref: APP/Q1445/W/19/3243168
Villa Fleurs, 7 Tongdean Road, Hove BN3 6QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr & Mrs W & A Sancha against Brighton & Hove City Council.
- The application Ref BH2019/01355, is dated 15 April 2019.
- The development proposed is demolition of existing dwelling and the erection of a 5 bedroom house, pool and garaging including landscaping.

Decision

1. I allow the appeal and grant planning permission for demolition of existing dwelling and the erection of a 5 bedroom house, pool and garaging including landscaping at Villa Fleurs, 7 Tongdean Road, Hove BN3 6QB in accordance with the terms of the application Ref BH2019/01355 dated 15 April 2019 and subject to conditions 1) to 14) on the attached schedule.

Application for Costs

2. An application for costs was made by Mr & Mrs W & A Sancha against Brighton & Hove City Council. This application is the subject of a separate Decision.

Main Issue

3. This is the effect of the demolition and the replacement dwelling on the character and appearance of the Tongdean Conservation Area.

Reasons

4. Core Policy CP12 of the Brighton and Hove City Plan Part One sets out requirements on urban design where all new development will be expected to raise the standard of architecture and design in the city and conserve or enhance the built heritage, among other things. Policy CP15 is specific to heritage and states that the city's historic environment will be conserved and enhanced in accordance with its identified significance, giving the greatest weight to designated heritage assets and their settings, and the Tongdean Conservation Area is a designated heritage asset.

5. The Brighton and Hove Local Plan includes Policy QD5 concerns design and street frontages and requires an interesting and attractive frontage particularly at pedestrian level. Existing trees are to be identified and retained under Policy QD16 and development that would damage or destroy a preserved tree will not be permitted unless the development is of national important or socially

essential. Policies HE6 and HE8 set out requirements for development and demolition within conservation areas, buildings that make a positive contribution to the character and appearance of the area should be retained unless supporting evidence is submitted with the application which demonstrates that the building is beyond economic repair (through no fault of the owner/applicant); viable alternative uses cannot be found; and the redevelopment both preserves the area's character and would produce substantial benefits that would outweigh the building's loss. Demolition will not be considered without acceptable detailed plans for the site's development.

6. Paragraph 124 of the 2019 National Planning Policy Framework states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Paragraph 193 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.

7. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

8. The Tongdean Conservation Area encompasses a relatively confined area centred on the junction of Dyke Road Avenue and Tongdean Road, extending only a short way along each and into Tongdean Avenue to the south-west of the appeal site. The dwellings appear individually designed and to occupy generous plots, although there are examples in an eclectic variety of styles and use of materials, including some classical motifs such as at number 9 next door and Spanish or Mediterranean influences nearer Dyke Road, while many contain Tudor or Georgian detailing or display a vernacular revival approach. Of note is the recent development on what is shown on the Conservation Area plan as a vacant plot on the lower corner of Tongdean Road and Tongdean Avenue, comprising a cluster of distinctive contemporary architecture.

9. The boundary treatments are similarly varied, with walls, hedges and more open railings, while trees are a feature of the area, either on a verge as opposite or to the back-edge of the footway, as well as those on the individual plots themselves, whose contribution to the public realm is less obvious. Again, there are features of note, such as the close position of a blank building wall to number 9 and the high brick frontage walls and solid gates on many properties which confine the public realm.

10. Within that variety, number 7 is an undistinguished example of a traditionally built and proportioned detached house, having brick ground floor external walls with render above and traditional roof detailing such as at barge boards and exposed eaves, and mostly traditional windows. There are however jarring features such as the flat roofed side extension and large flat roofed wrap-around dormer, the latter having an unfortunate visual relationship with a chimney stack. These features are seen from the road, but to the rear there is an assemblage of additions and further changes over time that appear poorly integrated with the design of the original house.

11. Also evident during the site inspection were the shortcomings identified in the SHW Condition Report, many of which stem from poor detailing and weathering of junctions in the original design, and only some result from a possible backlog of maintenance and preventative attention. That Report listed the likely costs

associated with putting the building in order, while an accompanying Valuation Report based on the assumption of full refurbishment, but no improvement, gave a market value as of March 2019. These Reports would inform consideration of Policy HE8 on demolition were the building be found to make a positive contribution to the character and appearance of the conservation area as set out previously.

12. The putative Reason for Refusal alleges that the existing house makes a very positive contribution to the historic and architectural qualities of this part of Tongdean Road and the wider Tongdean Conservation Area, and that it exhibits many of the common features of the area and is reflective of the period in which this part of the conservation area was developed.

13. That analysis however needs to be tempered by the harmful effects of the later additions and the dominance of flat roofs in the public view. In addition, the detached pitched-roof garage is poorly integrated with the house design and does not sit well within the street-scene. The Squire Heritage Statement has accurately described the factual context and standing of the house and the conclusions resulting from that study back the findings of the Appeal site inspection as to the quality of the existing dwelling and its contribution to the character and appearance of the conservation area.

14. Regardless of the shortcomings identified in the Condition Report, many of which are not readily discernible from public viewpoints, the house makes only a neutral contribution to the character and appearance of the conservation area, and were the condition and repair issues to be addressed, that finding on its limited architectural and townscape quality would not change. There are other more representative remaining examples to be seen, while that character and appearance has evolved over time to display a less homogeneous set of styles and has successfully integrated some good examples of contemporary domestic design, as well as other additions.

15. Demolition would not therefore be contrary to the first parts of Policy HE8 and since the building does not make a positive contribution, there is no need to consider the 3 criteria on economic repair, alternative uses, which in any event would likely be highly inappropriate, or the need for substantial benefits from the redevelopment. The second part of the Policy on the quality of the replacement and the need to avoid a long-term vacant site will now be considered, along with the other policies on the quality of design.

16. The proposed main part of the dwelling would be a compact plan form placed in a similar position on the site as the existing main house and side extension combined, but would present a more attractive front elevation to the road than that seen at present due to the use of 2 gable-ended pitched roofs receding back into the site, a more fitting replacement for the unattractive flat roof to the east side now such a feature of the public view. Whilst the north-east corner appears to reach closer to the driveway to number 5A than with the existing extension, it is the presence of that driveway, before the close location of the end wall to number 5, that allows this limited extension of the plan footprint. In any event, the use of a pitched roof to that boundary is an enhancement.

17. The plan width would be extended by the pool-house and gym nearer number 9, and that part would have a bedroom suite on the first floor under a third pitched-roofed gable end. The location would be similar to that of the existing

poorly located and presented garage, but the increased height of the gable would mediate far more successfully with the bulk of number 9, which built form extends across the full width of its plot. That gable and the two previously described would be linked by a low fully glazed part which would introduce an attractive modelling to the composition and would serve to break down the bulk of the elevation.

18. That frontal elevation would be further modulated with the middle gable being set back and incorporating more solid detailing, while the second floor that is in only that part would be within the pitch and disguised by hit-and-miss brick detailing. The effect, with a play of shadows and a variation in finish, together with the book-matched symmetry of the outer gables, would be attractive and incorporate many of the defining features of the conservation area but re-interpreted in a contemporary style.

19. It is the fact that the rearward projection of the pool, and what is described as a 'cover', would occupy an area of garden that was not previously utilised, other than in part by an ancillary garden building, but that would not be readily seen from public places and would be visually linked with a rear projection of number 9. There would remain adequate open space and the overall density of built form would not appear as over-development or unduly close to the boundaries when compared with many plots in the area.

20. The suggested Reason for Refusal refers to a potential for damage or loss of trees and it is a fact that those on the road frontage contribute to the character and appearance of the area and are clearly within the public domain. They would not be adversely affected visually by the development and conditions could be used to protect them during construction. As trees within a conservation area they are already subject to control, and the appellant has detailed the position with regard to an ash on the northern boundary which would not be affected and a sycamore that was removed earlier in 2020.

21. Concluding on the proposals with regard to the Development Plan, the new development would meet the standards of design sought in Policies CP12 and QD5, and trees would be protected as required in Policy QD16. The demolition and redevelopment would at least preserve the character and appearance of the conservation area, in accordance with Policies CP15 and HE6, and with a condition to avoid a long-term vacant site, would satisfy the requirements of Policy HE8, and since the existing building does not make a positive contribution to the area, there is no need to consider the exception criteria.

22. As a result, the proposal would accord with the aims of the Framework on design and designated heritage assets and would satisfy the test in section 72(1) as previously detailed.

Conditions

23. The appellant had suggested conditions in Appendix A attached to the Appeal Statement of Case of December 2019 and the Council had in their Statement of June 2020 adopted similar conditions with the addition of a requirement for swift and bee bricks and the removal of permitted development rights. The appellant had in addition proposed a condition regarding tactile paving at a road junction that does not appear to relate to the appeal development or the site. The inclusion of pre-commencement conditions in the appellant's

suggested list is sufficient proof of the agreement required by section 100ZA of the Town and Country Planning Act 1990.

24. Looking then at the detail, a three-year commencement condition is appropriate and a condition naming the 'as proposed' drawings is required for the avoidance of doubt. In addition to those suggested by either party, a condition to secure a timetable for redevelopment is required under Policy HE8 to avoid a vacant site which would be detrimental to the character and appearance of the area.

25. Condition 3 requires the dwelling to be completed, whereas the operative part is that it is not occupied until compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) has been achieved. Occupation is also a suitable trigger point for the necessary energy and water efficiency measures, cycle provision and landscaping. Tree protection is important enough to require a pre-commencement condition, while agreement to materials may be carried out after commencement but before the relevant parts of the building are commenced. The suggested swift and bee bricks are a reasonable and necessary provision, but to ensure a holistic design, details should be provided beforehand.

26. Lastly the question of permitted development rights, which were not included in the appellant's agreed list and where the Council request removal of Classes A, B and C. The removal of rights under Class A for the enlargement, improvement or other alteration of the dwellinghouse would be reasonable in this case, in order for the Council to assess the effect, even allowing for the reduced rights available in the conservation area. Class B is not however available on Article 2(3) land, while the limited rights available under Class C should be permitted due to the configuration of the roof in this design.

27. The resulting conditions satisfy the tests in the Framework and the web-based Planning Practice Guidance.

Conclusions

28. The existing buildings on the site make only a neutral contribution to the character and appearance of the Tongdean Conservation Area and the redevelopment would preserve the character and appearance of the area and would accord with national and local policies on the quality of design. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Villa Fleurs.09A, 10A, 11A, 12A, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23.

3) No demolition shall take place until arrangements have been put in place to secure the implementation of the development approved under this permission and details of these arrangements have been submitted to and approved in writing by the Local Planning Authority. The arrangements shall include details of the timescale for carrying out the development approved under this permission.

4) The development hereby permitted shall be carried out in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) prior to first occupation and shall be retained as such thereafter. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.

5) The dwelling hereby approved shall not be occupied until the building has achieved an energy efficiency standard of a minimum of 19% CO^2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).

6) The dwelling hereby approved shall not be occupied until the building has achieved a water efficiency standard using not more than 110 litres per person per day maximum indoor water consumption.

7) Prior to occupation of the development hereby permitted, a scheme for landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following:

   a. details of all hard and soft surfacing to include type, position, design, dimensions and materials;

   b. details of all boundary treatments to include type, position, design, dimensions and materials;

   c. details of all proposed planting to all areas fronting a street or public area, including numbers and species of plant, and details of size and planting method and location of any trees.

   All hard landscaping and means of enclosure shall be completed in accordance with the approved scheme prior to occupation of the development. All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

8) The development hereby permitted shall not be commenced and no other operations shall commence on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and or widening, or any operations involving the use of motorised vehicles or construction machinery) until the following Method Statements have been submitted to and approved in writing by the Local Planning Authority:

   i) An Arboricultural Method Statement, to include a detailed Tree Protection Plan and Treeworks Specification and means for their implementation, supervision and monitoring during works;

   ii) A Construction Method Statement to include details on how, amongst others, excavations, materials storage, drainage, servicing and hard surfaces will be managed and implemented to provide for the long-term retention of the trees.

9) No development or other operations shall take place except in complete accordance with the Arboricultural and Construction Method Statements approved pursuant to Condition 8).

10) Prior to first occupation of the development hereby permitted, details of secure cycle parking facilities for the occupants of, and visitors to, the development shall have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.

11) No development above ground floor slab level of any part of the development hereby permitted shall take place until samples of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority, including (where applicable):

   a) samples of all brick, render and tiling (including details of the colour of render/paintwork to be used)

   b) samples of all cladding to be used, including details of their treatment to protect against weathering

   c) samples of all hard surfacing materials

   d) samples of the proposed window, door and balcony treatments

   e) samples of all other materials to be used externally

   The development shall be carried out only in accordance with the approved details.

12) Three swift bricks shall be incorporated within the external walls of the development hereby approved in accordance with details to be submitted to and approved in writing by the Local Planning Authority and shall be retained thereafter.

13) A bee brick shall be incorporated within the external wall of the development hereby approved in accordance with details to be submitted to and approved in writing by the Local Planning Authority and shall be retained thereafter.

14) No enlargement, improvement or other alteration of the dwellinghouse as provided for within Schedule 2, Part 1, Class A of the Town and Country

Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.