



Appeal Decision

Site visit made on 2 June 2020

by Robin Buchanan BA (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2020

Appeal Ref: APP/Q1445/W/20/3244547

84 Hollingbury Road, Brighton BN1 7JA

- 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 R Pook (Investsave Ltd) against the decision of Brighton & Hove City Council.
 - The application Ref BH2019/02836, dated 20 September 2019, was refused by notice dated 15 November 2019.
 - The development proposed is the conversion of an existing dwelling (C3) to provide two flats (C3).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether or not the proposed development would:
 - Retain the existing stock of smaller dwellings for small family accommodation;
 - Provide acceptable living conditions for future occupiers, having particular regard to natural light and privacy; and
 - Provide a unit of accommodation which would be suitable for family occupation.

Reasons

Existing stock of smaller dwellings

3. 84 Hollingbury Road is a two storey maisonette in a mixed residential area. The proposal would sub-divide the maisonette into a 1-bedroom flat and a 2-bedroom flat (the latter incorporating a single storey rear extension already granted planning permission by the Council, but not yet built¹). Saved Policy HO9 of the Brighton & Hove Local Plan 2005 'policies retained', March 2016 (the LP) refers to residential conversions and to the retention of smaller dwellings. In criterion HO9(a) a larger dwelling for conversion is defined as being greater than 115m² original floor area or more than 3-bedrooms as originally built. Both main parties agree that the maisonette is the original dwelling for this current appeal and that it has less than 115m² original floor area.

¹ BH2018/00833.

4. I note that existing or future floor area/bedrooms is not referred to in HO9(a), so do not help to establish a larger dwelling to begin with for the purposes of Policy HO9. In an appeal² existing bedrooms were a starting point because it was inconclusive whether that property was originally built as a dwelling or as flats; moreover, it was already in use as flats. In the current appeal there is no dispute that the maisonette exists and is the original dwelling. The Council believes it was originally built with 2 bedrooms and a third created by conversion of an integral garage. That would be consistent with the appellant's 'as existing' floor plans. Furthermore, even if the study is able to be used as a bedroom, there is no clear or compelling evidence before me that it was originally built as a bedroom.
5. It has not therefore been demonstrated that the original floor area of the maisonette is greater than 115m² or that it had 4 or more bedrooms as originally built. I also note that the City's existing housing stock has a particular concentration of certain dwelling types, including flats and maisonettes; but, a bias towards smaller flats which is also manifest in recent new development. Furthermore, while the second highest proportion of demand for market housing is for 2 bedroom properties, there is a lack of choice in property types and sizes available to current and future households, particularly for larger family dwellings.
6. Considering the above, the maisonette is a smaller dwelling and not within the scope of conversion permitted under HO9(a) — it therefore already makes a positive contribution to meeting the Council's housing objectives, as Policy HO9 seeks to safeguard. Furthermore, while a 2-bedroom flat and a 2-bedroom maisonette are both smaller dwellings for the purposes of this Policy and both could meet demand for small family accommodation, the proposal would nevertheless fail to retain the maisonette which could accommodate a larger sized family and would therefore detrimentally reduce housing choice.
7. Consequently, the proposed development would cause harm to the existing stock of smaller dwellings and in this regard would not accord with LP Policy HO9. It would also conflict with the National Planning Policy Framework (the Framework) paragraphs 8(b) and 61 which seek to ensure a sufficient number, size and range of homes are provided to meet needs.

Living conditions

8. The Council does not have a development plan policy that makes use of the Government's Nationally Described Space Standards for internal living spaces. Both main parties agree that the 2-bedroom flat would provide an acceptable standard of living conditions and I have found no reason to disagree. Only the proposed bedroom window in the 1-bedroom flat is in dispute.
9. This window would be relatively narrow and positioned quite low down towards one corner of the building — on one side very close to the side elevation of the approved extension and on the other side close to a relatively high hardboard panel boundary fence. Nonetheless, the window is quite tall and slightly elevated above garden level, which slopes down to the east. In addition, the fence is not very long and the extension roof reduces in height as it projects away from the building. Even if it would be the second smallest window in the rear elevation of the building, and the only window to this only (main)

² APP/Q1445/W/19/3231995.

bedroom, there would therefore be a spaciousness that would not unduly restrict natural daylight into the window, especially in the morning.

10. However, the window would be in line of sight when approaching along a path from the lower parts of the rear garden. These transient views would be unobstructed and eventually very immediate — next to and in front of the window, allowing direct views into the bedroom. The frequency of views, though relatively low, would nevertheless be higher than normal because the path would also be used by the occupiers of the proposed 2-bedroom flat and another maisonette that occupies the top two floors of this building and, in particular, be significantly more intrusive as a result. Furthermore, on occasions it is likely that people may have to pause near the window to allow oncoming people to pass, who may emerge suddenly from around the corner of the house at the bottom of the narrow side steps — such static views, albeit infrequent, would nonetheless be appreciably more intrusive.
11. I appreciate that curtains, blinds or shutters could be closed or occupiers could conduct activity in other parts of the flat. However, during the day this would also unduly reduce natural light into the room (and possibly outlook and ventilation). Moreover, it is not a reasonable expectation to have to rely on such deliberate measures or for external circumstances to dictate internal use and enjoyment of living accommodation to this degree, especially a most private space such as a bedroom, even in urban areas. These circumstances would be likely to cause a tangible sense of worry which would be unsettling and not conducive to satisfactory residential use and occupation.
12. Considering the above, and notwithstanding my findings on natural light, there would be harm to the future occupiers of the 1-bedroom flat due to loss of privacy. Consequently, the proposed development would not provide acceptable living conditions and would not accord with LP Policy QD27. This policy seeks to prevent the loss of amenity for occupiers of new development. It would also conflict with Framework paragraph 127(f) which seeks to ensure a high standard of amenity for future users.

Family occupation

13. Having regard to 'living conditions' above, the 1-bedroom flat would not provide a unit of accommodation suitable for family occupation; it would, in any event, provide only one bedroom and for both reasons conflict with criterion HO9(b). However, both main parties agree that the 2-bedroom flat would provide a unit of accommodation suitable for small family occupation and I have found no reason to disagree.
14. Moreover, it would not therefore be necessary for the 1-bedroom flat to be suitable for family occupation, or for it even to provide two bedrooms — those requirements of HO9(b) would otherwise be met by the 2-bedroom flat. In this regard the proposed development would therefore accord with LP Policy HO9. It would also respect Framework paragraphs 8(b), 61 and 127(f), which seek to ensure a sufficient number, size and range of homes are provided to meet needs, including for families with children.

Other Matters

15. I appreciate that 84 Hollingbury Road is not a listed building (or near one) and not in a conservation area. The proposals would not affect the character or

appearance of the area, the living conditions of occupiers of other properties or any natural features. There would be satisfactory provision for on-street car parking (if required) and with the external side access, while there are steps, cycles for both flats could be securely stored in rear gardens or more conveniently in the front garden. However, the absence of harm in these matters is a neutral factor in my decision and does not lead me to conclude differently in terms of the harm that I have identified in the main issues above.

16. Since the appeal was lodged, the Council has granted planning permission to change the use of the maisonette to a 'five bedroom small house in multiple occupation' (HMO).³ However, this would not increase the number of bedrooms in the maisonette and this loss of an existing smaller family home is a matter that the Council has reconciled in its decision to grant permission for the HMO — noting, in any event, that LP Policy HO9 is not a barrier to such a decision and that the HMO would not provide self-contained accommodation or be suitable for small family occupation. This extant permission does not therefore provide a fall-back position in support of the appeal.

Planning Balance and Conclusion

17. I recognise that the appeal site is closely located to small parades of shops and other facilities and services, with bus routes and railway station accessible by walking. I also acknowledge that the proposed development would result in a net gain of one residential unit, would add to the future stock of 1 and 2-bedroom smaller dwellings and would result in construction and related work. Other benefits of the proposal suggested by the appellant relate to Council Tax receipts, a New Homes Bonus and efficient use of previously developed 'brownfield' land.
18. Furthermore, it is common ground between the main parties that the Council has not met the Government's Housing Delivery Test and cannot demonstrate a five year housing land supply (5YHLS). Consequently, the so-called 'tilted balance' of Framework paragraph 11 is engaged.
19. Notwithstanding my findings on living conditions and family occupation for the 2-bedroom flat, the proposed development would cause harm to the existing stock of smaller dwellings and would cause harm to the living conditions of future occupiers of the 1-bedroom flat. Consequently, the proposed development does not accord with the development plan overall. Even if I were to conclude that there is a 5YHLS shortfall on the scale argued by the appellant, given the modest scale of the development proposed, the identified benefits would be limited, such that the adverse impacts of granting planning permission would significantly and demonstrably outweigh those benefits.
20. For the reasons given, the appeal does not succeed.

Robin Buchanan

INSPECTOR

³ BH2019/02908.