The Planning Inspectorate

Appeal Decision

Site visit made on 21 July 2020

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2020

Appeal Ref: APP/Q1445/W/20/3246949
43 Rushlake Road, Brighton, BN1 9AE

- 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 Christina Banks against the decision of Brighton & Hove City Council.
- The application Ref BH2019/03365, dated 8 November 2019, was refused by notice dated 17 January 2020.
- The development proposed is erection of a new build dwellinghouse (C3) replacing existing garage.

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing garage and erection of a dwellinghouse (C3) fronting Rushlake Close with landscaping and associated works at 43 Rushlake Road, Brighton, BN1 9AE in accordance with the application Ref BH2019/03365, dated 8 November 2019, but subject to the attached schedule of conditions.

Preliminary Matters

2. The description of development in the header is taken from the planning application form. However, the description in the formal decision is taken from the decision notice. This was also the description used by the appellant, on the appeal form.

3. I carried out an unaccompanied site visit. It was possible to assess the proposal from public land.

Main Issues

4. The effect of the proposal on:

   - The character and appearance of the area

   - The living conditions of future residents, with particular regard to natural light and outlook.

   - The living conditions of existing residents at 43 Rushlake Road, with particular regard to the provision of external amenity space.

Reasons

5. The site currently hosts a detached garage. In planning terms, the Council advise that it forms part of the planning unit associated with 43 Rushlake Road,

although the site has been fenced off and the larger plot has been informally subdivided. The new building would face on to Rushlake Close, with a similar orientation to the existing garage.

Character and Appearance

6. Buildings along and around Rushlake Close are of various sizes, with bungalows, semi-detached and detached properties all visible around the site. The underlying land is hilly, reflected in the layout of Rushlake Close and the positioning of residential properties; some sit above the road, others below. In the area immediately around the site there is limited regularity in plot and building lines. The area therefore has a spacious and eclectic character.

7. The residual garden of 43 Rushlake Road would be of a similar depth to 37 Rushlake Road, another corner plot which appears to have been historically partitioned in a similar manner. The plot associated with the proposal would be slightly more compact than that typically found in the surrounding area, but this would be reflected in the limited above ground dimensions of the proposed building, meaning that there is still a good amount of visual space around it, at ground level.

8. The above ground structure would be of broadly similar dimensions to the existing garage. It would be set back a reasonable distance into the site and would not be unduly prominent when viewed from the street. It would be smaller than surrounding residential buildings, but it would be faced in brick and would otherwise blend in with its surroundings.

9. The main manifestation of the subterranean element, the sunken central garden, would be sited well away from any important public views. It would be also be set a reasonable distance away from private views from neighbouring residential properties, so it would not be visually prominent. The proposed rooflights would be set level with the ground, so they would not be unduly visible from the road.

10. Read together, the above and below ground elements of the structure would appear as a coherent building that makes effective use of land whilst respecting the character of the surrounding built environment. Neither the residual plot associated with No. 43 nor the new plot would appear unduly small and the proposed development would not appear cramped. Overall, the proposal would add to the eclectic and spacious character and appearance of the area, there would be no harm in this respect. It complies with policy CP12 of the Brighton and Hove City Plan Part One (2016) which seeks to achieve good design.

Living Conditions (future residents)

11. The main living area and second bedroom of the proposed building would both face on to retaining walls several metres away, across private external amenity space associated with the proposed development. The arrangement proposed is not dissimilar to a courtyard - a common layout in residential development. Whilst the area would be heavily shaded for parts of the day, it would be possible to view the sky above the retaining walls. The outlook from these rooms would be acceptable.

12. The main living area associated with the dwelling would also benefit from large rooflights. Consequently, this area would have a good amount of natural light. There would be less light in the second bedroom, but the primary purpose of

this room is for sleeping so this is acceptable. Overall, the proposal would provide acceptable living conditions for future residents, both in terms of natural light and outlook. There is no conflict with saved policy QD27 of the Brighton and Hove Local Plan 2005 ("Local Plan") which requires, amongst other things, that new development is not detrimental to human health.

Living Conditions (existing residents)

13. The proposal would formalise the existing partitioning of the residential garden of 43 Rushlake Road. The depth of the residual garden would be broadly comparable to other rear gardens depicted on the submitted block plan, including 37 Rushlake Road and 1A Rushlake Close. At several metres in depth, it would be satisfactory for activities typically associated with residential external amenity space such as sitting out, children's play or gardening.

14. There would be no harm to the living conditions of existing residents at 43 Rushlake Road, in terms of the provision of external amenity space. There is no conflict with saved policy QD27 of the Local Plan which seeks to ensure that proposals do not cause loss of amenity to existing residents.

Other Issues

15. It is common ground that the Council cannot demonstrate a 5-year housing land supply. The National Planning Policy Framework ("the Framework") states that, in these circumstances the policies which are the most important for determining the application are out-of-date. However, the proposal here would achieve a well-designed place and there are no adverse impacts of granting planning permission. The presumption in favour of sustainable development applies.

Conditions

16. Planning conditions are necessary in the interests of certainty and for legal reasons; to ensure that the final materials used are acceptable in relation to the character and appearance of the surrounding area; to ensure compliance with optional building standards reflected in local plan policies, and to ensure adequate provision for cycle parking is made within the development.

17. Two additional conditions have been added, beyond those suggested by the Council. Firstly, it will be clear from my reasoning above that the rooflights above the main living area are necessary to provide appropriate levels of natural light to this area. A condition requires that these are installed before the development is occupied. Secondly, the appellant suggested an additional condition relating to landscaping. I agree that this is necessary to ensure a satisfactory standard of development that makes appropriate provision for biodiversity. The conditions as imposed comply with the policy on the use of planning conditions, as set out in the Framework.

Conclusion

18. The proposal complies with the development plan and there are no other considerations that outweigh this finding. The appeal should succeed.

Neil Holdsworth

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: Proposed drawings PR01, PR02, PR03 and PR04

3) No development above ground floor slab level of any part of the development hereby permitted shall take place until details of all materials to be used in the construction of the external surfaces of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. This shall include samples if requested by the Local Planning Authority. The development shall be carried out in accordance with the details approved under the terms of this condition.

4) The development hereby permitted shall not be occupied until the dwelling hereby permitted has been completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) and shall be retained in compliance with such requirement 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) None of the residential units hereby approved shall be occupied until each residential unit built has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline)

6) None of the residential units hereby approved shall be occupied until each residential unit built has achieved as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption.

7) The development hereby permitted shall not be occupied until details of secure cycle parking facilities for the occupants of, and visitors to, the development 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.

8) No part of the residential development hereby approved shall be occupied until the rooflights that serve the kitchen/dining/living room have been installed. Once installed, these rooflights shall be maintained as a source of natural light for the habitable living area for the lifetime of the development.

9) No part of the residential development hereby approved shall be occupied until a landscaping and ecological improvement scheme demonstrating appropriate details to encourage biodiversity has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the plans approved in response to this condition.

END OF SCHEDULE