
Appeal Decision

Site visit made on 24 November 2020

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2020

Appeal Ref: APP/Q1445/W/20/3252042
218 Dyke Road, Brighton BN1 5AA

- 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 LAN Estates Ltd against the decision of Brighton & Hove City Council.
 - The application BH2019/02289, dated 29 July 2019, was refused by notice dated 9 March 2020.
 - The development proposed is the erection of 1 no. 3 bed dwellinghouse.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 1 no. 3 bed dwellinghouse at 218 Dyke Road, Brighton BN1 5AA in accordance with the terms of the application BH2019/02289, dated 29 July 2019, and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by LAN Estates Ltd against Brighton & Hove City Council. This application is the subject of a separate decision.

Procedural Matter

3. Representations by interested parties have questioned the lawful status of the appeal site, arguing that it remains a beer garden. I understand that following closure of the public house around 2016 it was converted to a shop with residential accommodation above under permitted development rights. Subsequently in 2019 part of the premises was granted planning permission for conversion back to a public house of a reduced size to the original¹. That permission has been implemented. The part of the site associated with the new public house use does not include the appeal site.
4. Based on this planning history, I share the view of the Council that the lawful use of the appeal site is as land ancillary to the remaining retail and residential use, and not ancillary to either the former or newly permitted public house uses. The change in the use of the land took place when the former public house was changed to a shop, and the change applied to the whole of the planning unit, including the curtilage of the building. The site is not, therefore, any longer a beer garden in land use planning terms. I have proceeded with the appeal on that basis.

¹ BH2019/00914.

Main Issues

5. The main issues are the effect of the development on:
- The character and appearance of the area, including the setting of the adjacent grade II listed building
 - The living conditions of future occupants in respect of noise and disturbance
 - The living conditions of neighbouring occupants of flats at 218 Dyke Road in respect of outdoor garden space.

Reasons

Character and appearance

6. The area is mixed in character with a variety of business uses including shops, a repair garage and public house alongside terraced housing and other more recent residential development. There are a multiplicity of different building sizes and styles and the area has a tight knit quality to it with buildings predominating.
7. The site itself is an open plot of land and is bounded by a brick wall. Backing on to the site is a grade II listed building that is a good example of a purpose-built public house in the Tudor Revival Arts and Crafts style. Running along the side of the site is a driveway serving a mews court of residential houses at the rear. A terrace of houses flanks the other side of the driveway facing Highwood Villas.
8. The proposed dwelling would be modest in size, largely filling the width of the plot and fronting onto the road. Its visual presence would be further reduced by it being sunken down with the ground floor forming a semi-basement.
9. Due to its modest size, height and design I consider that the proposed building would fit into the plot without appearing overly dominant or cramped in views from the road. It would flank the drive leading to Old Mills Mews, but this relationship would be similar to that which exists between the neighbouring end of terrace and the drive. It would reflect the tight knit character of this part of the neighbourhood.
10. While filling part of the space at the rear of the adjacent grade II listed building, there would nevertheless remain sufficient room to provide visual separation between the buildings and retain views of the flank and rear of the listed building. I reach that view notwithstanding the former use of the site as a beer garden to the public house. The rear of the listed building has been altered and added to over the years, causing it to have less visual significance than the principal elevations that front Dyke Road and Highcroft Villas. The reduction in views of the rear of the listed building from Highcroft Villas that would be caused by the proposed dwelling would not therefore adversely affect its significance or historic value.
11. The proposed dwelling has been designed with a simple building form, reminiscent of a coach house, which would further help it to sit comfortably alongside the rear of the listed building without appearing discordant or out of place. It is also proposed to retain the boundary wall, other than where

required to form front and rear pedestrian accesses to the site. The wall is of a similar age to the listed building and its retention is therefore desirable.

12. I conclude that the proposed dwelling would not harm the character or appearance of the area and would preserve the setting of the listed building. As a result, it would comply with policy HE1 of the Brighton & Hove Local Plan and policies CP12 and CP15 of the Brighton & Hove City Plan Part One, which together seek to ensure good design in new development and to protect the city's heritage assets.
13. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. For the reasons given above I consider that the development would preserve the setting of the listed building and therefore would not conflict with the legislation protecting such heritage assets. As I have found no harm to the setting of the listed building, there is no need for me to weigh it against the public benefits of the proposal.

Living conditions of future occupants

14. Immediately to the rear of the public house, between it and the appeal site, is a small fenced service yard used to store barrels and refuse bins associated with the public house use. This yard would be separated from the proposed dwelling by a fence, a narrow strip of garden and the pedestrian access to the dwelling.
15. Activity in the yard may cause some noise on occasion. However, I would expect that disturbance to be limited given the size of the public house and the level of activity that it may be expected to generate. Potential disturbance would be further reduced by conditional controls imposed when the most recent public house use was granted, which include a delivery and service management plan, and a limit on opening hours. There is already residential accommodation above the public house, and I have not been presented with any evidence that the occupants of that accommodation are caused unacceptable disturbance by the public house use. The relationship between the proposed dwelling and the public house is not significantly different to many such relationships between dwellings and businesses in the urban environment.
16. I conclude that while the proximity of the dwelling to the public house, and in particular its service yard, may give rise to some noise and disturbance, it would not be so noisy or disturbing as to be harmful to the living conditions of future occupants. The proposed development would therefore comply with policy QD27 of the Brighton & Hove Local Plan, which resists development that would cause material nuisance and loss of amenity to proposed, existing or adjacent occupiers.

Living conditions of neighbouring occupants

17. Planning permission has been granted for the formation of three residential flats in the upper floor of the shop/public house building². This permission includes the use of the appeal site as part of the outdoor garden space for the flats.

² BH2019/02290.

18. Development of the appeal site in the manner proposed would remove it from being used as garden for the flats. However, a smaller area of land of some 42m² would remain between the appeal site and the rear of the shop unit, which would continue to be available as garden space for the flats.
19. Policy HO5 of the Brighton & Hove Local Plan requires the provision of private useable amenity space in new residential development where appropriate to the scale and character of the development. Neither the policy nor its supporting text sets any minimum standard for amenity space, it being a matter of judgement as to what is appropriate in any given circumstance. I consider that although it would be considerably smaller than originally proposed, the reduced garden area would still be adequate as useable outdoor amenity space for the 3 flats which have been permitted.
20. Whether the planning permission for the 3 flats is invalidated by the removal of part of its assigned garden land is a matter for the Council to determine. Based on my assessment, in principle it would not. In any event, the appeal scheme would not prevent the continued occupation of the residential accommodation above the shop/public house building, which at present has no access to any of the outdoor garden area.
21. I conclude that the current appeal scheme would not harm the living conditions of neighbouring occupants of the permitted flats. Although it would reduce the garden space assigned to them, there would still be adequate space left. The development would thereby accord with policies HO5 and QD27 of the Brighton & Hove Local Plan.

Other Matters

22. I am conscious that there has been considerable local support to retain the public house as a community asset, and that this has led to opposition to the appeal scheme because it is seen as removing part of that asset. I am aware that the appeal site is registered as part of an Asset of Community Value. That does not grant any particular land use status to the land, but rather provides time for the community to bid for the site should it be offered for sale. For the reason set out in my procedural note, the site does not form part of the curtilage to the current public house use, and I must determine the appeal on that basis.
23. While the appeal site nominally forms land associated with the remaining retail and residential uses, it is not used for any retail related purposes and its development would not lead to the loss of any retail floorspace. I do not therefore consider it conflicts in any material way with policy SR8 of the Brighton & Hove Local Plan, which controls changes of use to individual shops.
24. Concerns have been raised on the effect of the development on the living conditions of other neighbouring residents, including those in Old Mills Mews, from additional congestion, lack of car parking, danger from greater use of a restricted access, pressure on public services and loss of the wall along the private driveway. The Council has not raised reasons for refusal on these grounds and I see no justification to do so either. The boundary wall is shown to be retained as part of the application, and a condition can be included requiring details of how that would be achieved in more detail.

25. Concern has also been raised about disruption during construction. This applies to almost all development and is not a reason for preventing development taking place.

Conditions

26. I have considered the conditions suggested by the Council against the tests contained in paragraph 55 of the National Planning Policy Framework. I have imposed those conditions which I consider meet the tests, subject to minor rewording in the interests of clarity, consistency and precision. I have re-ordered them in accordance with the advice in the Planning Practice Guidance and combined suggested conditions together where appropriate.
27. In addition to a time limit condition I have included a condition listing the approved plans for certainty. I have included two pre-commencement conditions requiring details of ground levels and measures to protect the boundary wall, in the interests of neighbouring properties and the character and appearance of the area. I consider these details need to be approved prior to commencement to avoid unnecessary harm being caused to land outside the site or the wall. The appellant has raised no objection to their inclusion.
28. I have included conditions requiring approval of external materials, window and bargeboard detailing, and the design of roof lights and garden gate in the interests of the character and appearance of the area and the setting of the adjacent listed building.
29. I have included conditions requiring refuse and recycling facilities and cycle storage facilities to be provided in the interests of the living conditions of future occupants.
30. I have included conditions requiring energy and water efficiency standards are met in the interests of the sustainable construction of the dwelling and to meet policy requirements in the Development Plan.
31. I have included the installation of bee and bird bricks in the building in the interests of the ecological value of the site.
32. I have included a condition requiring windows in the west elevation to be non-opening in the interests of the living conditions of neighbouring residents. I have modified this condition so that it applies only to the first floor windows and also requires them to be obscured glazed, as shown on the approved plans, where that might lead to overlooking.
33. Paragraph 53 of the Framework advises that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. I do not consider the proximity to the listed building amounts to sufficient justification and have therefore not imposed such a condition.
34. As a single residential dwelling I consider a condition limiting the fixture of cables and wires to the building to be unnecessary. Similarly, given the size of the scheme and the limited garden land available, I consider a landscaping scheme is also unnecessary.
35. The Council has suggested a condition which has the intention of preventing future residents of the dwelling from applying for residents' parking permits. As

this relates to a restriction that would more normally be controlled through other means of regulation, in this case the controlled parking zone traffic regulation order, I consider it would fail the test of necessity to seek to impose it by a planning condition. Although I note the high uptake in parking permits within the existing controlled parking zone, the addition of one additional dwelling is unlikely to make a significant difference to parking congestion or highway safety in the time required for the traffic regulation order to be amended.

Conclusion

36. The appellant has drawn attention to the lack of a 5 year housing land supply in Brighton & Hove. Given my conclusions on the main issues, I consider that I have no need to consider this issue any further as the proposed development accords with the Development Plan and that there are no material considerations that indicate otherwise.

37. I therefore conclude that the appeal should be allowed.

Guy Davies

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: TA115101F, TA1511/40B, TA1511/41B, TA1511/42B, TA1511/43B, TA1511/44B and TA1511/45B.
- 3) The development hereby permitted shall not commence until details of existing and proposed ground levels within the site and on land adjoining have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved ground level details.
- 4) The development hereby permitted shall not commence until a method statement setting out how the existing boundary wall is to be protected during and after construction works, including details of temporary support or underpinning, has been submitted to and approved in writing by the Local Planning Authority. The protection works shall be carried out in accordance with the approved method statement.
- 5) No development above slab level of the development hereby permitted shall take place until details or samples of the 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. The development shall be carried out in accordance with the approved details or samples.
- 6) No development above slab level of the development hereby permitted shall take place until details of windows and bargeboards, including 1:20 scale elevational drawings and sections and 1:1 scale joinery sections, have been submitted to and approved in writing by the Local Planning Authority.

The windows and bargeboards shall be installed in accordance with the approved details.

- 7) The development hereby permitted shall not be occupied until details of secure cycle storage facilities for the occupants and visitors to the development have been submitted to and approved in writing by the Local Planning Authority. The approved storage facilities shall be made available prior to first occupation and thereafter retained.
- 8) The development hereby permitted shall not be occupied until the refuse and recycling facilities indicated on the approved plans have been installed. The refuse and recycling facilities shall thereafter be retained.
- 9) The development hereby permitted shall not be occupied until it has been completed in accordance with Building Regulations Optional Requirement G2 Regulation 36(2b) to achieve a minimum water efficiency standard using not more than 110 litres of water per person per day maximum indoor consumption, and shall be retained in compliance with such requirement thereafter.
- 10) The development hereby permitted shall not be occupied until the first floor windows on the west elevation have been fitted with obscured glazing, and no part of those windows that is less than 1.7m above the floor of the room in which it is installed shall be capable of being opened. Once installed the obscured glazing shall be retained thereafter.
- 11) The rooflights hereby approved shall have steel or cast metal frames colour-finished black or dark grey, fitted flush with the adjoining roof surface and shall not project above the plane of the roof.
- 12) The new gates at the front and rear of the site shall be constructed of tongue and groove timber boards with a painted finish.
- 13) The development hereby permitted shall be constructed to an energy efficiency standard that is designed to achieve a minimum reduction of 19% CO₂ emissions over Building Regulations requirement Part L 2013 (TER baseline).
- 14) One bee brick and three swift bricks shall be incorporated within the external walls of the development hereby permitted and retained thereafter.

***** End of Conditions *****