



Appeal Decision

Site visit made on 25 November 2020

by **G Roberts BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 08 January 2021

Appeal Ref: APP/Q1445/W/20/3255322

111 Kings Gate, The Drive, Hove, BN3 6FU

- 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 Anstone Properties Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/00900, dated the 23 March 2020, was refused by notice dated the 26 May 2020.
 - The development proposed is creation of an additional floor to provide 4 units each with private parking.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant has submitted a revised Proposed Site Plan showing changes to the layout of proposed car parking spaces No. 25 and 26. The Council's Statement of Case indicates that this revised plan would overcome its objections to the original parking layout and thus address its second reason for refusal.
3. This revised plan was not included as part of the original application. Whilst I note that the appellant submitted the plan to the Council before it received the decision notice, it was received too late to be considered as part of the original application. This revised plan has not, therefore, been the subject of formal consultations with local residents. I also note from the representations made by interested parties that they appear to have been unaware of the submission of this revised plan. In addition, these interested parties have not had the opportunity to comment on the position now being adopted by the Council.
4. Given the above and in applying the 'Wheatcroft Principles' (*Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]), the interests of interested parties would be prejudiced were I minded to accept this revised plan. I have therefore determined the appeal on the basis of the Proposed Site Plan referred to in the Council's decision notice.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the character and appearance of the host building and surrounding area; and

- the effect of the use of the proposed car parking spaces on the safety of pedestrians, cyclists and drivers.

Reasons

Character and Appearance

6. The appeal site is located on the corner of The Drive and Old Shoreham Road. The surrounding area comprises a mixture of blocks of residential flats, similar to the appeal building, as well as substantial detached houses dating from the Victorian period. The latter include the properties that immediately adjoin the appeal site, No. 70 Old Shoreham Road and No. 107 – 109 The Drive, both of which are two storeys with rooms in the roof.
7. The existing appeal building already dominates its neighbours. This results not only from its height, extending as it does to four storeys, but also from its massing and width, with the 'L' shaped building occupying a substantial part of the site frontage to Old Shoreham Road and The Drive.
8. Within that context, the appeal proposal would represent an incongruous addition to the host property. It would result in a building that would be substantially taller and bulkier than its neighbours, completely overwhelming them. The resulting scale, height and mass of the building would be out of keeping with the streetscene. Moreover, I agree with the Council that the proposal would result in the building appearing over-extended. The harm that would result to the character and appearance of the host building and the surrounding area would be significant, accentuated by the fact that the appeal site occupies a prominent corner at a busy junction where it is highly visible.
9. The appellant has referred to the existence of other blocks of flats in the area and examples of blocks where additional floors have been permitted and built, including West View on The Drive and Park House on Old Shoreham Road. However, both developments are located some distance from the appeal site and do not form part of its immediate context. In the case of West View, its neighbours on The Drive are a railway line and modern block of flats, of similar height albeit separated from it by Wilbury Avenue. In relation to Park House, its neighbours on Old Shoreham Road are open parkland areas. In neither case are they, therefore, comparable to the appeal site.
10. The appellant contends that weight should be accorded to the prior approval process for additional storeys under the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020. However, the Council have confirmed that a prior approval application was submitted by the appellant and refused (Ref BH2020/02220), and that as a consequence there is no current or legitimate fall-back option. Moreover, the appeal before me relates to the refusal of planning permission and not an application for prior approval.
11. The appellant submits that the set back of the new floor would result in the additional storey appearing subservient to the host building and that its impact would be further mitigated by the use of lighter materials. Whilst I accept that these factors would soften the appearance of the new floor, they do not affect my findings in relation to the significant harm that would result from the proposal. Similarly, the fact that The Drive also rises slightly as you approach the appeal site from the south does not affect my findings.

12. Accordingly, I find that the proposed development would be contrary to Policy CP12 of the Brighton & Hove City Plan Part 1 (City Plan) and Policy QD14 of the Brighton & Hove Local Plan (Local Plan). These policies seek, amongst other requirements, to ensure that new development has regard to its setting and the character of the area, is not overbearing and is well sited in relation to the host building, adjoining properties and the surrounding area.

Highway Safety

13. The Proposed Site Plan shows four new parking spaces, No. 25, 26, 27 and 28. The Council contend that spaces No. 25 and 26 would be unsafe. These two spaces would be located on the frontage of the appeal site, to The Drive and at right angles to the access road that leads to the main parking area at the rear of the host building. As these spaces would be set back from the access road and from the southern extent of the host building, they would be completely screened from drivers, cyclists and pedestrians' views when exiting the main rear car park.
14. The level of visibility from spaces No. 25 and 26 would be very poor, increasing the potential for both vehicle, cyclists and pedestrian conflict. I also agree with the Council, that vehicles exiting these spaces could result in the pedestrian walkway to The Drive being blocked if vehicles were attempting to access the car park at the same time. This would result in an unsafe layout, harmful to highway safety.
15. Occupiers of the flats on the appeal site have raised concerns over whether proposed parking spaces No. 27 and 28 would restrict access to their garages, within the rear parking area. I note that this was not an issue raised by the Council. Even so, the proximity of these new spaces to the existing garages appears tight, but in the absence of any information showing how vehicles could manoeuvre within this area it is not possible for me to reach a finding on the concerns raised.
16. The appellant has referred to the fact that the surrounding Controlled Parking Zone is under capacity and could absorb any likely levels of overspill of parking, a view that the Council accept. Even so, the proposal before me is for four new parking spaces to serve the proposed development, and thus the acceptability of those spaces in highway safety terms. I have considered the appeal solely on that basis.
17. Accordingly, I find that proposed parking spaces No. 25 and 26 would be unsafe and harmful to highway safety contrary to Policy TR7 of the Local Plan. This policy requires new development to be designed so that it is safe to all highway users.

Planning balance and conclusion

18. The Council acknowledge, in their Officers Report and Statement of Case, that they are unable to identify a 5-year supply of housing land and that consequently the relevant housing policies of the development plan are out of date. In these circumstances, paragraph 11 d) ii of the National Planning Policy Framework (February 2019) (Framework) requires planning permission to be granted unless "*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*"

19. There are a number of benefits to the appeal proposal. It would secure four new residential units and would therefore assist in meeting strategic housing delivery aims and boost the supply of new homes in line with paragraph 59 of the Framework; it would secure an appropriate mix of units in accord with development plan policies; it would secure the more effective use of the appeal site; and, it would secure employment during construction, though the economic benefit of this would only be short term. Collectively, I attach moderate weight to these benefits
20. The appeal proposal would have an adverse impact on the character and appearance of the host building and the surrounding area. The proposed new parking spaces No. 25 and 26 would also be harmful to highway safety.
21. In my view, the harm I have identified would significantly and demonstrably outweigh the benefits of the appeal proposal, when assessed against the policies in the Framework taken as a whole. Consequently, the presumption in favour of sustainable development envisaged in the Framework does not apply in this instance. The Framework is not a material consideration in this instance that indicates a decision other than in accordance with the development plan
22. For the reasons given above and having taken all other matters into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR