
Appeal Decision

Site visit made on 20 April 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2021

Appeal Ref: APP/Q1445/W/20/3261825

40 Wilbury Road, Hove BN3 3JP

- 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 against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/01331, dated 13 May 2020, was refused by notice dated 10 July 2020.
 - The development proposed is erection of two dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission has already been granted¹ for a development of two 2-bedroom dwellings on the appeal site. That permission has been implemented and the dwellings are substantially complete. At least one was occupied at the time of my visit. The proposal would involve the construction of an extra storey to create a pair of 3-bedroom dwellings.

Main Issues

3. The main issues are:
 - a) whether the development would provide acceptable living conditions for its occupants, with reference to outdoor amenity space; and
 - b) whether the proposal would preserve or enhance the character or appearance of the Willett Estate Conservation Area.

Reasons

Quality of living environment

4. The Council cites two policies in relation to this issue. Policy HO5 of the Brighton and Hove Local Plan 2005 (LP) requires the provision of private useable amenity space in new residential development where appropriate to the scale and character of the development. Policy CP14 of the Brighton and Hove City Plan Part One (2016) (CP1) permits development at higher densities than those typically found in the locality where, amongst other things, the proposal provides for outdoor recreation space appropriate to the demand it would generate.

¹ Reference BH2019/02863

5. The latter is aimed at outdoor recreation space as opposed to private amenity space and therefore it is Policy HO5 which is most relevant to this particular appeal. The policy does not prescribe the amount of amenity space required and furthermore I have not been directed to any minimum size standards for gardens and balconies. Whether the proposed provision is adequate will be a matter of planning judgement based on the facts of the case.
6. As built, each of the dwellings is provided with a decked area at ground level, accessed from the main living room at the rear of the property. According to the officer report these areas would measure 7.81 m² and 5.55 m² in area, with depths of 1.78 m and 1.43 m respectively. Whatever the precise dimensions, and I note the appellant does not dispute the Council's figures, it is evident from the plans that the amenity space is extremely limited. The decking is large enough to accommodate a small table and chairs but circulation space is tight and the areas are substantially enclosed by solid boundary treatments. The Council clearly accepted this arrangement in approving the original scheme, but this was an on balance judgement, with officers considering that the arrangements for amenity space were 'less than ideal'.
7. The proposed plans show a pair of 3-bedroom dwellings. The appellant argues that one of these rooms could be used as a home office, guest room or gym. Whilst I acknowledge this possibility, the addition of a room to each unit moves the development firmly into the realms of family accommodation. The probability is that there would be a greater number of occupants. These households have an increased requirement for high quality outdoor space for everyday activities such as sitting out, children's play, gardening and clothes drying. The decked areas in the appeal scheme are simply too small to be able to accommodate these needs.
8. The appellant has directed me to an appeal decision for 4-6 Montefiore Road² relating to a proposal for a 3-bedroom townhouse. I have not been supplied with the approved plans for this scheme, but note from the Inspector's reasoning that provision for amenity space included a small patio garden at ground level, balcony and 'reasonably sizeable' roof terrace with a southerly aspect and good views. Based on this description, that scheme is not directly comparable with the proposal before me.
9. I note that the Council has approved a flatted scheme at the cricket ground in which a significant proportion of the residential units lack any private amenity space. I do not know the precise bedroom mix for that development, but it is clear from the committee report that there were significant constraints to the provision of amenity space. The indications are that this was a complex scheme with significant public benefits to factor into the planning balance. It can therefore be distinguished from the current appeal.
10. I have taken account of the fact that the area has a high proportion of dwellings which have been subdivided into flats where only the lower ground floor units benefit from small gardens. I have also noted that there are public open spaces, including the beach, within half a kilometre. Whilst some households will value the accessibility of the urban location over amenity space, this does not persuade me that the appeal scheme is acceptable. The proposal would provide inadequate outdoor amenity space relative to the scale of the accommodation, and for this reason I conclude that it would not provide acceptable living conditions for its occupants. This would lead to conflict with LP Policy HO5.

² APP/Q1445/A/14/2225541

Conservation Area

11. The character and appearance of the Willett Estate Conservation Area is derived in the main from large bay fronted, detached, semi-detached and terraced houses, set in spacious tree-lined streets, behind low walls. The appeal site bounds onto Eaton Road which cuts across the main streets. Originally part of the curtilage for 40 Wilbury Road, the site was used for car parking before permission was granted for a pair of semi-detached dwellings. This development, which is now substantially complete, has blocked views across the rear gardens of properties in Selborne Road and Wilbury Road. The new dwellings, which substantially fill their modest plot, have created a street frontage where none previously existed and they run contrary to the historic street pattern. That said, the building does not jar in the street scene; its principal façade is constructed using good quality stone detailing and gault brickwork which is sympathetic to the prevailing local style.
12. The additional storey of accommodation being proposed would increase the height of the building, but this in itself would not be out of character. The flat roof would sit well below the eaves of 40 Wilbury Road and 51 Selborne Road, against which the development would be viewed. The top floor would be set back from the edges of the roof to create subordination. Eaton Road contains a greater variety of architecture compared with some of the principal streets within the Conservation Area, including some large scale buildings immediately outside the boundary. Set in this context, I do not consider that the general form, scale and massing being proposed would be intrinsically harmful to the street scene or the Conservation Area as a whole.
13. Where I do have concerns is in relation to the design of the proposed top storey. Although respectful of the building symmetry, the addition would be bland and lacking in architectural detail. Its appearance would bear little relation to the principal elevation below, with the result that it would read as a discordant adjunct. The appellant draws parallels to 24 Wilbury Grove, but the design of that building is more successful due to the differentiation in materials and the fact that the roof addition is visually less prominent.
14. For the above reasons, I conclude that the proposal would fail to preserve or enhance the character or appearance of the Willett Estate Conservation Area. There would be conflict with CP1 Policies CP12, CP14 and CP15 and LP Policy HE6 insofar as these promote a high standard of design and detailing which respects the City's historic environment.

Planning Balance and Conclusion

15. The proposal would lead to less than substantial harm to the Conservation Area. Paragraph 196 of the National Planning Policy Framework (the Framework) explains that in such circumstances, the harm should be weighed against the public benefits of the proposal including, where appropriate, securing the optimum viable use of the heritage asset. The appellant argues that I should factor in the public benefits of housing delivery, even though the original permission has already been implemented. I disagree. My decision must be based on the circumstances prevailing at the time my decision is issued. The dwellings are substantially complete and at least one is occupied; that is the default position should the appeal fail. Furthermore, any visual benefits of redeveloping the car park have already been realised.

16. The proposal would make more effective use of the site through the provision of additional bed spaces and it would generate some employment during the construction period. However, the scale of construction works would be limited and statistics show demand for 2 and 3 bed properties to be evenly split³. I therefore consider both to be minor public benefits which are not sufficient to outweigh the harm to the character and appearance of the Conservation Area. The Framework explicitly states that great weight should be given to the conservation of designated heritage assets and this applies even where the harm is less than substantial.
17. The Council concedes that it is unable to demonstrate a 5 year supply of deliverable housing sites. Paragraph 11 (d) of the Framework is thus engaged. This states that permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
18. The harm to the Conservation Area provides a clear reason for refusing the development proposed, and for this reason the proposal does not constitute sustainable development for which there is a presumption in favour. Given this finding, there are no material considerations to outweigh the conflicts with the development plan in respect of the adverse impact on heritage assets and the quality of living environment for future residents.
19. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR

³ Paragraph 4.213 of the Brighton And Hove City Plan Part One (2016)