



Appeal Decision

Site Visit made on 6 July 2021

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021

Appeal Ref: APP/Q1445/W/20/3264787

50 Benfield Way, Portslade BN41 2DL

- 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 Ideal Property Brighton LLP against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/02531, dated 8 September 2020, was refused by notice dated 9 November 2020.
 - The development proposed is "Erection of two new build detached dwellinghouses (C3) incorporating associated alterations to an existing dwellinghouse".
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on: (i) the character and appearance of the area; and (ii) the living conditions of the residents of neighbouring properties, with particular regard to noise.

Reasons

3. The appeal site is a large detached two storey house with off-street parking to the front and a substantial garden to the rear, located within a suburban setting, surrounded by a mix of detached and semi-detached houses of similar sizes. Plot sizes vary somewhat in the surrounding area, with those located on Hillside being smaller and less spacious than those on Benfield Way and Mill Lane. The appeal site is the largest plot in the near area, running the length of 2 – 8 Hillside and rising in height from east to west.
4. It is proposed to excavate a large proportion of the rear garden and erect two detached three-bedroom dwellings of contemporary, flat roofed design with an access drive along the side of the existing dwelling, in place of an existing garage and part of a side extension. The amount of excavation proposed would ensure a large proportion of the proposed dwellings would remain below the prevailing land levels. The appellant notes the proposed buildings would exceed the height of existing boundary fencing by 1.6m at their highest points when viewed from Hillside.
5. The Council object to the extent of subdivision of the plot to create two dwellings, which they claim would result in cramped plots of uncharacteristic sizes. Despite the extent of excavation proposed, the presence of the two proposed dwellings would be unavoidable from adjoining rear gardens, where it

would be evident that their substantial built form occupies large proportions of their narrow plots.

6. The proposed dwellings would be sited towards the rear of their plots, with relatively large areas given over to parking and garden spaces at the front. This would leave smaller garden areas at the rear, which would be part excavated. The result would be cramped and contrived layouts, surrounded by neighbouring gardens. The proposed front gardens would fail to ensure the spacious character of the surrounding area is replicated due to the enclosed nature of the partially excavated site.
7. I note the plot layouts of neighbouring properties, including semi-detached houses on Hillside with plots of similar widths and detached houses on Benfield Way with rear gardens of similar depths, but those sites are more open, facing onto the highway and are not contained within backland plots. The subdivision of the existing garden into the two plots proposed and the positioning of the proposed buildings towards the rear of those plots would be a combination of uncharacteristic features of the area.
8. I also note the distances of the proposed dwellings from their side boundaries would reflect other separation gaps seen in the surrounding area. However, these gaps would be insufficient to ensure the proposed buildings sit comfortably in their surroundings, despite their reduced height above ground level. Although the proposed buildings would not dominate the local area, their mass would remain appreciable and the appeal site would appear significantly more densely developed than its surroundings, to the detriment of the character and appearance of the area.
9. The proposal would therefore cause significant harm to the character and appearance of the area, contrary to Policy CP12 of the Council's City Plan¹. This requires, amongst other things, development to respect local character, general layout, pattern and footprint of buildings and streets.

Living Conditions

10. The proposed dwellings would be accessed by a driveway running between the detached houses at 48 and 50 Benfield Way. The Council have claimed that the forecast comings and goings associated with two new dwellings would result in an unsatisfactory level of noise and disturbance experienced by the residents of Nos. 48 and 50. Both main parties have referred to the possibility of using acoustic fencing along the driveway to minimise any noise and disturbance experienced by those residents. I have not been presented with any detailed forecasts of expected vehicle movements or information concerning the effectiveness of any specific acoustic fencing in this location.
11. The access drive would be located very close to the existing dwellings at Nos. 48 and 50, but the level of vehicular activity associated with two dwellings in this location would be unlikely to be significant enough, in my view, to cause any unacceptable levels of noise or disturbance sufficient to harm the living conditions of residents of those dwellings. The use of acoustic fencing of an appropriate specification to line parts of the driveway would make any unacceptable harm even less likely. I have not been provided with any details

¹ Brighton & Hove City Plan Part One (2016)

of such fencing, but this could be required by condition to be approved by the Council prior to the commencement of development.

12. On the second main issue I therefore conclude that the proposal would not cause any unacceptable levels of noise or disturbance sufficient to harm the living conditions of any neighbouring residents. The proposal would therefore accord with Saved Policies QD27 and SU10 of the Council's Local Plan², which seek to prevent development which would cause a noise nuisance to neighbouring residents.

Other Matters

13. The Council is unable to demonstrate the supply of housing sites required by the Framework³. In cases such as this, the most important policies are deemed to be out of date and Paragraph 11(d)(ii) of the Framework states that planning permission should be granted for applications involving the provision of housing unless 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. I have found harm relating to the effect of the proposal on the character and appearance of the area. Whilst I may attribute less weight to the most important policies by virtue of them being out of date, harm arising out of the proposed development would not be as affected. This harm would be significant and long lasting and as such I would ascribe substantial weight to it.
14. The main benefit of the proposal would be the contribution of two three-bedroom dwellings to the City's housing land supply. These would be environmentally efficient dwellings in an existing residential location, close to existing services and transport links. There would be short-term economic benefits during their construction too. The appellant has claimed they would comprise high quality design, but I have found their plot layouts would be of poor design. I agree that otherwise, the proposed dwellings would appear to be well-designed. These are modest benefits to which I assign moderate weight.
15. The appellant has referred to Paragraph 68 of the Framework, which encourages local planning authorities to support the development of windfall sites through their decisions, giving great weight to the benefits of using suitable sites within existing settlements for homes. Paragraph 127 of the Framework advises that planning decisions should ensure developments will add to the overall quality of the area over the lifetime of the development and are visually attractive as a result of good architecture and layout, amongst other things.
16. The proposed development would not cause any unacceptable harm to the living conditions of neighbouring residents; however, it would cause significant harm to the character and appearance of the area on account of the site layout appearing too cramped and dense for its location, despite extensive excavations seeking to limit the impact of the development. The adverse impacts of approving the development would significantly and demonstrably outweigh the benefits, when assessed against the Framework. The proposal

² Brighton & Hove Local Plan 2005

³ National Planning Policy Framework (2019)

would not therefore be sustainable development for which the presumption in favour applies.

Conclusion

17. For the reasons given above I conclude that the proposal would fail to accord with the development plan and there are no material considerations, including the Framework, that would indicate planning permission should otherwise be granted. The appeal should therefore be dismissed.

L Douglas

INSPECTOR