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## 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: 27<sup>th</sup> July 2021**

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**Appeal Ref: APP/Q1445/W/21/3266313**

**31 East Drive, Brighton BN2 0BQ**

- 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 Mr Adam Gee against the decision of Brighton & Hove City Council.
  - The application Ref BH2019/03677, dated 10 December 2019, was refused by notice dated 19 September 2020.
  - The development proposed is "Demolition of five car garages and the erection of a two bedroom house".
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of five car garages and the erection of a two bedroom house at 31 East Drive, Brighton BN2 0BQ in accordance with the terms of the application, Ref BH2019/03677, dated 10 December 2019, subject to the attached Schedule of Conditions.

### Main Issue

2. The main issue is whether or not the proposed development would preserve or enhance the character or appearance of the Queens Park Conservation Area (CA).

### Reasons

3. The northern boundary of the appeal site forms part of the border of the CA, which has three distinct areas, as described at Section 6 of the Council's Character Statement<sup>1</sup>. The appeal site forms part of Character Area 1, 'The Park', which mainly comprises large detached villas skirting Queen's Park, set within a spacious plan form originally developed in line with Thomas Attree's 19th century vision. A 1960s development of tall flats is located directly to the north of the appeal site, outside of the CA.
4. The significance of the CA is derived in part from its architecture of large Victorian and Edwardian detached and semi-detached villas and smaller terraced housing surrounding the open park. The spaciousness of rear gardens and building plots is not readily noticeable from the street in the CA, apart from along Queen's Park Terrace where the roofs of large villas at a lower level fronting onto East Drive are all that can be seen above a tall boundary wall. The heavily planted, large rear gardens forming the original plot layouts of East Drive can be seen in views from the north at Windermere Court and along

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<sup>1</sup> Queen's Park Conservation Area Character Statement (2018)

North Drive, outside the CA, making a positive contribution to the character and appearance of the area. In views from that direction, it is evident that the original plot of 31 East Drive no longer exists due to the presence of 31A East Drive and the garages within the appeal site, to the rear of the villa at No.31. The existing plot layouts of the appeal site and Nos. 31 and 31A make no positive contribution to the significance of the CA.

5. The villa at No.31 is within the appellant's ownership but does not form part of the appeal site. The appeal site and the villa have distinct separate uses occupying different areas: the villa is split into rented flats and the garages at the rear are rented out to various parties, rather than being used exclusively by residents of the villa. Along with No.31A, which became a separate dwelling after being used as accommodation associated with the villa, the original large plot of No.31 has comprised three separate areas without any large garden space since 1972. The existing layout of the villa, garages and No.31A therefore pre-dates the designation of the CA in 1977 and is notably different to other plots within it, where most large villas appear to remain occupied by single households with long gardens.
6. The form and positioning of the villa at No.31 make a positive contribution to the character and appearance of the CA, reflecting the original intended speculative residential development. However, the subsequent subdivision of the plot prior to designation and the form of the garages at the appeal site detract from the significance of the CA and have a negative effect on its character and appearance. The Council's officer report notes that the proposal would provide a visual improvement compared to the existing garages but would result in harm to the character of the CA through the creation of a formalised third plot. The Council claim the proposal would not therefore respect or respond to the layout, development pattern and character and appearance of this part of the CA.
7. Although the appeal site originally comprised part of one large plot, it is clear that the loss of the original garden to No.31 and the subdivision of the plot into three happened some time ago, before the designation of the CA. It is therefore not appropriate to compare the proposal to a hypothetical scenario where the villa could be served by a large garden, characteristic to this part of the CA. The current circumstances of the site are that the former garden area is occupied by five garages and parking spaces rented to various parties, marking it out as a separate plot, uncharacteristic to the CA.
8. The layout of the site would change on account of the currently open parking area being replaced by enclosed planting, paving, refuse and bicycle stores and an excavated terrace. This would appear more formal than the existing garages and parking area, in that a single household would occupy and maintain the site, rather than several unconnected people visiting the site for storage purposes. The pattern of development and site density would remain largely unchanged. Considering the existing layout and use of the appeal site, which is different to its surroundings and has a negative effect on the significance of the CA, the proposed layout – although more formal – would not affect the significance of the CA or cause any harm to the character or appearance of the CA.
9. The proposed dwelling would appear as a low-level building due to part of the structure being below ground floor level. The use of light brown facing

brickwork together with timber elements and a flat sedum roof would ensure its contemporary design does not dominate the surrounding CA. The proposal would be of a high standard of design, reflecting the existing scale, development pattern and building form presently seen at the appeal site.

10. Although the proposed building would be taller than the existing garages, the increase in height would not be substantial and would not have any adverse impact upon views into the CA from the north. The visibility of the proposal from the north, at the height proposed and finished with light brown facing brickwork and a flat sedum roof would have a neutral effect on the significance of the CA, preserving its character and appearance. In the limited available views from within the CA, where the front of the existing garages and parking area can currently be seen, the proposal would make a minor improvement to the character and appearance of the CA due to the high-quality design of the proposed dwelling replacing the strong utilitarian design of the existing garages.
11. The proposal would therefore accord with Policy HE6 of the Council's Local Plan<sup>2</sup> and Policy CP15 of the Council's City Plan<sup>3</sup>. These require, amongst other things, development to conserve the historic environment and preserve or enhance the character or appearance of conservation areas by showing a high standard of design, reflecting the scale, development patterns and building forms of the area, without having a harmful impact on townscape. The proposal would also accord with Policy CP14 of the Council's City Plan which requires residential development to be of a density that is appropriate to the character to the neighbourhood, amongst other things.

### **Other Matters**

12. Most of the concerns raised by third parties have been addressed by the Council in their evidence. I have seen no compelling reason to disagree with them. Claims concerning the potential for damage to buildings and land owned by other parties have not been substantiated by evidence to show this is likely and incapable of being appropriately addressed between the relevant land owners, should such damage be caused. In any case, this would be a civil matter.
13. I have read concerns relating to the impact the proposal would have on access to No.31A during and after construction, but the Council's submissions do not raise any concerns in these regards. I note the appeal site includes the existing access route to No.31A, and it would be a matter for the land owners to manage access arrangements. I also note concerns relating to the potential effect of air and noise pollution during construction works, but there are measures open to the Council to control such concerns separately, if necessary.

### **Conditions**

14. It is necessary to attach a condition requiring the commencement of development within the relevant timeframe and a condition identifying the approved plans in the interests of clarity and enforcement. The Council have suggested various conditions, all of which appear to be reasonable and necessary to ensure accordance with the development plan. I have amended

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<sup>2</sup> Brighton & Hove Local Plan (2005)

<sup>3</sup> Brighton & Hove City Plan Part One (2016)

the wording of the suggested conditions where necessary to ensure they accord with the advice contained within the Planning Practice Guidance.

15. Notwithstanding the plan annotations and details submitted, a condition requiring the approval of samples of finishing materials is necessary to ensure the exterior appearance of the building is appropriate for its surroundings, having regard to the CA. Full details of bicycle storage facilities are required to ensure accordance with the development plan and encourage sustainable transport.
16. The Council's officer report claims that the proposed gravel drive could cause difficulty for people with reduced mobility accessing the property, and for any residents moving wheelie bins. It is also suggested that gravel could cause a hazard to other road users. I noted the existing drive is finished with gravel, serving the existing garages and No.31A without causing any apparent highway safety issues; however, I consider a condition requiring details of how the proposed dwelling will be made accessible to disabled people would be reasonable and necessary to address the Council's concerns in this regard. A separate condition requiring the dwelling to meet building regulations optional requirement M4(2) prior to its first occupation is also reasonable and necessary to ensure the building is capable of being occupied by persons with reduced mobility.
17. The Planning Practice Guidance advises that conditions restricting the future use of permitted development rights may not pass the tests of reasonableness or necessity and Paragraph 53 of the Framework advises against such conditions unless there is clear justification to do so. In this case, due to the specific design of the proposal, and the confines of the site and its positioning within the CA, I consider it reasonable and necessary to attach a condition prohibiting any extension, enlargement or other alteration of the building, or the erection of any outbuilding within its curtilage without approval from the Council.
18. It is also necessary and reasonable to prohibit the use of the proposed dwelling's roof as a balcony, roof garden or similar amenity area, to protect the living conditions of neighbouring residents in respect of noise and overlooking which may otherwise occur. Conditions relating to the provision of a bee brick and the indicated refuse and recycling storage facilities, and compliance with standards in respect of water and energy efficiency are necessary to ensure the development is environmentally and ecologically sustainable in accordance with the development plan. A condition requiring development to cease where any contamination is found during the course of works is necessary and reasonable to protect the health of residents, considering the extent of excavation proposed.

## **Conclusion**

19. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above and subject to the conditions set below, I therefore conclude that the appeal should be allowed.

*L Douglas*

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: 0568EXG.001-A, 0568.EXG.002, 0568.PL.001, 0568.PL.002, 0568.PL.003.
- 3) No development above ground floor slab level of any part of the dwelling shall take place until samples of all external facing materials and hard surfacing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) The development hereby permitted shall not be first occupied until a scheme indicating the provision to be made for disabled people to gain access to the dwelling has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the development hereby permitted is first occupied and shall be retained thereafter.
- 5) The development hereby permitted shall not be first occupied until details of secure bicycle parking facilities have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the first occupation of the dwelling hereby permitted. The secure bicycle parking facilities shall thereafter be retained and kept available at all times for the parking of bicycles.
- 6) The development hereby permitted shall not be first occupied until the refuse and recycling storage facilities indicated on the approved plans have been completed. The refuse and recycling storage facilities shall thereafter be retained and kept available at all times for those purposes.
- 7) The development hereby permitted shall not be first occupied until a bee brick has been incorporated within the external wall of the development. The bee brick shall be retained thereafter.
- 8) The development hereby permitted shall not be first occupied until the Building Regulations Optional requirement M4(2) has been complied with.
- 9) The development hereby permitted shall not be first occupied until the dwelling has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).
- 10) The development hereby permitted shall not be first occupied until the dwelling has achieved as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption.

- 11) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 12) The roof area of the dwelling hereby permitted shall not be used as a balcony, roof garden or similar amenity area.
- 13) Notwithstanding the provisions of Schedule 2, Part 1, Classes A – E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extension, enlargement, or other alteration of the dwelling, and no other building, shall be constructed.