
Appeal Decision

Site visit made on 11 October 2021

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 22 October 2021

Appeal Ref: APP/Q1445/W/21/3271573

Stowford, Withdean Road, Brighton BN1 5BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr Christopher Liu against the decision of Brighton and Hove City Council.
 - The application Ref BH2020/03455, dated 25 November 2020, was refused by notice dated 21 January 2021.
 - The application sought planning permission for erection of two storey rear extension to create 5no residential units (1no 2 bed, 3no 1 bed and 1no studios) with associated parking. Removal of existing chimney, without complying with a condition attached to planning permission Ref BH2017/03342, dated 29 November 2018.
 - The condition in dispute is No 1 which states that: The development hereby permitted shall be carried out in accordance with the approved drawings listed below.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The development subject of the original permission has not been carried out in accordance with the approved plans. The application subject of this appeal was therefore in part retrospective. Whilst I have taken the works so far undertaken into account in assessing the scheme, I have made my decision on the basis of the relevant plans.
3. An application for costs was made by Mr Christopher Liu against Brighton and Hove City Council. This application is the subject of a separate Decision.

Main Issues

4. The main issue is the effect that development without complying with the disputed condition would have on:
 - highway safety; and
 - the living conditions of occupants of Flat 2 with regard to outlook, sunlight and access to outdoor amenity space; and of users of the parking area in relation to access to their flats.

Reasons

Highway safety

5. The north and east sides of the site are defined by Withdean Avenue and Withdean Road respectively, with a T-junction formed at their intersection. Withdean Avenue is fairly narrow and made more so by on-street parking along its south side. This is however restricted to the rear of the site, where the road widens slightly close to the junction. This space plays an important role in allowing vehicles approaching and leaving the junction to pass one another.
6. The approved plans show 3 parking spaces laid out along the rear edge of the plot facing directly onto Withdean Avenue. This was approved notwithstanding uncertainty over whether or not a license for a crossover would be granted by the Highways Authority (the HA). The appellant indicates that no license was forthcoming, and therefore the approved scheme could not be properly implemented. The specific reasons why a license was not issued are unknown, however the HA's comments on the original application appear to identify proximity to the junction as a key risk factor.
7. An enclosed parking and turning space has been constructed instead. This is served by an access which has received approval in principle from the HA. Such approval in principle at the very least implies that use of the access could be safe if constructed in accordance with the attached conditions.
8. Insofar as these conditions include the provision of 2m x 2m splays unobstructed above a height of 60cm, the HA's conditional requirements appear unlikely to be met by the access as both constructed and proposed. Whilst some doubt exists over the height of the fence within the right hand splay, the required left hand splay is more substantially obstructed by an adjacent garage. As such, the evidence before me indicates that the access and parking space could again not be properly constructed and used.
9. The safety implications of a non-compliant splay would otherwise be in relation to driver visibility of oncoming traffic and pedestrians. Assuming that a vehicle would leave the access in forward gear, the risk in relation to traffic would principally arise to the left, and would be exacerbated by potential on-street parking.
10. Risks could also arise and be compounded by manoeuvring. Tracking diagrams indeed suggest that the manoeuvres required to turn within the site would be so tight that they would most likely be impractical. The diagrams also fail to take into account possible obstruction by on-street parking to the left of the access, and by other road users. It is far more likely that vehicles would either reverse into or out of the access. Given doubts over visibility and given proximity to the junction, this would give rise to an unacceptable collision risk in both directions, and again most particularly to the left.
11. The approved parking layout provided no scope for turning within the site. Use of the spaces would therefore have required either reversing into or out of them, far closer to the junction than is now proposed. This would have had the potential to give rise to a greater degree of risk. Given that the approved scheme cannot be implemented the comparison is however somewhat academic, and therefore attracts little weight.

12. It is unlikely that a similar degree of risk would exist in relation to pedestrians. This is because the pavement along the south side of Withdean Avenue is both narrow along most of its length, and made impassable by pavement parking. Pedestrians instead appear to use the pavement on the north side of the road.
13. For the reasons outlined above I conclude that the effects of development without complying with the disputed condition would be unacceptable in relation to highway safety. Conflict would thus arise with Policy TR7 of the Brighton and Hove Local Plan 2005 (the LP) which seeks to restrict development where this would increase danger to users of adjacent roads.

Living conditions

14. The revised layout has seen a fence constructed to enclose the back of the parking area, adjacent to the rear facing glazed doors of Flat 2. The stepping up of levels is such that the height of the fence is perceived differently depending on the side in question. Though it is substantial feature viewed from within the parking area, it stands at roughly half the height of the glazed doors of Flat 2 viewed from the other side. The fence therefore provides enclosure but does not harmfully limit the outlook.
15. The rear glazed doors at Flat 2 are north facing. This means that they cannot be expected to receive direct sunlight. That being so, whether or not the fence was present, levels of sunlight reaching the interior of the flat would be unaffected. The height of the fence does not in any case act to fully obstruct the entry of light into the interior. Consequently, no harm does or would arise in relation to the obstruction of sunlight.
16. The parties appear to agree that outdoor amenity space was to be attached to Flat 2 within the approved scheme. However, this is not shown on the approved plans. Moreover, no other flat was to have been provided with similar access to outdoor amenity space. As such I see no reason why the revised layout should be considered unacceptably harmful to the occupants of Flat 2.
17. The Council has additionally raised objection to the distance that occupants using the parking area would be required to walk to access their flats. However, even if it wasn't practical to insert a gate into the boundary fence, the additional distance travelled relative to the previously approved scheme would be negligible, and would not give rise to any adverse effect.
18. For the reasons outlined above I conclude that development without complying with the disputed condition would not cause any unacceptable harm in relation to living conditions. There would therefore be no conflict with Policy QD27 of the LP which seeks to restrict development where this would cause a material nuisance and loss of amenity, and Policy HO5 of the LP which requires the provision of amenity space where appropriate.

Conclusion

19. The scheme would have an unacceptable effect in relation to highway safety and there are no other considerations which alter or outweigh this. Thus, for the reasons set out above I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR