
Appeal Decision

Site visit made on 26 October 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2021

Appeal Ref: APP/Q1445/W/21/3272366
361a Ditchling Road, Brighton BN1 6JU

- 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 Luciano Carluccio against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/02612, dated 12 May 2020, was refused by notice dated 17 December 2020.
 - The development proposed is construction of single storey house.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the refusal of the planning application and the submission of this appeal, a revised version of the *National Planning Policy Framework* (the Framework) was published on 20 July 2021. The main parties were given the opportunity to address this matter, and I have taken the Framework into account where relevant to my decision.
3. Notwithstanding that the Council has confirmed that 361a Ditchling Road is not a formally adopted address, for the purposes of this appeal, the site address in the heading above is taken from the planning application form, decision notice and appeal form.
4. The property to the south of the appeal site is variously referred to by the main parties as either 361 Ditchling Road or 2 Beacon Close. For the sake of consistency and clarity, I refer to this property as 361 Ditchling Road/2 Beacon Close in my decision.

Main Issues

5. The main issues are:
 - The impact of the proposal on the character and appearance of the area; and
 - The impact of the proposal on the living conditions of the occupiers of 361 Ditchling Road/2 Beacon Close, having regard to private garden space.

Reasons

Character and appearance

6. The appeal site comprises a vacant piece of land on the west side of Ditchling Road within an established residential area to the north of the City Centre. The information before me is that the land originally formed part of the garden of 361 Ditchling Road prior to being severed and transferred in ownership to 363 Ditchling Road to the north of the site. A prefabricated building, which was used as a study in association with No.363, remains on site. The building is no longer in use, and fencing separates the site from No.363.
7. This part of Ditchling Road, which lies between Beacon Close and Balfour Road, predominantly comprises large detached dwellings set within broad plots with generous private gardens. The carriageway is wide, with grass verges on both sides and there are open fields associated with sports facilities on the opposite side of the road. These factors all contribute to an open and spacious street scene character. Whilst there are a variety of building designs and materials, the properties are mainly two-storey or chalet bungalow height and of a traditional design.
8. The appeal scheme plot would be roughly half the width of that which is characteristic of this stretch of Ditchling Road. This, combined with the box-like design of the dwelling which would extend at full height to within close proximity of both side boundaries, would result in an incongruous addition to the street scene, which would appear unduly confined and cramped in relation to the regular wider more spacious pattern of development identified above. The narrow congested nature of the development would not be sufficiently mitigated by the proposed retention of space at first floor level above the low new dwelling.
9. The incongruous nature of the proposal would be exacerbated by its position set notably further forward of the established building line to the north of the appeal site. This would be visually apparent in public views from the street, and from neighbouring properties. It is noted that the new dwelling would align with the front of No.361 Ditchling Road/2 Beacon Close. However, this property currently functions as a corner property, having been built with a greater amount of space around the building, and it sits comfortably within this prominent road corner location. The appeal proposal would diminish the space around the building and appear as a cramped and discordant addition to the side of the property.
10. The new building would be out of keeping with the other larger properties which typify this part of Ditchling Road, due to its significantly lower height, narrower footprint and smaller scale. This would be particularly apparent in relation to the pitched roof houses to both sides, and noting that No.363 is at a higher ground level than the appeal site in addition to comprising a much higher building.
11. Whilst there are a variety of dwelling forms within the locality of the site, and rendered walls are evident on several other nearby properties, the flat-roofed simple design of the proposal would be at odds with the more traditional pitched roof development within the locality. The minimalist building would lack architectural detailing to provide visual interest, and there is no evidence before me that the proposed design takes any cues from surrounding built development. No justification has been made for this particular design in this location.

12. The proposal is more in keeping with the existing portable building on the site, which it would replace. However, the Council has confirmed that formal permission has not been granted for the annexing of the land to No.363. The appellant suggests that the prefabricated temporary office building has planning permission due to the length of time it has been present on the site, noting that it appears on an ordnance survey map dated 2017 and the Council states that such a structure has been present on the site since 2009.
13. However, I have no evidence before me that a formal application for a certificate of lawfulness with respect to the structure has been determined by the Council prior to the appeal planning application. It is not for me, under a section 78 appeal, to determine whether or not the structure is lawful. To that end, it is open to the appellant to apply for a determination under sections 191/192 of the Act, and my determination of this appeal under section 78 does not affect the issuing of a determination under section 191/192 regardless of the outcome of this appeal.
14. As such, I do not consider the presence of the existing temporary building to provide sufficient justification for the proposed low, flat-roofed utilitarian design approach of the appeal scheme in this location.
15. The proposal to incorporate frontage landscaping and fencing to screen the dwelling is noted. However, the proposal would nonetheless be visible from the street scene from the vehicular access point, and is likely to be visible in views from the street when approaching the site from the north, due to its forward positioning in relation to the dwellings to the north. Moreover, the implementation and future retention of landscaping could not be guaranteed in the future, and it is not appropriate to rely upon sufficiently high boundary fencing/walling to screen new built development of an inappropriate design for its surroundings.
16. For the above reasons, I conclude that the proposal would cause significant harm to the character and appearance of the area. As such, the appeal scheme would be contrary to Policies CP12 and CP14 of the *Brighton and Hove City Plan Part One* (2016) (the City Plan). These policies, amongst other things, seek to ensure that new development is of a high standard of design, raises the standard of architecture and design in the city, respects the diverse character and urban grain of the city's identified neighbourhoods, and is of a density that is appropriate to the identified positive character of the neighbourhood.
17. For similar reasons, the proposal would also be contrary to Chapter 12 of the Framework which seeks to ensure well-designed places.

Living conditions

18. The Council does not object to the proposed amount of private garden space to be allocated to the new dwelling, having regard to the living conditions of future occupiers. Neither do I, since the proposed enclosed private rear garden would be sufficient in size, and position in relation to the dwelling, to reasonably provide for the external amenity requirements of the proposed small one-bedroomed dwelling.
19. The appeal proposal would occupy a considerable proportion of the original garden associated with the 'host' property at 361 Ditchling Road/2 Beacon Close, which is a large, family-sized dwelling. Whilst the Council has confirmed

that it has not authorised the separation of the appeal site from the host property, the evidence before me is that the land has been used independently of that property for a number of years. Moreover, I saw during my site visit, that the remaining areas of garden to the front, side and rear of that property have become established as private enclosed amenity areas through the provision of fencing.

20. I have no cogent evidence before me that the external amenity space for that property has been limited to such a degree that it has caused material harm to the living conditions of the occupants of the property. The Council has not directed me to any adopted development plan policies in respect of minimum garden size standards, and has not specifically indicated the amount of outdoor garden space it would expect to be provided for the host property.
21. With the above in mind, and having regard to the existing situation and my observations on my site visit, I find that, whilst smaller than other nearby gardens of similar-sized properties, the residual garden space for the host property resulting from the appeal scheme is sufficiently large to provide for the typical requirements associated with a dwelling of the size of the host property. These include outdoor play space, sitting out, outdoor dining and drying washing areas.
22. For the above reasons, I therefore conclude that the proposal would provide satisfactory living conditions for the occupiers of 361 Ditchling Road/2 Beacon Close, having regard to the provision of private garden space. As such, the development would accord with Policy CP14 of the City Plan and retained Policies HO5 and QD27 of the *Brighton and Hove Local Plan 2005* (2016), in so far as these policies seek to ensure that new development avoids material loss of amenity to proposed, existing and/or adjacent residents, and provides useable amenity space appropriate to the scale and character of the development.
23. This is generally consistent with the Policies of the Framework which seek to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users (Paragraph 130).

Other Matters and Planning Balance

24. Since the refusal of the planning application and the submission of this appeal, the transition period in respect of the new standard method for assessing local housing need where strategic policies are more than 5 years old, has ended. Accordingly, the new methodology includes a 35% uplift for Brighton and Hove City due to the City Plan having reached five years since adoption.
25. The Council's statement of case confirms that it is unable to demonstrate a five-year supply of deliverable housing sites. It considers that it has 2.2 years of housing supply.
26. Paragraph 11 of the Framework applies, which states that relevant policies for the supply of housing should not be considered up to date where a five-year housing land supply cannot be demonstrated. Paragraph 11 states that where relevant policies are out of date, permission should be granted unless 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 the adverse impacts of doing so would significantly and

demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted.

27. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be in an urban area where access to facilities is likely to be greatest. It would make a positive contribution towards the Council's housing supply, and it could be built-out relatively quickly, having regard to paragraph 69 of the Framework.
28. There would also be economic benefits as a result of the construction and occupation of the new dwelling. By providing a small, single storey unit, which would suit first time buyers, elderly downsizers, or mobility-impaired occupants, the proposal would also contribute to the Framework objective of creating mixed and balanced communities.
29. However, whilst the Council's supply of deliverable housing is very low, an additional dwelling would make a very modest contribution towards addressing the housing supply deficit. Moreover, a high standard of design is also a key aspect of sustainable development. The harm I have identified to the character and appearance of the area would be significant. As a result, the social objective of sustainable development of fostering well-designed and beautiful places, would not be achieved.
30. Whilst the Framework encourages the effective use of land in meeting the need for homes, and requires the Council to approach decisions in a positive and creative way, these matters are not unqualified and would not address or outweigh the aforementioned harm that I have identified to the character and appearance of the area.
31. Therefore, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.
32. I acknowledge that the proposal represents an amended scheme from that refused under planning application Ref BH20/01383. Whilst the changes to the proposal have been noted, including a reduction from two to single storey, and changes to the detailed design, footprint and positioning of the building, these changes do not alter my findings with respect to the current proposal, which I must determine on the merits of the current scheme.
33. There is a difference of opinion between the two main parties in respect of whether or not the appeal scheme accords with pre-application advice given by the Council. Notwithstanding this, I am not bound by the advice given by the Council prior to the submission of the planning application, and it does not alter or outweigh my conclusion on the first main issue.
34. The appellant has drawn my attention to two recent planning approvals for new dwellings at Preston Park Avenue and Marine Drive. I have not been provided with detailed information in respect of the planning history of these properties. On the basis of the information before me it appears that these properties are

not directly comparable with the appeal proposal, including in respect of their two-storey height, detailed design and position in relation to surrounding built development. In any event, I must consider the appeal scheme on its own merits and in relation to the context of the appeal site.

35. The appellant states that the proposal meets the *Technical Housing Standards - Nationally Described Space Standards* relating to internal space provision in new housing. Also, that the proposal would not harm neighbouring living conditions in respect of privacy and light impacts. These factors are not sufficient to justify or outweigh the harm that I have identified in respect of the first main issue.

Conclusion

36. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR