
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: 25 November 2021

Appeal Ref: APP/Q1445/W/21/3271221

Land to rear of 236 Ditchling Road, Brighton BN1 6JF

- 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 Amanda Newins against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/01519, dated 4 June 2020, was refused by notice dated 25 September 2020.
 - The development proposed is erection of 1no. one bedroom two storey dwelling including a lower ground floor (C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development is taken from the appeal form and decision notice, as it more accurately describes the proposal than that on the application form.
3. 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.

Main Issues

4. The main issues are:
 - The impact of the proposal on the character and appearance of the area;
 - The impact of the proposal on the living conditions of future occupiers of the development, with particular reference to outdoor private amenity area, outlook, and internal space; and
 - The impact of the proposal on highway safety, having regard to parking provision.

Reasons

Character and appearance

5. The appeal site is located on the east side of Ditchling Road, a busy thoroughfare in an established residential area to the north of the City Centre.

This particular stretch of the road is characterised by two-storey period residential properties with brick walls under tiled pitched roofs, fronting onto the road with a regular front building line and long rear gardens backing onto Ditchling Gardens.

6. Ditchling Gardens is a quiet, narrow cul-de-sac. The west side of the road does not present an active residential frontage onto the road. Instead, it is characterised by garaging and parking for houses which front onto Ditchling Road, or rear gardens which are enclosed by high fencing and walling. Part of this side of the road is edged by grass verging, and the remainder has no public footway.
7. The appeal site comprises the rear-most part of the garden of No.236. It is currently used for carparking, which is accessed from Ditchling Gardens. As such, it comprises an intrinsic part of the established street scene of this side of the road, and it is visible from the public realm within the road.
8. The east side of the road has a notably different character, comprising bungalows within a sheltered housing development, which front onto the road behind grassed open plan front gardens. There is a clearly identifiable regular pattern of built development, with dwellings comprising a traditional brick-walled and pitched tiled roof design. This side of the road has a footpath edge and street lighting, together with on-street parking.
9. The appeal scheme would introduce an incongruous form of built development having regard to the established form and layout of residential development within the locality. The proposed plot size would be uncharacteristically small in relation to those within the vicinity of the appeal site. This, together with the proposed positioning of the new dwelling so that its footprint would occupy most of the site, and a box-like design which would abut at full height the front, north side and most of the south and west site boundaries, would result in an unduly cramped form of development. This would be at odds with the spacious prevailing character of residential development. The perceived congested nature of the development when viewed from the street, would be compounded by the close proximity of the dwelling to the edge of the carriageway, given the lack of highway verge or footway in front of the site.
10. The introduction of an active residential frontage would be at odds with the established subsidiary nature of built development on this side of Ditchling Gardens. The contemporary flat-roofed simple single storey design of the new dwelling, incorporating a rendered finish, would not reflect the uniformity of traditional dwelling designs and materials that prevail within Ditchling Road and Ditchling Gardens. Furthermore, the building would contain large areas of blank wall space and would be lacking sufficient architectural features to provide visual interest.
11. Notwithstanding the proposed two-storeys of accommodation, the partly subterranean nature of the house means that when viewed from the public realm, the dwelling would appear significantly smaller in scale than the single storey bungalows on the opposite side of the road and the two storey houses fronting Ditchling Road. The dwelling would have a low visual presence within the street scene which would be incongruous within Ditchling Gardens where the bungalows on the opposite side of the road have a strong presence within the street scene.

12. The result would be a visually discordant design and size of dwelling, and a layout of built development that would harmfully erode the established pattern of built development within Ditchling Road and Ditchling Gardens. As such, the appeal scheme would appear incongruous within the townscape, to the detriment of the visual amenities of the area.
13. The presence of several single storey garages on the appeal site side of the road does not provide sufficient justification for the proposed dwelling design and siting. These structures are clearly perceived as functionally designed small-scale ancillary outbuildings in relation to their parent properties. They do not fundamentally alter the established and spacious layout of residential development and the established character of this side of the road. As such, they are not directly comparable with the appeal scheme for a new dwelling.
14. For the above reasons, I therefore conclude that the proposed development would cause significant harm to the character and appearance of the area. As such, the appeal scheme would be contrary to Policy CP12 of the *Brighton and Hove City Plan Part One* (2016) (the City Plan) and retained Policy QD5 of the *Brighton and Hove Local Plan 2005* (2016) (the Local Plan). These policies, amongst other things, seek to ensure that new development raises the standard of architecture and design in the city, respects the diverse character and urban grain of the city's identified neighbourhoods, and presents an interesting and attractive frontage, particularly at street level, for pedestrians.
15. For similar reasons, the proposal would also be contrary to Chapter 12 of the Framework which seeks to ensure well-designed places.

Living conditions

16. The outlook from the basement accommodation would be limited to fenestration in one side of each of the basement bedroom and study/sitting rooms. Whilst the glazing would comprise large double door openings, they would be sited below ground level and in close proximity of the south and west site boundaries. As such, the view from the openings would be oppressive, facing directly onto the retaining side walls of the site. The amount of light entering the rooms would be restricted, resulting in a gloomy living environment within the rooms.
17. Having regard to the proposed use of the rooms as the sole bedroom and a study/sitting room, comprising a significant part of the habitable accommodation of the proposed dwelling, I consider that that this would amount to an unsatisfactory living environment. The overall small size of the dwelling, limited glazing on the ground floor, and small amount of external amenity area, means that there is insufficient opportunity to compensate elsewhere within the proposed dwelling for these poor-quality conditions.
18. The proposed dwelling would provide accommodation over two floors, and living accommodation for two persons, with a possibility of a third person occupying the study/sitting room as a bedroom. It is reasonable to expect the scheme to provide an amount of outdoor private amenity space appropriate to the needs of the potential occupiers. The proposed external amenity area would solely comprise a small, enclosed basement courtyard. I do not find this to comprise a useful size or practical layout and position to satisfactorily serve these requirements, which would typically include space to enjoy sitting outside and/or outdoor dining, and the provision of outdoor drying facilities. This is due

to its restricted size, and low level in relation to the site boundary walling/fencing and dwelling walls which would result in the space being oppressively enclosed, and experiencing restricted sunlight and daylight.

19. The Council has indicated that it intends to formally adopt the Nationally Described Space Standards (NDSS) into its future Draft City Plan Part 2. It is concerned that the proposal, should it be used as a two-bedroomed dwelling, would not meet the minimum floor area standard as set out in the NDSS. However, the proposal does meet the NDSS for a one-bedroom dwelling, as applied for by the appellant. Moreover, the Council has not directed me to any adopted development plan policies or supplementary planning guidance in respect of minimum internal floor area requirements for residential developments. Having regard to the above, I am not persuaded that this matter amounts to material harm that would amount to a reason for dismissing the appeal. This does not alter my above findings on outlook and outdoor private amenity area, which are determining factors in my decision.
20. For the above reasons, I therefore conclude that the proposal would not provide satisfactory living conditions for future occupants of the development, in respect of outlook and outdoor private amenity area. As such, the development would not accord with Local Plan retained Policies HO5 and QD27, in so far as these policies seek to ensure that new development will not cause material loss of amenity to the proposed occupiers and that it provides private useable amenity space appropriate to the scale and character of the development.
21. This is generally consistent with guidance within the Framework, which seeks 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).

Highway safety

22. The appellant has confirmed that the cars currently parked on the site are parked for storage purposes only. However, on-site parking is not restricted to this, and the site could potentially be used for parking of roadworthy cars at any time. As such, the proposal would result in the loss of 2 on-site parking spaces, notwithstanding that the current owner chooses to use the site for long-term storage of cars. In addition, the proposal would potentially generate a requirement for additional parking, which is not provided for within the appeal scheme.
23. I saw during my site visit that on-street parking is limited within the site vicinity. There are double yellow line parking restrictions along the west side of Ditchling Gardens, and parking on the opposite side of the road is limited due to partial double yellow lining of the road, parking dedicated as disabled parking only, and permit-holder only parking between the hours of 09:00 to 20:00. I also acknowledge third party concerns regarding the need to ensure access for emergency vehicles via Ditchling Gardens.
24. However, I do not have any cogent evidence or parking surveys before me to substantiate localised parking problems, parking congestion or impeded access to the highway network within the vicinity of the appeal site. Neither did I witness such during my site visit, albeit I acknowledge that this was only a snapshot during the day, and there may well be more on-street parking at other times, including the evening and weekends.

25. The road lies within a controlled parking zone, and the Council has confirmed that the uptake of permits has been below the threshold above which a development would be expected to be restricted from applying for a parking permit. Also, the site lies within an accessible location, close to community facilities and services and bus and train public transport routes, and the proposal would provide for secure on-site cycle parking. As such, there is a likelihood of future occupants of the proposal using alternative modes of transport other than the car.
26. I also note that the road is a short, quiet cul-de-sac, where traffic speeds are low. Although, there is no public footway on the appeal side of the road, there is a lit public footway on the opposite side of the road.
27. Taking the above factors into account, I conclude that, in the absence of compelling evidence to the contrary, the proposal would not result in materially harmful impacts on highway safety having regard to the parking needs of the development and the proposed on-site parking provision. As such, having regard to carparking provision, the development would accord with the objectives of Local Plan Policy TR7, in so much as this policy seeks to ensure that new development does not increase the danger to users of adjacent pavements and roads.
28. In coming to this view, I have had regard to Paragraph 111 of the Framework, which states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
29. The Council's third reason for refusal includes reference to Local Plan Policy TR14. This policy relates to the provision of cycle access and parking. The Council has confirmed that the proposed amount and location of cycle parking provision is acceptable, and that details of the security of the cycle parking is capable of being dealt with by means of a planning condition. On the basis of the cycle parking proposal before me, I concur with this view. As such, I do not consider Local Plan Policy TR14 to be directly relevant to this reason for refusal.

Other Matter

30. The Council's third reason for refusal includes concerns that the proposal has not provided sufficient details in respect of safe access provision to the property for all users from the opposite side of Ditchling Gardens, having regard to the lack of pedestrian carriageway on the appeal site side of the road.
31. Factors, including the possible requirement for additional consent from the Council's Streetworks team, or, noting the location of an existing disabled parking bay opposite the proposed entrance, a need to redesignate existing parking spaces through Traffic Regulation Orders which cannot be assured, and requirements in respect of the Equalities Act 2010, have led the Council to question the deliverability of the appeal scheme.
32. Had I been minded to allow the appeal, and the circumstances therefore existed in which planning permission could be granted, it would have been necessary for me to examine this matter further, and to seek further comments from the main parties in respect of these requirements. However, since I find the proposal to be unacceptable having regard to the first two main issues, the

conclusion on this matter would have no bearing on the overall outcome of this appeal. There is therefore no need for me to consider this subject any further as part of my decision.

Planning Balance

33. 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. The Council has confirmed 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.
34. 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.
35. The appeal site is not subject to policies in the Framework that protect areas or assets of particular importance that provide a clear reason for refusing the development. Given the lack of a 5-year housing land supply, paragraph 11 d) of the Framework is engaged.
36. 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.
37. There would also be economic benefits as a result of the construction and occupation of the new dwelling. By providing a small dwelling which would suit first time buyers, the proposal would also contribute to the Framework objective of creating mixed and balanced communities.
38. 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.
39. In addition, for the reasons set out above, the appeal scheme would have a harmful effect upon the living conditions of the future occupiers of the proposed dwelling. This would conflict with the requirements of the Framework

to achieve well-designed places in which developments create places with a high standard of amenity for existing and future users.

40. Having given careful consideration to the balance of factors, I consider that, when assessed against the policies of the Framework taken as a whole, the harmful impacts would significantly and demonstrably outweigh the benefits of the proposed development. Therefore, the proposal would not be a sustainable form of development and the presumption in favour of sustainable development in paragraph 11(d)(ii) does not apply in these circumstances. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

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

S Leonard

INSPECTOR