



Appeal Decision

Site visit made on 1 November 2021

by D Cramond BSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3rd December 2021

Appeal Ref: APP/Q1445/W/21/3272911
25 Preston Park Avenue, Brighton, BN1 6HL

- 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 Damian Frizzell against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/02943, dated 12 October 2020, was refused by notice dated 1 April 2021.
 - The development proposed is the erection of 2no two storey dwellinghouses (C3) in rear garden with associated landscaping; demolition of existing garage and erection of a three storey rear extension & conversion of existing house including excavation of basement to provide 7no flats (C3) and associated alterations.
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Decision

1. The appeal is allowed and planning permission is granted for is the erection of 2no two storey dwellinghouses (C3) in rear garden with associated landscaping; demolition of existing garage and erection of a three storey rear extension & conversion of existing house including excavation of basement to provide 7no flats (C3) and associated alterations at 25 Preston Park Avenue, Brighton, BN1 6HL in accordance with the terms of the application, Ref BH2020/02943, dated 12 October 2020, subject to the conditions on the attached schedule.

Application for Costs

1. An application for costs has been made by the Appellant against the Council. This application is the subject of a separate decision.

Preliminary Matters

2. I use the Council's description of development which has precision; I note that the Appellant also uses this on the appeal form.
3. In the light of planning history and consents which are comprehensively set out in the appeal papers, and my inspection of the work to date on the site, I am satisfied that I need only consider the merits of the proposed dwelling houses in the rear garden of the host property albeit the overall scheme encompasses wider development.

Main Issues

4. The main issues are a) the effect of the proposal on the character and appearance of the locality and b) whether the scheme would make suitable provision for affordable housing within the City.

Reasons

Character and appearance

5. The appeal site includes a three-storey detached property with an attractive front elevation located to the east of Preston Park Avenue. The substantial site rises from street level to the rear boundary and the rear garden stepped up considerably in comparison to the ground floor level of the property albeit considerable excavation has taken place. The property is adjacent to a five-storey modern block of flats and a three-storey property which has been markedly extended to the rear and at roof level. In the wider context the site lies within an area of mixed development consisting of several modern blocks of flats and traditional buildings, many of which have also been converted into flats. A number of properties within the street have constructed back-land developments. The overall scene is of an established good quality residential area with a visually pleasing wider setting largely stemming from the properties' juxtaposition to Preston Park. The proposal is as described above.
6. The site lies within the Preston Park Conservation Area. There is a duty imposed by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requiring decision makers to have special regard to the desirability of preserving or enhancing the character or appearance of a Conservation Area. This is reflected within Saved Policy HE6 of the Brighton and Hove Local Plan (LP) which also includes a range of relevant design criteria for proposals within Conservation Areas. Similarly, the thrust of S72(1) is, amongst other matters, included in Policy CP15 of the City Plan Part One (CP).
7. The Council recognises that there is a well-established precedent for back-land development in the locality; indeed, this site has a planning history including two dwellings being approved at the rear. However, in this instance the Council is concerned that the plot coverage and positioning of the latest planned dwellings to the rear would harm the qualities of the Conservation Area, unduly erode green space, impinge upon the frontage building, not respect historic grain and pattern, and generally represent overdevelopment.
8. I observed a varied pattern of development in both use and styles on the extensive rear parts of the curtilages which front Preston Park Avenue with some making better use of land than others. At one time there would have been a discernible historic grain but this is not now evident or of relevance to the importance of the heritage asset in my opinion. What struck me was that the areas, including that on the appeal site, individually or collectively made no marked positive contribution to the aesthetics of the Conservation Area. The rear areas such as the appeal site do not offer valuable landscape space in any wider picture or the immediate scene. In many plots they are

almost merely service areas with considerable hardstanding or locations where further development has taken place whether domestic or for other purposes such as garaging. The buildings to the front dominate and their landscape context is most heavily formed by the verdant scene across the road, not the little planting which arises in some cases to the rear.

9. With the appeal proposals I am satisfied that the overall characterful and attractive situation in the locality will continue and the planned development would be innocuous. In terms of ground levels, building height and mass, and architectural form the scheme has been thoughtfully designed. Plot coverage is at the upper end of acceptability but not beyond it. There will continue to be clear spacing between the main building and the back-land development, the principal frontage building will still read as such, quality of living conditions for all pertinent future residents would be well provided for internally and externally, and the scheme would not unduly impinge upon residential amenity for neighbours beyond the site. I would not classify the appeal scheme as overdevelopment and it has been designed with due accord to the character and appearance of the Conservation Area.
10. Given the nature of the scheme I conclude that the proposal would not run contrary to the aims of S72(1) of the Act or with LP Saved Policy HE6 as well as CP Policy CP15. It would also not conflict with CP Policy CP12 which, amongst other matters, seeks suitable increases in density through well designed development that should protect heritage assets and embody a sense of place and architectural merit.

Affordable Housing

11. The Council was concerned that the Appellant did not at the time of the planning application provide for an affordable housing contribution. However, during the appeal processing period an Agreement under Section 106 of the Town and Country Planning Act, dated 26 November 2021, has been signed by principal parties. The Council's concern has consequently been addressed. From my perspective, having carefully considered all relevant matters, I would deem that this Agreement is suitably constructed and is necessary to make the appeal proposal acceptable. On this main issue I therefore conclude that there would not be conflict with CP Policy CP20 Affordable Housing.

Conditions

12. The Council puts forward a number of suggested conditions; no comments thereon were received from the Appellant. The standard commencement period should apply. A condition that works are to be carried out in accordance with listed, approved, plans was not promoted but would be necessary to provide certainty. To assist with highway safety the crossover and access should be constructed prior to first occupation. External materials need to be agreed and landscaping implemented in the interests of amenity.
13. Refuse and recycling arrangements are necessary in the interests of residential amenity as is cycle parking in the interests of encouraging

sustainable travel. Porous materials should be required for the hard surfacing to ensure a sustainable drainage regime. I would agree with the Council that 'permitted development' rights ought to be removed appropriately in the interests of visual and residential amenity. This is such an unusual site arrangement with its restrictive nature, relationship to other gardens and general prominence that exceptional controlling circumstances apply. Specific use of the flat roof needs to be controlled to prevent overlooking.

14. In the interests of sustainable development and to accord with CP Policy CP8 I shall apply conditions relating to energy efficiency and maximum water consumption. Bee bricks incorporation and the ecological measures put forward should be implemented in the interests of biodiversity and trees need appropriate protection, maintenance, planting and replacement to protect visual amenity.

15. On occasions I include some variation from the wording set out by the Council in order to aid precision, pay regard to submitted plans, and accord with national guidance and legislation.

Overall conclusion

16. For the reasons given above I conclude that the appeal proposal would not have unacceptable effects upon the character and appearance of the locality and would make suitable provision for affordable housing within the City. Accordingly, the appeal is allowed.

D Cramond
INSPECTOR

SCHEDULE OF CONDITIONS (16)

1. The development to which this permission relates shall begin no later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location & Block Plan A.001 and Proposed Drawings D.001, D.002, D.003, D.004, D.005, D.006, D.007 & D.008.
3. No extension, enlargement, alteration or provision within the curtilage of the dwellinghouse(s) as provided for within Schedule 2, Part 1, Classes A - E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.

4. Access to the flat roof over the development hereby approved shall be for maintenance or emergency purposes only and the flat roof shall not be used as a roof garden, terrace, patio or similar amenity area.
5. The hard surface hereby approved shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.
6. The development hereby permitted shall not be occupied until the approved secure cycle parking facilities for the occupants of, and visitors to, the development have been fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.
7. The extended crossover and access shall be constructed prior to the first occupation of the development hereby permitted.
8. No development above ground floor slab level of any part of the development hereby permitted shall take place until samples of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority, including (where applicable):
 - a) details of all brick, render, tiling and coping (including details of the colour of render/paintwork to be used)
 - b) details of all cladding to be used, including details of their treatment to protect against weathering and proposed profile
 - c) details of all hard surfacing materials including brick pavers
 - d) details of the proposed window, door and balcony treatments, external stair and balustrades
 - e) details of downpipes and rainwater goods
 - f) details of all other materials to be used externallyDevelopment shall be carried out in accordance with the approved details.
9. The approved landscaping shall be implemented in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
10. The development hereby approved shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.
11. None of the residential units hereby approved shall be occupied until each residential unit built has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).

12. None of the residential units hereby approved shall be occupied until each residential unit built has achieved as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum water consumption (to include a fixed factor of water for outdoor use of 5 litres per person per day in accordance with the optional requirement defined within Approved Document G of the Building Regulations).
13. 2 no. bee bricks (1 per house) shall be incorporated within the external wall of the development hereby approved and shall be retained thereafter.
14. All ecological measures and/or works shall be carried out in accordance with the details contained in the Ecological Design Strategy, Artech (dated 27/08/2020).
15. No trees shown as retained on the approved drawings shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner during the development phase and thereafter within 5 years from the date of occupation of the building for its permitted use, other than in accordance with the approved plans and particulars or as may be permitted by prior approval in writing from the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species
16. Prior to the commencement of the two dwellings in the rear garden a Tree Schedule and Arboriculture Impact Assessment, and a scheme for the protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be implemented in strict accordance with the approved details.