

Appeal Decision

Site visit made on 17 February 2022

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 March 2022

Appeal Ref: APP/Q1445/W/21/3280986

Land rear of 7 Woodland Drive, Hove BN3 6DH

- 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 Danny Regan, City Partnership Housing Limited, against the decision of Brighton and Hove City Council.
 - The application, Ref. BH2020/02285, dated 15 August 2020 was refused by notice dated 15 February 2021.
 - The development proposed is the erection of a two-bed detached house, landscaping and forecourt parking.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two-bed detached house, landscaping and forecourt parking on land to the rear of 7 Woodland Drive, Hove BN3 6DH in accordance with the terms of the application, Ref. BH2020/02285, dated 15 August 2020, subject to the conditions in the attached Schedule.

Main Issues

2. The main issues are (i) the effect of the proposed development on the character and appearance of the Benett Avenue street scene; (ii) the effect on a cedar tree protected by a Tree Preservation Order ('TPO') and (iii) the adequacy of private amenity space for future occupiers of the proposed dwelling.

Reasons

3. On the first issue, I saw on my visit that the host dwelling is a detached corner property at the junction of Woodland Drive and Benett Avenue with its northeast flank boundary along the latter's pavement. The appeal scheme seeks to sever part of the rear garden to accommodate a new dwelling with a frontage width of 10m to Benett Avenue.
 4. The planning history of the site is material to any consideration of development. In the appeal decision of 2015, the Inspector concluded that the development would not reflect the spacious character of the surrounding properties. This was essentially because of the overall scale of the proposed dwelling; a narrow front garden used mainly for parking, and the different design of its roof above the comparatively tall flank walls in relation to the neighbouring bungalows.
 5. In the more recent application ref. BH2020/01039 refused in June 2020 the Council, correctly in my view, primarily took issue with the visual disharmony
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that would result from the proposed dwelling's more contemporary design, including a flat roof.

6. However, in terms of principle, the use of part of an existing back garden adjacent to a side road is one of the most common forms of infill development, given the potential for a new vehicular access to the development. As regards plot width, with a frontage of 10m and the plot appearing to slightly widen to the rear, I consider that this is reasonably comparable with other sites in Benett Avenue.
7. Because of the proposed dwelling's 90-degree orientation to the existing property, the width of the existing garden becomes the depth of the new plot. Without the inclusion of extra land to the rear of No. 5 Woodland Drive the proposed plot would be smaller in terms of plot depth (and therefore garden size) than the surrounding plots in Woodland Drive and Benett Avenue.
8. That said, infill development is, by definition, at a higher density than its existing surroundings and whilst a greater plot depth would be preferable, the fact that the proposed dwelling would respect the prevailing front building line on this side of the road would essentially limit the visual impact to that of the shorter garden of the host dwelling. The current scheme proposes a plot with its frontage a metre wider than that considered at the last appeal and including amendments made during the application it has a design and scale which would now harmonise with the appearance of the adjoining row of bungalows in Benett Avenue. Thus, in contrast to the proposals in the earlier appeal and the June 2020 refusal, the proposed development would retain the rhythm of this side of the road. And whilst the dwelling would be tight to its flank boundaries, this is already a feature of the nearby bungalows on this side of the road.
9. On balance therefore, despite the limited plot size I do not consider that the proposed dwelling as seen from the public realm would draw the eye as a noticeably harmful change to the character and appearance of the area including the Benett Avenue street scene. This is particularly the case if the TPO cedar tree is retained with a satisfactory relationship to the proposed dwelling.
10. As regards the cedar tree, since the refusal of the application a further report in the form of an Arboricultural Impact Assessment and Method Statement ('the AIA & MS') dated August 2021 has been prepared and submitted as an appeal document. Whilst the Council's appeal statement re-iterates the objection in the reason for refusal, it does not present further arboricultural evidence. Having carefully considered the AIA & MS and inspected the tree and its surroundings at my visit, I conclude that a tree protection compliance condition on a permission would ensure that the tree would not be harmed and thereby overcome this reason for refusal. Reference has been made to the potential for future pressure from occupiers for the lopping or felling of the tree but given its amenity value to the street scene I consider that the Council would be well placed to resist such requests.
11. Turning to the third issue of amenity space for future occupiers of the dwelling, the rear garden area at about 76sqm is small but slightly larger than that considered in the previous appeal. As a two-bedroom house the property would be unlikely to be occupied by a family of more than four and before future occupiers decide whether to live there, they would be able to decide whether

the rear garden is large enough for their particular needs. With a proposed open market dwelling in a good quality residential area this is not a situation where occupiers would be deprived of adequate living conditions in terms of amenity space.

Other Matters

12. Notwithstanding my finding that the appeal proposal in itself is of sufficient merit to be in accordance with local and Government planning policy, I acknowledge the view of Members and some residents that because of the modest size of the site there would be disadvantages in the form of a shorter rear garden for the proposed house compared to its neighbours. And because of the plot severance, there would also be a shorter rear garden for the host dwelling No. 7. Together these factors are considered to harm the character and appearance of the locality.
13. However, the planning balance in individual appraisals for this type of development is 'tilted' because of the requirement in paragraph 11d) and footnote 8 of the Framework for Local Planning Authorities to give increased weight to proposals for housing where they are unable to demonstrate a five-year supply. This applies to Brighton with a shortfall of 1,400 dwellings and where incremental provision within the existing built up area is likely to have a significant role. In this instance I am satisfied that any actual or perceived adverse impacts of granting permission would not significantly and demonstrably outweigh the benefit of an additional dwelling when assessed against the Framework's policies taken as a whole.
14. Public consultation on the application has resulted in objections from the aforementioned local residents and in making my decision I have taken these into account. In the case of the occupiers of No. 8 Benett Avenue, which will adjoin the proposed dwelling, a number of issues were raised that were considered to have an unacceptably adverse effect on their enjoyment of their property.
15. However, I note that in their report recommending approval of the application, under the heading 'Impact on Amenity', officers addressed this neighbour's concerns in respect of noise and disturbance, outlook, light and privacy as well as on the main issues set out above. I agree with the officer's appraisal. However, I have also read the letters from the occupiers of No. 8 to the Planning Inspectorate which refer to a large number of points that in the writers' view remain outstanding or unresolved. The appeal process cannot facilitate the ongoing resolution of such objections, but from my appraisal of the appeal site and also mindful that all development inevitably has some effect, I do not consider that they are of sufficient weight for me to withhold permission. Moreover, with appropriate conditions I consider there is the opportunity to significantly mitigate the potential for any harm.

Conclusions and Conditions

16. Overall, taking into account all three main issues and also having regard to the 'Other Matters', I conclude that the development would not be in harmful conflict with Policies CP12 & CP14 of the Brighton and Hove City Plan Part One 2016; Policies QD16 & HO5 of the Brighton and Hove Local Plan (Retained Policies March 2016), and Section 12: 'Achieving Well-Designed Places' of the

National Planning Policy Framework 2021 ('the Framework'). I shall therefore allow the appeal.

17. As regards conditions, with some minor modifications the conditions in the officer's report are reasonable and necessary. Condition 2) requiring compliance with the plans is needed for the avoidance of doubt and is in the interests of proper planning. In a number of cases the plans post-date the drawings refused by the Council, but I am satisfied firstly that the amendments are minor in nature and are necessary for accuracy and clarity, and secondly the changes made to the originally submitted plans do not prejudice the interests of any third party.
18. The reasons for the remaining conditions as numbered in the Schedule are in summary: 3) to prevent the over-development of the site and thereby maintain the character and appearance of the area; 4) to conserve energy and mitigate climate change; 5) to ensure the efficient use of water as a valuable natural resource; 6) to ensure the provision of cycle storage facilities and thereby encourage cycling; 7) to maintain highway safety; 8) to reduce the risk of localised flooding; 9) to ensure adequate off-road car parking in accordance with the Council's standards; 10) to ensure that the development has a satisfactory appearance and thereby maintains visual amenity; 11) to enhance the biodiversity of the site; 12) to provide a lifetime home including for people with disabilities; 13) to ensure the satisfactory provision of refuse storage and recycling; 14) to safeguard the amenities of neighbouring properties, and 15) to ensure that the development is carried out in accordance with this permission and to safeguard the amenities of neighbouring properties and the character and appearance of the area.

Martin Andrews

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this Decision;
- 2) The development shall be carried out in accordance with the following approved plans and document: Drawing Nos. 19036-001; 19036-002A; 19036-003A; 19036-004B; 19036-005B; 19036-006A; 19036-007C; 19036-008A; Arboricultural Impact Assessment and Method Statement ('AIA & MS') dated August 2021. The AIA & MS shall be implemented in full and strict accordance with the approved details;
- 3) No extension, enlargement, alteration of the dwellinghouse as provided for within Schedule 2, Part 1, Classes A, B, C and D 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 first being obtained from the Local Planning Authority;
- 4) The dwelling hereby approved shall not be occupied until the building has achieved an energy efficiency standard of a minimum of 19% CO₂ improvement over Building Regulations requirements Part L 2013 (TER Baseline);
- 5) The dwelling hereby approved shall not be occupied until it has achieved (as a minimum) a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption;
- 6) Notwithstanding the approved drawings, the development hereby permitted shall not be occupied until details of secure cycle parking facilities for the occupants of, and visitors to, the development have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be 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 development hereby permitted shall not be occupied until the crossover and access has been constructed to the standard required by the Local Highway Authority;
- 8) The hard surfaces hereby approved shall either be made of porous materials or provision made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property;
- 9) The vehicle parking area shown on the approved plans shall not be used other than for the parking of private motor vehicles and motorcycles belonging to the occupants of and visitors to the development hereby approved and shall be maintained so as to ensure its availability for such use at all times;
- 10) No development above ground floor slab level of any part of the development hereby permitted shall take place until details of all materials to be used in the construction of the external surfaces of the development have first been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in full accordance with the approved details;

- 11) One bee brick and three swift bricks shall be incorporated within the external wall of the development hereby approved and thereafter be permanently retained;
- 12) The development hereby permitted shall not be occupied until the dwelling hereby permitted has been completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) and shall be retained in compliance with such requirements thereafter. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, Building Notice, or Initial Notice to enable the building control body to check compliance;
- 13) 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;
- 14) The development hereby permitted shall not be occupied until a plan detailing the positions, height, design, materials and type of all existing and proposed boundary treatments has been submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be provided in accordance with the approved details prior to occupation of the development and shall thereafter be retained at all times;
- 15) The development hereby permitted shall not commence until full details of existing and proposed ground levels have been submitted to and approved by the Local Planning Authority. The levels shall be referenced as Ordnance Datum within the site and on land and buildings adjoining the site by means of spot heights and cross-sections, proposed siting and finished floor levels of all buildings and structures. The development shall be implemented in strict accordance with the approved level details.