



Appeal Decision

Site visit made on 25 April 2022

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 MAY 2022

Appeal Ref: APP/Q1445/W/21/3283766

Panorama House, 1D Vale Road, Portslade BN41 1BA

- 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 Ms O Golan of Mulberry One Capital Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2021/01919, dated 19 May 2021, was refused by notice dated 27 July 2021.
 - The development proposed is the installation of one window (within the wall of unit 42) and conversion of units 9, 42, 45 and 46 into 4 residential units.
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Decision

1. The appeal is dismissed insofar as it relates to the installation of one window (within the wall of unit 42) and the conversion of units 9 and 42 into 2 residential units. The appeal is allowed insofar as it relates to the remainder of the application and planning permission is granted for the conversion of units 45 and 46 into 2 residential units at Panorama House, 1D Vale Road, Portslade BN41 1BA in accordance with the terms of the application, Ref BH2021/01919, dated 19 May 2021, and subject to the conditions within the attached schedule.

Procedural Matters

1. Since the appeal has been submitted The City Plan Part Two, Brighton and Hove City Council's Development Plan, April 2020 (CPP2) has undergone examination and in November 2021 Main Modifications were issued. These do not require amendments to CPP2 Policy DM20 and the appellant has had the opportunity to respond. I have considered this accordingly.
2. I appreciate that some parties consider the location plan to be inaccurate in terms of the layout of the site. The proposal does not include significant physical development therefore I am satisfied it is adequate for purposes of locating the site. I am aware that within the officer report, the Council did not refer to the amended unit 9 layout. As this was submitted during the application process and formed the basis of the appeal submission, both the Council and interested parties have had opportunities to comment. For the purposes of this appeal. I have considered the proposal for unit 9 to align with plan SM-02 Revision A.
3. For the following reasons, I find the conversion of units 45 and 46 into 2 residential units acceptable, and they are clearly severable both physically and functionally from units 9 and 42 and the location of the proposed new window. Therefore, I intend to issue a split decision in this case and grant planning permission for the conversion of units 45 and 46.

Main Issue

4. The main issue in this appeal is the effect of the proposed development on the living conditions of existing occupants of Panorama House and whether appropriate living conditions would be provided for future occupants of the 4 proposed new residential units (units 9, 42, 45 and 46) in relation to privacy.

Reasons

5. Panorama House is a high density residential development within the urban area of Portslade, providing 42 residential units. The layout of the development is somewhat insular with a high proportion of the ground and first floor residential units having views onto internal areas of the site or across the car parking areas. The site has limited landscaping predominantly related to defensible space in front of some of the ground floor units. Due to the proximity and density of the various units there is a reasonably high level of perceived and actual overlooking already in existence.
6. To the north of Panorama House is the rail line and embankment. To the east there is a row of properties facing onto Station Road. These are mainly commercial with potentially some upper floor residential uses. Both the rail line and Station Road properties are at a higher level to Panorama House and as such the boundary walls separating these uses from the appeal site is in some places, approximately 2 storeys in height.
7. Unit 9 is situated on the ground floor of the main building and is single aspect. All its windows face directly onto an internal courtyard. The appellant states that the courtyard is not meant to be amenity space. However, on visiting the site it was evident the occupants of the existing units facing into the courtyard use it as such. This use is confirmed in comments submitted by the Panorama House Right to Manage Company Limited (RTM).
8. The submitted plans do not provide unit 9 with access into the courtyard nor defensible space in front of its windows. This means that users of the courtyard have unfettered views into the entirety of unit 9. Due to the perpendicular relationship of unit 9 with the existing courtyard facing residential units, I find its conversion would not create additional overlooking of the internal living space of those individual units. Nevertheless, the proposal would significantly increase overlooking of the courtyard. Obscure glazing would remedy the concerns relating to privacy but due to the single aspect design of unit 9 this would not be acceptable for future occupants in relation to outlook.
9. The proposed conversion of unit 42 would include the installation of an additional window. The proposed new window would have direct views into the residential units opposite harming the privacy of the occupants of those dwellings. As with unit 9, the use of obscure glazing would be to the detriment of the living conditions of future occupants in relation to outlook.
10. This proposed and existing window would also face directly onto the walkway accessing numerous other units with no defensible space. This would allow unfettered views into unit 42. In certain circumstances landscaping can be used to provide defensible space in high density environments. However, on visiting the site I am unconvinced that such space could be provided in front of unit 42's existing and proposed windows without prejudicing the walkway and access to other units.

11. It is noted future occupants of unit 42 would be aware of the potential overlooking before their occupation. This does not mediate the harm to the privacy of the future occupants nor the existing occupants of the residential units opposite.
12. Consequently, the part of the proposal relating to the installation of a new window (within the wall of unit 42) and the conversion of units 9 and 42 would significantly harm the living conditions, in relation to privacy, of current occupants of Panorama House and fail to provide appropriate living conditions for future occupants of units 9 and 42. This part of the proposal is contrary to Local Plan Policies QD14 and QD27 and CPP2 Policy DM20, insofar as they seek to protect the living conditions of the city's residents.
13. The windows in unit 9 and one window in unit 42 are already in existence and therefore overlook adjacent dwellings. During my visit, it was evident the units in question had been vacant for some time with the windows covered up. As such, the fact the windows are in existence would not overcome the harm to the living conditions of future occupants of units 9 and 42, nor those of existing occupants of Panorama House.
14. There is also potential that the units could be put into some other use and the appellant has suggested commercial offices. The Council have confirmed that a previous prior approval application (BH2020/2011) was refused as it was considered there was no lawful B1 office uses in existence on the site. Such a use would likely only require the units to be occupied for certain periods of the day, whereas a residential use means the windows could be used any time day or night. Nevertheless, the proposal in front of me is for residential purposes and my findings relate to that. I give this, as a fallback option, limited weight and it does not mitigate the harm found.
15. Unit 45 (ground floor) and unit 46 (first floor) are situated in the north-east corner of the site. Windows within their front elevation are set back from the existing ground and first floor residential units. They provide views along the access walkways and public space between existing units without directly looking into the windows of adjacent dwellings. This lack of mutual overlooking would also benefit the front facing windows of unit 46. The front facing window of unit 45, however, is adjacent to the public walkway which is used by occupants of other units and so can be looked directly into, to the detriment of future occupants' privacy. This could be overcome by using landscaping to provide a defensible area in front of the window. As opposed to unit 42, it was evident that there was enough space that this could be achieved without detriment to the access to other units and so could be conditioned.
16. The windows within the rear elevations of units 45 and 46 look towards a 2 storey section of the appeal site boundary wall. They are not overlooked and do not overlook any other units within Panorama House. There would only be partial and distance views of the upper parts of the Station Road properties from unit 46, which would not cause any significant issues with overlooking. However, the section of the site to the rear of units 45 and 46 is very overgrown blocking most light into unit 45. This detrimental impact on the living conditions for future occupants of unit 45 could be negated by using a landscaping condition to ensure the area is properly designed and maintained. This part of the proposal would not, therefore, harm the living conditions of the

existing occupants of Panorama House and provide appropriate living conditions for the future occupants of units 45 and 46 in relation to privacy.

17. For the reasons given above, the conversion of units 45 and 46 into residential units could be achieved without unacceptable harm to the living conditions of existing occupants of Panorama House and would provide appropriate living conditions for future occupants of units 45 and 46 in relation to privacy. This would comply with Policies QD14 and QD27 of the Brighton and Hove Local Plan (Local Plan) and CPP2 Policy DM20 insofar as they seek to protect the living conditions of the city's residents.

Other Matters

18. The appellant has referred to various paragraphs from the National Planning Policy Framework (the Framework), relating to highway safety and effective use of land. I have had regard to these, but a lack of harm to highways and the following of good land use principles are neutral factors so do not outweigh the harm found.
19. In relation to refuse and bicycle storage, the acceptable part of the proposal would create 2 one-bed dwellings and it is considered the size of the existing storage would be suitable to incorporate future occupants requirements without change. The conversion of units 45 and 46 would not increase traffic onto the site and would not increase risk of contamination for future or existing occupants. It is also unnecessary to limit construction by condition as internal works have largely been started (albeit several years ago) and will be short lived. I have not pursued matters relating to the fire access and parking provision for unit 9 as I am dismissing this part of the proposal. Matters relating to property values, lease disputes, the landowner / RTM relationship, the RTM approval requirements, utility bill division and the quality of previous work, do not alter my findings on the main issue.
20. Issues relating to enforcement actions on the wider Panorama House site is a matter for the appellant or interested parties to raise with the Council.

Conditions

21. In addition to securing commencement within the relevant statutory timeframe, I have imposed conditions requiring adherence to the approved plans but only in relation to the part of the proposed development considered acceptable. Condition 3 would ensure suitable landscaping of the area to the rear of units 45 and 46 and to the front of the bedroom window in unit 45. This is necessary to ensure the living conditions of future occupants, as set out in the above reasoning. I have also attached conditions 4 and 5 to secure use of the existing bin and cycle storage for future occupants of units 45 and 46.
22. The Council also recommended a condition relating to the use of areas of flat roof, however units 45 and 46 would not have any form of access to such areas and therefore this condition is not considered necessary or reasonable.

Planning Balance and Conclusion

23. The Council have confirmed that they are unable to demonstrate a 5-year housing supply. As such, it is necessary for me to apply paragraph 11d) ii of the Framework.

24. For the reasons given above the proposed installation of a new window (within the wall of unit 42) and the conversion of units 9 and 42 into 2 residential units would significantly harm the living conditions, in relation to privacy, of current occupants of Panorama House and fail to provide appropriate living conditions for future occupants of units 9 and 42.
25. The provision of additional smaller sized dwellings would reflect the housing needs of the city and the proposal would constitute sustainable development. I attach moderate weight to this matter which further supports the conversion of units 45 and 46. The lack of impact on the character and appearance of the wider area and that all 4 units would comply with internal space standards are also noted. However, these matters are considered principles of good design and so carry a neutral weight.
26. In conclusion, the significant harm found in relation to living conditions would significantly and demonstrably outweigh the benefits of the proposal in relation to the installation of the new window and conversion of units 9 and 42. These elements of the proposal would conflict with the development plan as a whole, and on this matter the relevant policies are supported by paragraph 130 of the Framework.
27. For the reasons given above and having considered the development plan along with all other relevant material considerations including the approach in the Framework, I conclude that the appeal should be allowed insofar as it relates to the conversion of units 45 and 46 into 2 residential units and dismissed insofar as it relates to the installation of one window (within the wall of unit 42) and the conversion of units 9 and 42 into 2 residential units.

R J Redford

INSPECTOR

Schedule of 5 Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans insofar as they are relevant to the part of the development hereby permitted, and all elements regarding the installation of a new window and the conversion of units 9 and 42 are disregarded:
 - Location plan – OS Map – SM-09
 - Existing Plan for Flat 45 – SM-05
 - Proposed Plan for flat 45 – SM-06
 - Existing Plan for Flat 46 – SM-07
 - Proposed Plan for flat 46 – SM-08
 - Existing Block Plan Ground Floor – SM-10

- Proposed block plan ground floor – SM-11
 - Existing Block Plan First Floor – SM-12
 - Proposed Block Plan First Floor – SM-13
 - Existing Elevation – SM-15
 - Proposed car park and bicycle storage – SM-17
- 3) Prior to occupation of the 2 residential units hereby permitted, a landscaping scheme shall have been submitted to and approved in writing by the local planning authority, and the approved scheme implemented. The implemented scheme shall be maintained thereafter.
- The landscaping scheme shall include designs for defensible space to the front of unit 45 and the area to the rear of units 45 and 46.
- 4) On occupation of the 2 residential units hereby permitted, occupants shall have use of the communal bin storage (as shown on drawing Proposed car park and bicycle storage – SM-17) and these facilities shall be retained thereafter.
- 5) On occupation of the 2 residential units hereby permitted, occupants and their visitors shall have use of the communal bicycle storage (as shown on drawing Proposed car park and bicycle storage – SM-17) and these facilities shall be retained thereafter.