



Appeal Decision

Site visit made on 3 August 2022

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 18 August 2022

Appeal Ref: APP/Q1445/W/22/3294477
85 Ditchling Road, Brighton BN1 4SD

- 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 Sam Murphy against the decision of Brighton & Hove City Council.
 - The application Ref: BH2021/03411 dated 22 September 2021, was refused by notice dated 15 November 2021.
 - The development proposed is change of use of ground floor and lower ground floor from commercial unit (E) to create a two bedroom maisonette (C3) incorporating new basement lightwells, revised fenestration and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken into account that the Brighton & Hove City Plan Part 2 is now at a very advanced stage of preparation, although not yet adopted, and I have therefore given significant weight to its policies. Both the Council and the Appellant have referenced policies and text from this Plan.

Main Issue

3. The main issue in this appeal is whether the proposal would create a satisfactory living environment for future occupiers, with particular regard to the lower ground floor bedrooms.

Reasons

4. The appeal property (ground floor and Basement) is a former commercial unit on the corner of Ditchling Road with Kingsbury Street. Kingsbury Street is blocked off to vehicular traffic at the Ditchling Road end of the street. The surrounding area is generally residential but with some commercial uses along Ditchling Road, particularly to the south and towards the City Centre. The upper floors are in residential use with separate access from Kingsbury Street. At the time of my site visit, there were extensive building works being undertaken to the building.
5. The proposal seeks to change the use of the ground and basement floors into a two bedroom maisonette, with alterations including the creation of basement lightwells to serve the proposed rooms at basement level, shown to be

bedrooms. I agree that there is no issue over the principle of the proposed change of use and that the size of the individual rooms as well as the overall space would be acceptable.

6. I have taken into account the detailed proposals to introduce light to the two main basement rooms, and the results of the Internal Daylight Report in this regard. However, although the amount of light to the two rooms would meet current guidance on the basis of the submitted report, I consider that the outlook would remain extremely limited and restricted for both rooms. The very limited outlook would lead to a very oppressive internal environment. The standard of accommodation would fall significantly short of the high quality living environment for future occupiers that both national and local planning policies seek to promote.
7. I note that these rooms are shown to be in use as bedrooms but the way in which future occupiers wish to use the rooms is for their determination. They are both habitable rooms and are not in my view secondary rooms in terms of the quality of the internal environment to be expected.
8. I therefore conclude that the proposal would not provide a satisfactory living environment for future occupiers, with particular regard to outlook. This would conflict with Policy QD27 of the Brighton & Hove Local Plan and Policy DM1 of the submission City Plan Part 2 as well as paragraph 130f of the National Planning Policy Framework all of which amongst other things seek a high quality of amenity of existing and future occupiers.
9. The Appellant and the Council have drawn my attention to decisions by the Council as well as appeal decisions which have reached different conclusions on the issue of outlook in relation to satisfactory living conditions. I am required to assess the proposal before me on its individual planning merits which is what I have done. Nonetheless and in so far as the information has been made available to me, I have taken these other decisions into account. However, given their differing conclusions, they serve to confirm that on this particular issue, it is difficult to draw generalised conclusions and it is dependent on the individual circumstances of the particular case. They do not therefore persuade me to a different conclusion.
10. The Appellant suggests that the Council should look to the adoption of Supplementary Planning Documents to avoid the pitfalls of arbitrary interpretation but that is outside the remit of this appeal. Nonetheless there is in my view a clear difference between arbitrary interpretation and different judgements being made based on the planning merits of individual cases.
11. The Appellant has also quoted from a Supplementary Planning Document of an adjoining authority but that is not pertinent to my decision in this case. In any event, it is not clear to me from the extract provided that the proposal before me would satisfy this principle.

Other Considerations

12. The appeal property lies within the Valley Gardens Conservation Area. I am required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (The Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. The proposed external alterations would be very limited in extent and I am

satisfied that there would be no harm to the significance of the Conservation Area; its character and appearance would be preserved. The Council also raised no concerns in this regard.

Planning Balance

13. The Council has acknowledged that it is unable to demonstrate a five year supply of deliverable housing land and the current position is a very serious shortfall in its supply. Paragraph 11 of the Framework sets out that decisions should apply a presumption in favour of sustainable development and that, under criterion d) where the policies which are most important for determining the application are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Given the lack of a five year housing land supply, paragraph 11 d) of the Framework is engaged.
14. The amount of weight to be given to development plan policies is a matter of planning judgement for the decision maker. In the context of the development plan I have found that the proposed development would be contrary to Policy QD27 of the Brighton & Hove Local Plan and Policy DM1 of the submission City Plan Part 2. I have found these policies to be generally consistent with the relevant aims of the Framework and I attach significant weight to them.
15. Paragraph 60 of the Framework refers to the government's objective to boost significantly the supply of housing, and paragraph 69 confirms that small and medium sized sites can make an important contribution to meeting the housing requirement of an area. In this instance, the proposal would contribute one two-bedroom additional unit for which there is an identified need.
16. When judged against some of the core planning principles the proposal would perform well in that it would be in a predominantly residential area where access to facilities and services is likely to be greatest. In terms of its component dimensions there would be a modest social and economic benefit in providing an additional unit.
17. I have found that the proposal would respect the character and appearance of the Conservation Area. However, it would not create a satisfactory living environment for future occupiers. The harm I have concluded would be significant and as a result the social role of sustainable development would not be achieved. 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.
18. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

L J Evans

INSPECTOR