

Appeal Decision

Site visit made on 19 May 2022

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

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

Decision date: 08 September 2022.

Appeal Ref: APP/Q1445/W/21/3282978

Land adjoining 12 Dunster Close, Brighton BN1 7ED

- 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 Martyn Holmes, Bunker Housing Co-operative Ltd, against the decision of Brighton and Hove City Council.
 - The application, Ref. BH2020/00674, dated 27 February 2020, was refused by notice dated 16 March 2021.
 - The development proposed is the erection of a two-storey building comprising 1 No. semi-detached four-bedroom house and 2 No. one bedroom flats (C3).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposed development on (i) local amenity and biodiversity; (ii) the character and appearance of the area and (iii) highway safety and convenience. I have referred to the refusal reason on the living conditions for neighbouring occupiers as regards privacy and light in 'Other Matters'.

Reasons

3. For the appellant it is argued that proposals for the site's development have to be assessed with regard to its sustainable location within an established residential area of the city close to local amenities and public transport modes. Given these advantages the site would be well placed to make a contribution towards Brighton's urgent housing need as demonstrated by the Council's failure to meet Government targets. I acknowledge that housing need is a significant consideration that has to be given substantial weight in this appeal and return to the issue under 'Other Matters' below.
 4. However, the four reasons for refusal relate only to the impact of the site's development, described in the officer's report recommending approval of the appeal scheme as an '*undesigned informal communal amenity green space owned by Brighton and Hove City Council*'. And although undesigned, the consultation replies from local residents on the application indicate that this description is a recognition of the role that the site plays in this part of Hollingdean. This notwithstanding, the officer's recommendation is predicated on the finding that the development's housing benefits would outweigh the
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negative impacts on the existing green space and its use by local residents as an informal amenity area.

5. In my review of that approach and the Members' decision not to accept the recommendation, issues (i) and (ii) above derive from the first and second reasons in the Council's Notice of Refusal and overlap in terms of the matters to be addressed. I shall therefore consider them together. As with my appraisal of issues (iii) and (iv) below, I have taken account of the proposal's amendment through a pre-application enquiry submission from five to three units and from three to two storeys.
6. In my assessment, the existing site makes a significant and positive contribution to the visual amenity of this residential area. This is partly because it effectively has two frontages to the public realm, at the end of the Dunster Close cul-de-sac and at a 90-degree bend in Dudley Road. In both cases the eye is drawn to and rewarded by the green space and / or mature trees forming a pleasing contrast with the neighbouring houses, but especially so in Dunster Close where the sward of grass and the backdrop of mature sycamores combine to provide an especially scenic vista in both longer and shorter views.
7. The existing view of the site from Dudley Road of the mature trees atop the retaining wall also provides a prominent element of natural landscape as a welcome element of variety in this road, with to the north its long stretches of terraced housing and their small front gardens. I acknowledge that trees would be retained along the frontage in the appeal scheme, but the screening effect would be significantly reduced by the severe pruning that would be needed.
8. Furthermore, although downsized since its inception, I remain unconvinced that the scheme's scale and design would sit comfortably within the townscape of the surrounding area. The proposed design is by no means without merit but the combination of its overtly rectilinear form and the massing of the single block of building across the width of the site in this elevated position would appear to impose on, rather than blend with, its immediate context of No. 4 Dudley Road and No. 15 Dunster Close. I acknowledge that the nearby Oldbury Row development has successfully introduced a contemporary design into Dudley Road, but despite its proximity this is much more of a stand-alone site and diverse immediate context than is the case with the appeal proposal.
9. The Council's arboriculturist considered that the application should be refused due to the tree removal necessary to enable construction of the dwellings and to the close proximity of retained trees. In coming to this conclusion he observed that the row of sycamore, due to their raised location above Dudley Road and the relative scarcity of any significant canopy coverage within Hollingdean, are considered to be of high amenity; that sycamore trees in general do not respond well to excessive pruning; that there are concerns regarding post development pressure for felling and pruning from the occupiers of the proposed dwellings, and that the removal of seven trees (including three of Category A: 'High Value' status) will have a significant visual impact upon the area. Nothing I have seen or read, including the appellant's 'Combined Ecological and Arboricultural Appraisal Report', has led me to disagree with these views which I consider to be accurate, and even allowing for the benefit of a professional input appear to me as plain common sense.

10. The appellant's combined report also addresses the specific matter of the proposed development on the site's biodiversity, in which respect it is found that *'the western wooded slope and the scrub-lined northern and eastern boundaries have potential breeding habitat for occupation by a small range of common and widespread garden birds such as wren and robin.'* However, it is asserted that the site is not considered to be a suitable reptile habitat, whilst the habitats that are present are of no significant ecological value and development is not precluded having regard to Policy CP10: 'Biodiversity' of the Brighton & Hove City Plan Part 1 ('the Local Plan') and Government policy in Section 15: 'Conserving and Enhancing the Natural Environment' of the National Planning Policy Framework 2021 ('the Framework'). The latter includes Principle d) of paragraph 180 which requires opportunities to improve biodiversity in and around developments to be integrated as part of their design, especially where this can secure measurable net gains for biodiversity.
11. Local residents dispute the appellant's biodiversity evidence including that there are no protected species on the appeal site and refer to the presence of bats and in one case a slow worm. Under the written representation procedure of this appeal, I am not in a position to test the evidence but I nonetheless consider that I am able to reach a broad conclusion on the information before me. This is to the effect that even with conditions to secure the proposed mitigation measures, the interests of biodiversity would unequivocally be best served by leaving the site undeveloped.
12. This is because with only the existing grass cutting and non-intensive informal use for children's play to interfere with the ecology of the site, the development would represent a seismic shift in terms of the implications of construction (in particular the loss of trees and associated ground cover) and the subsequent use as a residence for up to nine people (using the appellant's own figures). This is not in itself sufficient to rule out development on the site because as the Framework indicates, compromises often have to be made. But it does carry substantial weight in weighing the planning balance when coming to a decision.
13. In short on issues (i) & (ii), the development of the site would fundamentally change its present role as a green space of ecological interest and eliminate its contribution as an informal open space in a part of the city where there is a significant shortage of such spaces and areas (noting also that Davey Drive is steeply sloping and Sanders Park performs a different function to the appeal site). There would additionally be significant harm caused to the character and appearance of the area. Accordingly on these issues I conclude that there would be harmful conflict with Local Plan Policies CP10, CP12, CP14, QD16 & QD18 and with Section 12: 'Achieving Well-Designed Places' of the Framework.
14. Turning to issue (iii), the effect on highway safety and convenience, the appeal proposal is put forward as a 'car free' development with pedestrian and service access via Dunster Close and no on-site parking provision. The appellant's Transport Statement, prepared for the appeal site and the nearby garage site (since granted permission for two dwellings) concludes that this is an accessible location, well situated to benefit from good local public transport, footway and cycle links. The Statement additionally asserts that there would be no unacceptable impact on local street parking. This notwithstanding, the Local Highway Authority ('LHA') objected to the appeal application because of the

parking stress that would occur as a result of the comings and goings associated with three additional dwellings.

15. With its location within the Outer Zone of the city as defined in the Council's SPD 14: 'Parking Standards' I do not regard the site as being sufficiently accessible to local services and public transport facilities to be properly regarded as being suitable for a car free development. Moreover, the absence of a Controlled Parking Zone would preclude the necessary measures to ensure that future occupiers would be unable to park on the roads close to the proposed dwellings. Accordingly, in these circumstances it would seem highly likely that those occupiers would include car owners and regard the kerbside of Dunster Close as their favoured option, given that road's proximity to the dwellings and level access.
16. The cul-de-sac has a 4m width which is clearly inadequate for kerbside parking if obstruction is to be avoided. In the event that cars are parked entirely on the carriageway there would be the obstruction of larger vehicles including refuse collection vehicles and delivery vans seeking access to the existing houses and to the proposed development. On the other hand, if cars are parked partly on the footpath to avoid causing an obstruction, this could require those with mobility vehicles and pushchairs to enter the road. The evidence is that these practices are already occurring and I consider the additional three dwellings now proposed would exacerbate the situation, which in my view would not be adequately mitigated by the low speeds in Dunster Close. Furthermore, the LHA also refer to other nearby roads already exceeding operational capacity in relation to parking and again cars from occupiers of the proposed development would make matters worse.
17. In these circumstances I conclude on this issue that there would be unacceptably harmful conflict with Local Plan Policy CP9 and with paragraph 111 of the Framework, which says that development should be prevented if there would be an unacceptable impact on highway safety.

Other Matters

18. The Council's Decision Notice includes a reason for refusal relating to an alleged adverse effect of the proposed building on the living conditions for neighbouring occupiers as regards a loss of sunlight & daylight and increased overlooking. However, I consider that both the officer's committee report and the appellant's statement, with their references to the land levels, orientation, position and distance of the proposed development relative to Nos. 12 & 15 Dunster Close and 4 Dudley Road, have satisfactorily demonstrated that any of these adverse effects would not be of a significance to warrant a withholding of permission on the basis of a harmful conflict with Local Plan Policy QD27.
19. The principal 'Other Matter' is the need to take account of the benefit to the city and its residents of three additional dwellings, including a family house. This benefit would be further enhanced in this case because the accommodation would be affordable housing for rent and in this respect I have noted and had regard to the letters of support for the application.
20. The Council is unable to demonstrate a five-year supply of deliverable housing sites and under the Government Planning Practice Guidance 2020 is additionally required to increase its definition of housing need by 35%. For these reasons

paragraph 11d)ii and footnote 8 of the Framework as applied to the appeal application require planning permission to be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

21. In the paragraphs above I have regarded the Council's refusal reason relating to the effect on the living conditions of nearby dwellings as an 'Other Matter' which on analysis does not support the Council's refusal of permission. The other reasons for refusal are dealt with as issues (i), (ii) and (iii). On issues (i) local amenity and biodiversity and (ii) the character and appearance of the area I consider that although the additional three dwellings proposed would make an important contribution to housing need in the city, albeit a modest increment, this benefit would be clearly outweighed by the harm that I have identified. My finding on issue (iii) highway safety and convenience adds further weight in support of the Council's decision to refuse permission against the officers' recommendation.

Conclusion

22. For the reasons explained and having had regard to all other matters raised I conclude, on balance, that the appeal should be dismissed.

Martin Andrews

INSPECTOR