



Appeal Decision

Site visit made on 9 August 2022

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 SEPTEMBER 2022

Appeal Ref: APP/Q1445/W/21/3288620

7 Richmond Road, Brighton, BN2 3RL

- 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 Patrick Cloherty against the decision of Brighton & Hove City Council.
 - The application Ref BH2021/02065, dated 01 June 2021, was refused by notice dated 17 September 2021.
 - The development proposed is the erection of a new build dwellinghouse (C3)
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the proposal is in a conservation area (CA), I have paid special attention to the desirability of preserving or enhancing the character or appearance of that area, as set out in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
3. The council's reasons for refusal did not refer to policies from their emerging City Plan Part Two (April 2020) (CPP2). However, during the appeal, the council provided an update on the status of CPP2 and alleged conflict with some of its draft policies. This confirmed that on 19 July 2022 the Inspector published her Report into the Examination of the CPP2. The Inspector concluded that, with her recommended changes (the schedule of Main Modifications as appended to the Report), the CPP2 is sound and can be adopted. Consequently, the council now refer to emerging policies DM1, DM20 and DM26 of the CPP2. Whilst the policies within CPP2 will not have full weight until it is formally adopted, the evidence before me indicates that the relevant CPP2 policies can be afforded significant weight. I will therefore address the relevance of each to this decision. Policy DM1 identifies the council's aim for the delivery of a wide choice of high quality homes and requires that the Nationally Described Space Standards (2015) (NDSS) are applied to new developments. Policy DM20 seeks to protect the living conditions of existing and future residential occupiers. Policy DM26 requires that development within conservation areas preserves or enhances the character and appearance of the conservation area and takes full account of the appraisal set out in the relevant character statement.

Main Issues

4. The main issues are:

- the effect of the proposal on the character and appearance of the area, with due regard to the location of the site in the Round Hill CA;
- whether the future occupiers of the proposed development would have acceptable living conditions; and
- the effect of the proposed development on the living conditions of occupiers of neighbouring properties.

Reasons

Character and appearance

5. The existing property is a grand, three storey semi-detached period property which has been sub-divided into five self-contained flats. The surrounding area is residential and many of the nearby buildings have also been converted into self-contained flats. This part of Richmond Road is on a steep incline with the land rising to the rear of the site. The front of the property is reached via steps, and further steps are required to access the rear garden. The large rear garden continues to rise, and the neighbouring properties on Crescent Road are at a raised level to the appeal property. The character of this part of the Round Hill CA and its significance stems from, amongst other aspects, the arrangement of generously sized and spaced semi-detached houses and villas with expansive rear gardens. The Council's Conservation Area Appraisal (2005) also identifies the curves and contours of streets and emphasises the 'green ribbons' of land which, whilst not visible from the street, define the unaltered Victorian street plan of the CA area within attractive long-distance views from outside it. With its long, open rear garden, the appeal site positively contributes to the character of the area.
6. The existing property's rear garden is not visible in views from surrounding streets. The proposed development is also unlikely to be visible in public views from nearby vantage points and views of the existing property within the streetscene would be unaffected by the proposed development. However, given the densely built up nature of the area, it would be visible from a large number of properties on both Richmond Road and Crescent Road. The introduction of a new dwelling, with a footprint of this size, and built close to the garden's boundaries, would erode the verdant and open nature of the garden. The subdivision of the garden would also lead to both the proposed dwelling and host dwelling having noticeably and uncharacteristically smaller gardens than neighbouring properties.
7. I note the single storey split-level design which would be set down into the rising land, and the green roof and future landscaping which have been proposed to minimise the dwelling's visual impact. A significant proportion of the site would also remain free from built form. However, for the reasons set out above, the building would have a harmful impact on the open and spacious character of rear gardens within this part of the CA, and would amount to a form of overdevelopment which would read as a cramped, incongruous feature. It cannot therefore reasonably be described as making good use of the site.
8. The council has no objection to the principle of some built form within the garden. Similarly, the detailed design and materials proposed for the dwelling, when viewed in isolation, may be acceptable. However, the impact of the

- development, when viewed in its context, due to its size and impact on the verdant garden area would cause harm to the CA, as a whole.
9. I have had regard to other rear buildings in the area, including at 13 Richmond Road. However, based on the available evidence and my site visit observations, large rear buildings do not appear to be a characteristic of the immediate area, and are not found within the majority of properties on this side Richmond Road, nor Crescent Road. In any event, the existence of a limited number of rear buildings does not indicate that the proposed development is acceptable.
 10. Concerns have been raised by the council and third parties about the impact of the proposed building in long views from elevated viewpoints, which I visited during my site visit. Given the distances involved, the built form within the rear garden would not be particularly visible from distant viewpoints and would not read as harmful in these isolated views.
 11. For the above reasons, I conclude that the proposed development, due to its impact on the openness of the rear garden, would harm the character and appearance of the surrounding area and would fail to preserve the character and appearance of the CA as a whole. I therefore find that it conflicts with Policies CP12, CP14 and CP15 of the Brighton & Hove City Plan Part One (CPP1) (2016) and draft Policy DM26 of the CPP2. Amongst other things, these policies seek to ensure that the historic environment is safeguarded from harm, the value and significance of conservation areas are maintained, and new development is of a high standard of design and respects local character.
 12. In failing to preserve the character and appearance of the CA, I find that the proposed development would, in the words of the National Planning Policy Framework (Framework), result in less than substantial harm to the significance of a designated heritage asset. In such circumstances, the Framework requires that the less than substantial harm should be weighed against the public benefits. The proposed development would provide an additional windfall dwelling which would contribute to the under-supply of housing in the borough, to which I give significant weight. The design of the dwelling would incorporate low-carbon technologies, be energy efficient and designed - in accordance with the Framework - to incorporate features to enhance biodiversity net gains. It has been put to me that the appeal proposals would also make an efficient use of the site. Be that as it may, and despite the significant shortfall in housing land supply, the nature and scale of the proposed development indicates that the public benefits would be limited. The benefits do not therefore outweigh the harm I have identified to the CA and the great weight given to the conservation of designated heritage assets. The proposed development therefore conflicts with the provisions of the Framework in relation to conserving and enhancing the historic environment.
 13. The council also alleges conflict with saved Policy QD27 of the Brighton and Hove Local Plan (2005) (LP). The policy is concerned with the protection of living conditions for existing and proposed occupiers. My attention has not been drawn to any words in it that are relevant to the character and appearance issues assessed above. The policy has therefore not been determinative in my reasoning on the issue. It is, however, relevant to the issues assessed below.

Living conditions for future occupiers

14. The kitchen/living/dining room would be served by full height glazed doors on the dwelling's northerly elevation. The doors would be set away from the shared boundary wall and would open onto a small garden area set back from the boundary, with trees in the neighbouring garden beyond. Consequently, the outlook from within the room would be acceptable for future occupiers. However, the room would be deep, spanning the full width of the dwelling and would be served only by glazing on this single northerly elevation. Consequently, and without any detailed evidence that the proposed room would, for example, be BRE compliant, it seems to me, that light to the kitchen area, which is located the furthest from the windows, would be limited and is likely to result in gloomy conditions.
15. The appellant suggests that a planning condition could be imposed to require details of an additional rooflight, which would provide supplementary natural light to the new dwelling. However, as I do not have proposed plans showing the size and location of the rooflight, it is not possible to gauge the extent to which it would improve the living conditions for future occupiers or to assess its potential impact on the character and appearance of the area and the living conditions of neighbouring occupiers. Consequently, such a condition would not be appropriate in this instance.
16. The double bedroom would be below the minimum of 11.5 square metres set out in the NDSS. The council suggest the room measures 10.7 square metres whilst the appellant suggests it is 10.8 square metres. Either way, the shortfall is less than 1 square metre from the desired standard. The floorplans show space for a double bed and wardrobe. The configuration of the room also allows reasonable circulation space and space for other items. I note that the second bedroom meets the NDSS standards, and the total floor area of the dwelling is 69 square metres, which comfortably exceeds the 61 square metre standard for a 2 bed 3 person single storey dwelling set by the NDSS. Considering the dwelling as a whole, it is appropriate in this instance to balance the slight shortfall in the size of the double bedroom against the other areas of compliance with the NDSS. Given its overall generous size I am not persuaded that a person living here would find the home unduly cramped or feel that the living environment was oppressive.
17. However, I have found that the kitchen areas would suffer from a lack of natural light, resulting in a gloomy room. Consequently, the proposed development would result in poor quality accommodation for future occupiers. Therefore, in this respect, it would be contrary to saved Policy QD27 of the LP which requires that new development should not result in a loss of amenity to proposed residents. It would also be contrary to draft Policies DM20 and DM1 of the CPP2, the aims of which are set out above.
18. The council also alleges conflict with saved Policy HO5 of the Brighton and Hove Local Plan the LP. The policy is concerned with the provision of useable private amenity space in new residential development. The council's Statement of Case is clear that their concerns relate to the quality of the internal accommodation. This policy has therefore not been determinative in my reasoning on the issue.

Living conditions of neighbouring occupiers

19. The existing low and open boundary treatments allow views between the gardens of the appeal site and neighbouring properties to the rear. However, the dwelling would be single storey and built into the ground to reduce its

height. The proposed plans also show that its roof height would not exceed the existing rear boundary treatment. Whilst its rear elevation would be visible in views through the existing rear boundary treatment, given its limited height and the higher garden levels at the rear properties, the building would not create an unacceptable sense of enclosure for neighbouring residents.

20. No 7 is sub-divided into five self-contained flats. Consequently, at present, five separate households have access to the rear garden. The new house, which would have a single and a double bedroom, is unlikely to be occupied by more than three residents. It would have its own private garden area. Accordingly, an additional small household using the rear garden area would not result in a significantly more intensive use that would unacceptably disturb surrounding neighbours.
21. The sub-division of the garden would reduce the communal amenity space available to the occupiers of the flats within No 7. Regardless of whether the garden is currently in frequent use, it provides important communal amenity space for current and future occupiers of No 7. However, in the absence of specific amenity space standards for flatted accommodation and given the remaining available area, I find that the size of the communal amenity space, would not be unreasonably small or impractical for use by the occupiers of No 7.
22. Consequently, the proposed development would not have an unacceptable impact on the living conditions of neighbouring occupiers. Therefore, in this respect, it would not be contrary to saved Policy QD27 of the LP which requires that new development should not result in loss of amenity to existing and proposed residents. Neither would it be contrary to draft Policy DM20 of the CPP2, the aims of which are set out above.

Other Matters

23. A significant number of concerns from third parties have been raised in relation to the development. These include its effect on trees, ecology and biodiversity, parking pressure, the local 'green network', refuse and waste, privacy, and disturbance during construction. Concerns are also raised about the creation of a precedent for future backland development, drainage, loss of views, impact on property values, and the cumulative impact of developments within an already dense area. However, given my conclusions on the main issues and that the appeal is dismissed, there is no need for me to address these in further detail.

Planning Balance

24. The appellant and the council are in agreement that the council cannot demonstrate a 5-year housing land supply. Therefore paragraph 11(d) of the Framework is engaged. However, the application of policies relating to designated heritage assets (in this case the CA) provides a clear reason for refusing the development proposed. Consequently, the presumption in favour of sustainable development does not apply in this case.
25. I have found that the proposed development would harm the character and appearance of the Round Hill CA and would result in poor quality accommodation for future occupiers. It therefore conflicts with Policies CP12, CP14 and CP15 of the CPP1, saved Policy QD27 of the LP and draft Policies

DM1, DM20 and DM26 of the CPP2. Whilst it has been put to me that the appeal proposal does also accord with a number of development plan policies, as a result of the conflicts that I have identified, I find that it would be contrary to the development plan as a whole.

26. As set out in the submitted Planning and Heritage Statement, the site is within a built-up, accessible area. I recognise that the windfall development would incorporate low-carbon technologies, be energy efficient and would enhance biodiversity net gain. In addition, the appeal proposal, providing a two-bed house, would add to the housing stock and mix in the area. However, despite the need for more housing and the significant shortfall in the council's supply of housing land, the benefits would be relatively limited in this instance given the scale of the development. Consequently, I find that the above matters neither outweigh the harm I have identified nor the conflict with the development plan and the great weight given to the conservation of designated heritage assets.

Conclusion

27. The proposal would harm the character and appearance of the appeal site and the Round Hill CA. It would also fail to provide an adequate standard of accommodation for future occupiers. For the above reasons, having had regard to the development plan as a whole, along with all other relevant material considerations, the appeal is dismissed.

B Pattison

INSPECTOR