



Appeal Decision

Site visit made on 10 October 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2022

Appeal Ref: APP/Q1445/W/22/3291915
43 to 45 Bentham Road, Brighton BN2 9XB

- 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 Mike Stimpson Properties against the decision of Brighton & Hove City Council.
 - The application Ref BH2021/00770, dated 3 March 2021, was refused by notice dated 5 November 2021.
 - The development proposed is described as 'conversion of existing building to create 8no studio flats (C3) and 1no two bedroom flat (C3) incorporating single storey rear conservatory extensions, insertion of windows to front & rear elevations, rooflights to east and west roof slopes, new front boundary wall and associated works'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. With its final comments the appellant submitted an executed unilateral undertaking dated 2 August 2022. It relates to affordable housing (AH). The Council's officer report and appeal statement refer to AH but there is no AH reason for refusal in its decision notice. I deal with this matter in the third 'main issue' below.
3. On 22 October 2022 the Council adopted its City Plan Part Two 2022 (CPP2). It replaced the Council's Local Plan 2005 (LP), thus the LP policies in its decision notice. The main parties have considered Policies DM1 and DM20 of the (then) emerging CPP2, also referred to in the decision notice. The reference numbers and relevant parts of these (now adopted) CPP2 policies have not changed. Accordingly, I have given full weight to them in determining the appeal.

Main Issues

4. These are:
 - whether the proposal would provide satisfactory internal and external living conditions for future occupiers of the proposed flats, with regard to useable space, natural light, outlook, privacy and noise and disturbance;
 - its effect on the living conditions of existing and future occupiers of neighbouring dwellings, with regard to noise, disturbance and privacy; and
 - whether it would make appropriate provision for dwelling type and size, including affordable housing.

Reasons

5. The appeal site is a former church hall and a short length of its original plot at the rear. This building is used by the appellant to store building materials and is part of a terrace of houses in a mainly residential suburb of Brighton. It is proposed to convert the building into 8 no. one-bedroom studio flats and 1 no. two-bedroom flat.

Living conditions (proposed flats)

6. There is agreement that all of the flats would meet the Nationally Described Space Standards minimum gross internal floor areas. However, the second floor flat would have limited floor to ceiling height, with a significant part of the habitable rooms under the internal roof slope with skilling less than 1.5m high. The single aspect rooms would receive satisfactory natural light through each window, including some rooflights, and provide adequate outlook. Nonetheless, the layout of space in this flat would seriously compromise its useability, especially the main open plan living area. This flat would, therefore, be overly cramped and unduly oppressive in use.
7. A communal patio for all of the flats would be wide but very narrow in depth next to the rear elevation of the building. A significant part of this limited space would be used for bin and cycle storage or as a thoroughfare. As a result, domestic activity and socialising in such close proximity to the rear ground floor studio flats would be unduly disruptive, especially in the evening or night time when they are most likely to be occupied. People would also be able to look through the windows of these flats, giving intrusive views into the main open plan living and sleeping areas.
8. The patio would also be overshadowed by the building during the afternoon and evening when it was most likely to be used. It would not provide private amenity space assigned to any of the flats, nor is any other such space proposed. While there are two parks nearby these public places cannot provide satisfactory privacy for all outdoor domestic activity, so would not be an acceptable substitute. The patio would not, therefore, be adequate in size or layout for its intended use.
9. Accordingly, I find that the proposal would fail to provide satisfactory internal living conditions for future occupiers of the two-bedroom flat with regard to useable space, and of the rear ground floor studio flats with regard to noise, disturbance and privacy. It would also fail to provide satisfactory external living conditions for any of the flats with regard to useable space. Consequently, it would conflict with CPP1 Policy CP14 and with CPP2 Policies DM1 and DM20. These policies seek high quality homes, including private outdoor space with no unacceptable loss of amenity for proposed occupiers.

Living conditions (neighbouring dwellings)

10. The occupants of all nine flats and visitors could access Bentham Road, including with cycles or bins, through an internal hall and centrally placed front entrance door with adequate separation to the dwellings either side. However, an open and covered passageway between the dwellings and rear gardens of Nos 39 and 41 Bentham Road would also be available for such access. This activity and use, albeit transient in nature and even if at different times of the day or evening, would be in such close proximity that it would be unduly

intrusive to the existing occupiers of these neighbouring dwellings. Living accommodation in the studio flats would share a party wall with the dwellings either side, at Nos 41 and 47 Bentham Road, including potentially next to bedrooms. However, suitable internal attenuation measures could be incorporated into the conversion works to ensure no undue domestic noise transmission or disturbance.

11. There is extensive mutual overlooking of rear gardens between the two opposing, close-knit terraces of dwellings in Bentham Road and Carlyle Street behind. Because the rear elevation of the appeal building is significantly closer to Carlyle Street than are the backs of dwellings in Bentham Road, the windows of the rear first and second floor flats would lie at a very oblique angle in relation to these adjoining gardens. This would significantly restrict views and there would be no material increase in overlooking in this respect. A view from a second floor bathroom rooflight in one direction could be alleviated with obscured glazing and in the other direction, standing views through kitchen rooflights would be fleeting or glimpsed in nature.
12. An extant planning permission¹ for a block of 8 flats and a house on a vacant plot of land in Carlyle Street has been implemented. There is no apparent reason why this development would not be completed. The current appeal plans show that the ends of new gardens and a path on that site would back onto the appeal site. The windows in the rear first and second floor flats would therefore face directly towards these gardens. Downward perpendicular views from these windows would be immediate and at close distance be unduly intrusive and cause unacceptable overlooking.
13. The patio would not be close to windows or the most private parts of rear gardens of existing neighbouring dwellings and be mostly screened by the scale and massing of the building. Nevertheless, some activity in the patio would likely be heard or observed by some local residents. However, the occupants of the flats are unlikely to be related to each other and would live as separate self-contained households. In these circumstances the patio is unlikely to be used at the same time, including because it would be too small. Such use would therefore be similar in nature or intensity to what could occur in the back gardens of neighbouring dwellings or in the new gardens of the development behind the site.
14. Taking all of the above into account, I find that the proposal would cause harm to the living conditions of existing occupiers of the neighbouring dwellings at Nos 39 and 41 Bentham Road due to noise and disturbance, and to future occupiers' use of rear gardens by loss of privacy. Consequently, it would conflict with CPP2 Policy DM20 which includes that development should avoid unacceptable loss of amenity to adjacent existing residents or proposed occupiers.

Dwelling type and size, including affordable housing

15. There is no objective evidence that the proposal is only viable for affordable levels of rent based on a high density of development for 9 flats of the proposed type and size, as the appellant otherwise suggests. This would significantly exceed the AH requirements of CPP1 Policy CP20 and, moreover, the Framework sets out that AH should not be provided in minor residential

¹ Council's Ref BH2004/00232/FP

development, such as in this case. This is also reflected in relevant Planning Practice Guidance and further to the Written Ministerial Statement November 2014. These are important considerations.

16. There would be no houses and all but one flat would be suitable only for single person occupation. This would be at odds with the housing stock in the Council's area which has a significant concentration of flats and a bias towards smaller flats, including by conversion of buildings. There is a significant need for two or three-bedroom family sized dwellings suitable for larger household occupation. Consequently, while there is a notable need for some small, one-bedroom dwellings, especially for AH, it is not the only need or the most pressing need within the city which is where the site is located.
17. The UU contains no reference to Brighton Housing Trust (or whether it, or the appellant, is a registered provider of AH) or to the Council's housing department or to the Rent Smart Partnership Agreement Scheme, including how tenants would be nominated. Nor is there a reference to another proposal elsewhere, whereby it is suggested by the appellant that AH in this appeal would off-set provision in that case.
18. The UU would not retain the flats as AH in perpetuity, only for five years, so thereafter they could be let or sold to anyone at a full market rent or freehold price. Furthermore, the UU states that five years would run from the date of an appeal decision letter or, elsewhere, from the commencement of development, not occupation. Notwithstanding this apparent inconsistency, and either way, discounting a construction period, AH would exist for significantly less than five years; or, potentially, development could start but not be completed and the obligation to provide any AH at all would lapse after five years.
19. I am therefore not satisfied the appellant has demonstrated that the building could not be converted at a different density of residential development or balance of housing mix. Nor has the appellant sufficiently justified the level or actual provision of AH. Accordingly, I find that the proposal would not make appropriate provision for dwelling type and size, including AH. Consequently, it would conflict with CPP1 Policies CP14 and CP19 and with CPP2 Policy DM1. These policies support higher density housing provided it improves housing choice, secures an appropriate mix of dwelling types, tenures and sizes that reflect identified local housing needs and makes a positive contribution to achieving mixed, balanced sustainable communities.

Other Matters

20. I acknowledge the many other concerns of a large number of local residents. However, none of the matters raised are determinative in this case so would not affect my decision or alter the outcome of the appeal.

Planning Balance

21. There is agreement that the Council has a 2.2-year supply of deliverable housing sites. It cannot therefore currently demonstrate a 5-year housing land supply. As a result, paragraph 11 d) of the Framework is engaged.
22. In terms of benefits, providing 9 flats on a sustainably located site would make a notable contribution to housing supply and be aligned with objectives of the Framework to significantly boost the supply of homes. Commensurate with the modest scale of the proposal the social, economic and environmental benefits

associated with building and occupying the flats are factors which I consider carry moderate weight in favour of the proposal. In this appeal there are no clear or definite AH benefits but, in any event, given my other findings this consideration would not have been determinative in this case so would not affect my decision or alter the outcome of the appeal.

23. The building is not a listed building and the site is not in a conservation area. The proposal would make beneficial use of a previously developed brownfield site and refurbish this pleasant Victorian building with an external appearance commensurate with its presence in the streetscene. Subject to conditions, there would be sufficient cycle parking and bin storage and a scheme for sound proofing and using obscured glazing in relevant parts of the flats could be secured. There would be no increase in permit controlled on-street parking. The absence of harm in these regards and compliance with the Council's development plan or the Framework are neutral factors in my decision.
24. The Framework recognises that small windfall sites can make an important and relatively quick contribution to meeting housing needs and requirements, including suitable sites within existing settlements. Available, under-utilised sites within urban areas can be used more efficiently and effectively in these regards. However, it also seeks to address the needs of people with specific housing requirements and achieve well-designed places. The proposal would not provide a satisfactory mix of housing size, type or tenure. It would not result in a high quality, well-designed better place to live or building types that maintain a strong sense of place and a distinctive place to live or that would function well, promote health and well-being with a high standard of amenity for existing and future occupiers.
25. The proposal would conflict with the Council's relevant development plan policies in these respects. These are consistent with aims of the Framework to balance meeting housing needs with these other objectives of sustainable development. These are important factors against the proposal and accordingly I give substantial weight to each of them.
26. The adverse impacts of the proposal would, therefore, significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole. Accordingly, the presumption in favour of sustainable development does not apply in this case.

Conclusion

27. The proposal would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
28. Consequently, for the reasons given above I conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR