



Appeal Decision

Site visit made on 14 November 2022

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2022

Appeal Ref: APP/Q1445/W/22/3293683

Land to rear of 74-82 Denmark Villas, Hove BN3 3TJ

- 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 Baron Homes Corporation Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2021/03497, dated 24 September 2021, was refused by notice dated 24 November 2021.
 - The development proposed is described as "erection of two storey dwelling to include four flats (C3). New entrance gates and landscaping to access route on Denmark Villas between no. 82 and 84-86".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The above description of development is taken from the application form. The Council has described the proposal more accurately on the decision notice as the "erection of two storey building of 4no flats (C3), with new entrance to access route from Denmark Villas, re-configured escape stairs, associated landscaping and parking".
3. The Brighton and Hove City Plan Part 2 (CP2) was adopted on 20 October 2022. This supersedes the remaining 'saved' policies from the Brighton and Hove Local Plan 2005. Policies QD27 and SU10 of the latter document are no longer part of the development plan. The parties have had an opportunity to comment on the implications for the appeal.

Main Issues

4. The main issues are whether the development would provide acceptable living conditions for future occupants, with regard to outlook, privacy and noise, and the effect of the proposal on the privacy of the residents of 1 and 2 Oxford Mews.

Reasons

5. The site comprises a narrow strip of land behind dwellings in Denmark Villas. The western site boundary is marked by the rear garden boundaries for those properties. To the east, and separated by a 2.4m high boundary wall, lies the Royal Mail Delivery Office for Hove. Nos 1 and 2 Oxford Mews back onto the site to the south. The land is hard surfaced and is an extension of the disused service yard associated with a convenience store at Nos 84-86 Denmark Villas.

6. The proposal is to erect a two-storey building with a pair of self-contained flats on each floor. The flats would have their principal living areas¹ facing either north or south. The ground floor units would each have a bedroom window facing west and the bedrooms for the first floor units would have patio doors onto roof terraces adjacent to the boundary with the Royal Mail site.
7. The ground floor flats would have small gardens ranging in depth from 5.1m to 5.5m. These would be adequately sized for sitting out, but the outlook from the main living areas would be onto solid masonry – a tall boundary wall in the case of the northern unit and the two-storey rear elevation of Oxford Mews in the case of the southern unit. These walls would be oppressive, including for the first floor occupants of Flat 4 who would be looking at the adjoining building at close quarters. The appellant has mooted the possibility of ‘vertical planting’ along the northern boundary, but space is limited and there can be no guarantees that it would be effective in mitigating the adverse impacts.
8. The occupants of Flats 2 and 4 would be able to look into windows in Oxford Mews. Conversely, the windows in those properties would afford views into the main living areas of the proposed flats. It is not clear what rooms some of the neighbours’ windows serve, although the appellant identifies one as a bedroom. Regardless, there would be the potential for overlooking and this would give rise to poor levels of privacy for the affected dwellings. There is a difference in ground levels, Oxford Mews being set slightly higher, but this would not reduce intervisibility sufficient to make the scheme acceptable.
9. The ground floor bedroom window for Flat 2 would have an outlook onto timber fencing at a distance of 1.5m. The bedroom window for Flat 1 would be adjacent to the pedestrian access for all four dwellings, and therefore it is proposed to obscurely glaze the bottom two thirds of the window to prevent passers-by from seeing into their bedroom. The outlook from both ground floor bedrooms would be heavily compromised.
10. The appeal site is immediately adjacent to the Royal Mail Delivery Office, which is operational 24 hours a day, 6 days a week. This facility generates noise from the comings and goings of vans and heavy goods vehicles, and also the moving of metal cages containing mail. A previous planning application for the site was accompanied by a noise impact assessment which concluded that the existing noise sources would not have a significant adverse impact on the internal or external living conditions of the residents of the development. However, that report related to a single-storey scheme for two dwellings. The application before me proposes two storeys and the occupants of the first floor flats would be more vulnerable to noise due to their elevated position above the height of the eastern boundary wall and the position of the bedroom terraces on the boundary. Whilst it may be possible to erect acoustic screening for the terraces, there is no technical evidence to demonstrate that this would be effective; a solid screen would also worsen the already poor outlook from the bedrooms.
11. I noted during my visit that there is a large piece of refrigeration plant to the rear of the convenience store. This is not specifically referenced in the noise report, but the continuous hum from the unit has the potential to be intrusive, particularly within Flat 3 which has an uninterrupted line of sight with the noise source. Overall, I am not satisfied that the noise report is robust or that its conclusions can be relied upon for the current scheme.

¹ These are shown on the plans as an open plan living room, kitchen and dining area.

12. I acknowledge that there is already other housing in the locality, including residential uses above Nos 84-86, but that is not reason to introduce further noise sensitive development which may give rise to complaints. Such complaints could result in action which has a detrimental impact on the long term operation of the Delivery Office and potentially also the convenience store.
13. Policy DP20 of the CP2 states that planning permission will be granted where it would not cause unacceptable loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is not liable to be detrimental to human health. Although the development would comply with the Nationally Described Space Standard, it would provide a poor living environment for future occupiers. There would also be potential for negative impacts on neighbouring residents and land uses. This would be in conflict with Policy DP20.

Other Matters

14. I am aware that a previous proposal for the site was dismissed on appeal². The current scheme has been designed to address the concerns raised by the Inspector. I have assessed it on its merits, having regard to the latest housing land supply position.

Planning Balance and Conclusion

15. The Council cannot demonstrate a five year supply of deliverable housing sites. Current supply is equivalent to 2.2 years which represents an acute shortage. Paragraph 11 d) of the National Planning Policy Framework (the Framework) indicates that in such circumstances permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
16. The proposal would deliver four dwellings on a previously developed land (PDL) in an accessible location near Hove railway station. The Framework recognises that small sites such as this can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. Policy CP14 of the Brighton and Hove City Plan Part One (2016) and Framework paragraph 120 encourage the full and efficient use of PDL.
17. Against these benefits I must weigh the harms. The development would provide a poor living environment for its occupants and it would also have a detrimental impact on the occupants of 1 and 2 Oxford Mews and potentially also adjoining land uses. Taken together, these adverse impacts would significantly and demonstrably outweigh the benefits and as such the proposal does not constitute a sustainable form of development.
18. For the reasons given above and having regard to all other matters raised, including the absence of objections from local residents, the Environmental Health Officer and ward councillors, I conclude that the appeal should fail.

Robert Parker

INSPECTOR

² APP/Q1445/W/19/3223490