

Appeal Decision

Site visit made on 10 February 2023

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI
an Inspector appointed by the Secretary of State

Decision date: 20th March 2023

Appeal Ref: APP/Q1445/W/22/3305137

Land to the east of The Sycamores, Bath Street, Brighton BN1 3TB

- 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 R Stubbs against the decision of Brighton and Hove City Council.
 - The application, Ref. BH2021/03089, dated 20 August 2021 was refused by notice dated 16 February 2022.
 - The development proposed is the erection of a residential dwellinghouse (Use Class C3) on vacant land with associated amenity provision and refuse/cycle storage.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a residential dwellinghouse (Use Class C3) on vacant land with associated amenity provision and refuse/cycle storage on Land to the east of The Sycamores, Bath Street, Brighton in accordance with the terms of the application, Ref. BH2021/03089, dated 20 August 2021 and subject to the conditions in the attached Schedule.

Procedural Matter

2. The Council's appeal statement explains that since the refusal of the appeal application, the Brighton & Hove City Plan Part Two has been adopted. The effect of this is that the relevant policies are now considered to be Policies CP1, CP14 & CP15 of the City Plan Part One 2016 and Policies DM1, DM18, DM20, DM26 & DM29 of the City Plan Part Two 2022. I have appraised the appeal scheme in the light of this policy update.

Main Issues

3. The main issues are (i) the effect of the proposal on the character and appearance of the street scene and the West Hill Conservation Area, and (ii) the effect on the living conditions for neighbouring occupiers as regards light and outlook.

Reasons

4. On the first issue, in principle the Council does not object to a dwelling on the site. However, it is considered that the appeal scheme would be an overdevelopment of the small plot, thereby resulting in a building that would appear cramped and causing harm to the character and appearance of the street scene and the conservation area.
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5. Whilst I recognise this is a constrained site in terms of size, shape and context I do not consider that the two storey element would be too large. It is clearly subservient in height and scale to The Sycamores and the buildings in Buckingham Place and if it were to be any smaller it would appear as being somewhat incongruous in this setting of large buildings with a vertical emphasis.
6. The more cogent argument is the size of the footprint including the single storey element. However, with the requirement to set the front elevation back by 5m to match the front building line of The Sycamores, it is clear that there is a need to make the most effective use of the remaining land to achieve a feasible building as regards design, aspect and accommodation. As regards the latter, the internal floorspace would be 80sqm, which whilst meeting the Nationally Described Space Standards for the floorspace of the proposed 2 bed 3 person dwelling would still be of a modest extent.
7. The Council criticises the scheme as contrived and cites as examples the roof design of the two storey element and the sloping wall between the single storey structure and the rear boundary. However, I do not consider that either of these features would be jarring or prominent in the street scene. Instead, it would be the continuous metal canopy on the front elevation that would draw the eye and I regard this as an attractive feature that as part of a quasi-contemporary design make a positive contribution to this part of Bath Street.
8. Consultees on the appeal application included the Conservation Advisory Group who recommended approval. This was a positive opinion broadly shared by the Council's Heritage Team, with their comments confined to matters of detail and clarification that could be addressed through the imposition of conditions. The appellant has indicated compliance with the amendments sought and full acceptance of the suggested conditions. Amongst other matters these would enable the finish of the proposed boundary wall to be to the satisfaction of the Heritage Team and the refurbishment and ongoing maintenance of all but 2m of the length of the existing flint wall to which access is not already impeded.
9. On the first issue, I conclude that the development of the site both in principle and in the form suggested in the appeal scheme (with some details amended through conditions) would comprise a significant improvement to both the character and appearance of the street scene and the West Hill Conservation Area. There would therefore be no adverse effect on the significance of the conservation area as a designated heritage asset or conflict with Government policy in Section 16: 'Conserving and Enhancing the Historic Environment' of the National Planning Policy Framework 2021 ('the Framework'). I similarly see no conflict with Policies CP1, CP14 & CP15 of the City Plan Part One 2016 and Policies DM1, DM18, DM26 & DM29 of the City Plan Part Two 2022.
10. On the second issue, the Refusal Notice refers both to a loss of light in the form of overshadowing and a loss of outlook, including an increased sense of enclosure, for the occupiers of 10, 12 & 14 Buckingham Place and in particular the ground floor and lower ground floor flats of Nos. 10 & 12. In this regard I have also noted individual representations in a similar vein from residents.
11. However, the appellant's appeal statement includes a sunlight study and in paragraph 3.9 of the Council's appeal statement it is accepted that there is

already existing overshadowing and that this would not be significantly increased as a result of the proposal. As regards outlook, the Council maintains its assertion that the occupiers of Nos. 10 & 12 Buckingham Place, particularly the lower ground floor flats would have their living conditions harmed as a result of the proposed two storey part of the development.

12. However, with a southern aspect there is a close correlation between the amount that any development would affect sunlight received by neighbouring land and buildings and the extent to which outlook would be lost and a sense of enclosure increased. I also consider it is appropriate to have regard to the high density of the inner and central areas of Brighton, where many properties are 'cheek by jowl' and would not meet the Council's current standards. This density in terms of the relationship between buildings is clearly illustrated by the OS based Location Plan submitted as part of Drawing No. 2060-P-01 and it is the context of the appeal scheme. That said, the two storey part of the development would be positioned at a reasonable distance from the rear boundary given the modest site size, and equally important have the roof sloping away from that boundary at a relatively shallow pitch.
13. Accordingly, given that in this case it has been established that there would not be a significant reduction in sunlight, there is unlikely to be a noticeable decrease of outlook or increased sense of enclosure. This would appear to be supported by the appellant's 'Window Impact Study' which provides a 'before and after' outlook from the windows considered to be most affected at No. 12 Buckingham Place.
14. On balance on this issue, I find that any adverse effect on the living conditions for neighbouring occupiers as regards outlook would not be significant and therefore insufficient to justify the refusal of the development on the basis of a conflict with City Plan Part Two Policy DM20 and paragraph 130f) of the Framework.

Other Matter

15. The Officer's Report says that the 5-year housing land supply (as adjusted) for Brighton is currently 2.2 years. Accordingly, because of this shortfall the presumption in favour of sustainable development in paragraph 11d of the Framework is invoked. However, as I have concluded that the appeal scheme would not be harmful, there is no balancing exercise to be carried out. Be this as it may, the significant deficiency of supply merits substantial weight and supports the argument for a development of an additional dwelling in this highly sustainable location.

Conclusion and Conditions

16. Overall, and having had regard to all other matters raised I conclude that the appeal should succeed and planning permission granted subject to conditions on the lines suggested by the Council.
17. A condition requiring the development to be carried out in accordance with the approved plans is necessary for the avoidance of doubt and is in the interests of proper planning. A number of conditions in respect of external materials including roof slates; window and rooflight details; existing and proposed boundary walls; rainwater goods; restriction of cables on the front elevation

and render finishes are needed to secure a high quality development and safeguard the character and appearance of the conservation area.

18. Conditions as regards surface water disposal on external ground surfaces will ensure sustainable drainage and prevent flooding, whilst conditions as regards foul drainage will ensure its availability before first occupation. A condition requiring the provision of cycle storage will encourage this mode of travel. A condition in respect of refuse/recycling will ensure the provision of adequate facilities and safeguard residential and visual amenities. Such amenities will also be protected by a condition restricting permitted development.
19. An archaeological condition will safeguard any archaeological interest of the site whilst the provision of a bee brick and swift boxes are in the interests of nature conservation provided they are installed in accordance with the Council's informatives. Conditions relating to energy consumption and the use of water are needed to secure sustainable development and minimise a waste of valuable resources.

Martin Andrews

INSPECTOR

Schedule of Conditions

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this Decision;
2. Unless as otherwise necessary to comply with the conditions, the development shall be carried out in accordance with the following approved plans: Drawing Nos. 2060-P-01; 2060-P-02; 2060-P-03;
3. No development above ground floor slab level of any part of the development hereby permitted shall take place until samples of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority, including (where applicable): a) samples of all brick, render and tiling (including details of the colour of render/paintwork to be used); b) samples of all cladding to be used, including details of their treatment to protect against weathering; c) samples of all hard surfacing materials; d) samples of the proposed window, door and balcony treatments; e) samples of all other materials to be used externally. Development shall be carried out in accordance with the approved details;
4. No development above ground floor slab level of any part of the development hereby permitted shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved details;
5. No development shall take place until the applicant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the Local Planning Authority. The archaeological work shall be carried out in accordance with the approved written scheme of investigation and a written record of all archaeological works undertaken shall be submitted to the Local Planning Authority for approval in writing within 3 months of the completion of any archaeological investigation unless an alternative timescale for submission of the report is agreed in advance and in writing with the Local Planning Authority;
6. Construction of the development shall not commence until details of the proposed means of foul and surface water sewerage disposal have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Southern Water;
7. No development above ground floor slab level of any part of the development hereby permitted shall take place until a drainage strategy detailing the proposed means of foul water disposal and an implementation timetable, has been submitted to and approved in writing by, the Local Planning Authority in consultation with the sewerage undertaker. The development shall be carried out in accordance with the approved scheme and timetable;
8. The development hereby permitted shall not be occupied until a scheme for the storage of refuse and recycling has been submitted to and approved in

writing by the Local Planning Authority. The scheme shall be carried out and provided in full in accordance with the approved details prior to first occupation of the development and the refuse and recycling storage facilities shall thereafter be retained for use at all times;

9. Prior to first occupation of the development hereby permitted, details of secure cycle parking facilities for the occupants of, and visitors to, the development shall have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times;
10. The development hereby approved shall achieve a minimum Energy Performance Certificate (EPC) rating 'B' validated before first occupation;
11. The development hereby permitted shall not be commenced until a survey report and a method statement setting out how the existing boundary walls are to be protected, maintained, repaired and stabilised during and after demolition and construction works, and including details of any temporary support and structural strengthening or underpinning works, has been submitted to and approved in writing by the Local Planning Authority. The demolition and construction works shall be carried out and completed fully in accordance with the approved method statement;
12. The development hereby permitted shall not be occupied until a plan detailing the positions, height, design, materials and type of all existing and proposed boundary treatments has been submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be provided in accordance with the approved details prior to occupation of the development and shall thereafter be retained at all times;
13. The rooflight hereby approved shall have a steel or cast metal frame colour finished black or dark grey, fitted flush with the adjoining roof surface and shall not project above the plane of the roof;
14. All new and replacement rainwater goods, soil and other waste pipes shall be in cast iron and shall be painted in accordance with details first submitted to and approved in writing by the Local Planning Authority and retained as such thereafter;
15. No cables, wires, aerials, pipework (except rainwater downpipes as shown on the approved plans), meter boxes, extracts or flues shall be fixed to the elevation facing Bath Street;
16. The ground level hard surface hereby approved shall be made of porous materials and retained thereafter, or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property;
17. No extension, enlargement, alteration of the dwellinghouse or provision of buildings and structures incidental to the enjoyment of the dwellinghouse within the curtilage, as provided for within Schedule 2, Part 1, Classes A - E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting

that Order with or without modification) other than that expressly authorised by this permission, shall be carried out without planning permission obtained from the Local Planning Authority;

18. A bee brick shall be incorporated within the external wall of the development hereby approved in a position first agreed in writing by the Local Planning Authority and shall thereafter be permanently retained;
19. The development hereby permitted shall incorporate at least one swift brick/box within the external walls of the development in positions first agreed in writing by the Local Planning Authority and shall thereafter be permanently retained;
20. All new render finishes shall be smooth, lime based, wet render without external beads, stops, bell drips or expansion joints;
21. No development above ground floor slab shall take place until full details of all new sliding sash windows and their reveals and cills including 1:20 scale elevational drawings and sections and 1:1 scale joinery sections have been submitted to and approved in writing by the Local Planning Authority. The windows shall be painted timber double hung vertical sliding sashes with hidden trickle vents. The works shall be carried out and completed fully in accordance with the approved details and shall be retained as such thereafter;
22. The dwelling hereby approved shall not be first occupied until it has achieved as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption.