



Appeal Decision

Site visit made on 6 June 2023

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2023

Appeal Ref: APP/M4320/W/22/3305017

1A Devonshire Road, Brighton Le Sands L22 2AJ

- 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 Pete Tierney against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2022/00099, dated 18 January 2022, was refused by notice dated 29 March 2022.
 - The development proposed is change of use from office to two bed dwelling house.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in respect of this appeal is the effect of the proposed development upon the living conditions of future occupiers with particular regard to outlook, daylight and sunlight and the provision of outdoor amenity space, and existing neighbouring residents in respect of overlooking.

Reasons

Living Conditions of Future Occupants

Outlook, Daylight and Sunlight

3. The ground floor living space of the proposed dwelling would be open plan and served by a number of essentially existing openings. However, the window in the north-eastern elevation would be predominantly high-level, the glazed door and window to the south-eastern elevation would be beyond the enclosed hallway, and the window and glazed door within the south-western elevation would be in severe proximity to the boundary fence, and close to the 3-storey building beyond.
4. Whether or not the property would amount to a small starter home, the outlook from the proposed ground floor living space would be exceptionally dismal, with inferior and enclosed living conditions for the future occupiers. In the absence of any substantive evidence to the contrary, for example a daylight and sunlight assessment, I cannot be certain that the amount of daylight and sunlight received by the ground floor windows due to their position and orientation as described above, would be sufficient to prevent gloomy living conditions for the main living space. Direct sunlight is likely to be particularly limited, especially in winter months when the sun is lower in the sky, given the proximity of neighbouring development. Thus, the outlook and light levels

would be compromised, producing inadequate living conditions for the future occupiers.

Private Garden Space

5. Policy EQ2 of A Local Plan for Sefton 2017 (LP) requires new development to achieve a high quality of design that protects the amenity of those within the site. In addition, the National Planning Policy Framework (the Framework) advises that developments should create places that have a high standard of amenity for future users that promote health and well-being. It is therefore reasonable to expect that the occupants of a new dwelling, even one created through conversion, would have access to a good quality private outdoor area, enabling the proper functioning of its use.
6. The external garden area for the proposed dwelling at just 9sqm would be measly, particularly given that part of the space would be required for bin storage. This would be significantly below the 50sqm minimum standard required by the Council's New Housing Supplementary Planning Document 2018 (SPD), which provides detailed guidance on how Policy EQ2 of the LP is to be implemented.
7. The SPD advises that there may be instances where sufficient private outdoor space cannot be achieved, but that this would be in limited exceptional circumstances, including where site constraints mean it is not possible to achieve the standard. The options for the provision of private garden space are limited by the constraints of the site, given that the host building already exists on a severely restricted apron of land. Nonetheless, even if the quantum of private space could be considered acceptable due to the constraints of the site, the SPD is clear that attention should also be given to the quality of the garden space.
8. The limited dimensions and narrow shape would in this instance restrict the overall practicality and value of the outdoor space to the future occupiers. Little more than an alleyway, it would not provide a meaningful or pleasant space for typical domestic activities such as sitting out, drying washing and gardening. Hemmed in by neighbouring buildings and high boundary fences/structures it would be unlikely to receive much direct sunlight. Users of the proposed amenity space would therefore experience an oppressively enclosed environment and in this regard, it would be considerably different to a balcony. The proposed garden space would therefore not only be substandard in size, but it would be severely poor in quality and useability which would be harmful to the living conditions of the future occupiers.

Living Conditions of Neighbouring Occupiers

9. The existing building sits close together with other existing properties, namely those on Bridge Road which have a number of different sized outriggers and extensions to the rear. The rear facing bedroom window would provide an uninterrupted view down onto the private yard area to the rear of 39 Bridge Road. This area appears to have a domestic use, given the presence of a washing line and plant pots. Such views would be at very close range with the existing occupants likely to experience a significant and uncomfortable feeling of being watched when using this space. Bedrooms can be occupied for purposes other than sleeping, including working from home and studying. Blinds and curtains cannot be adequately enforced by planning condition and as

such, would not adequately mitigate the degree of overlooking that would occur to the neighbouring outdoor space. The rear ground, first and second floor windows of No 39 whilst close, would however be at such an oblique angle, that direct overlooking would be unlikely to occur.

10. The rear garden of 1 Devonshire Road would also be visible from the rear facing bedroom window, beyond the access to Bridge Road Motorcycles. However, the existing boundary fence would provide a reasonable degree of screening, such that the privacy afforded to the occupants of this property would not be significantly harmed.
11. Obscured glazing would be installed to the lower half of the first-floor windows serving the staircase/landing and bathroom which would be sufficient to protect the amenity of the residents living in flats above 41 Bridge Road. Sufficient distance would also be maintained between the first-floor bedroom within the front elevation and the dwelling and garden at 2b Devonshire Street, given that the street is an intervening feature. The ground floor windows due to being high-level, obscured by the boundary fence or facing onto the existing street would not give rise to any direct unacceptable overlooking of adjacent properties.

Conclusion on Living Conditions of Existing and Future Occupants

12. Whilst I have found that the proposal would not result in a loss of privacy to the occupants of neighbouring properties from overlooking of habitable windows, it would have an adverse effect on the living conditions of the occupants of the flats within No 39 through a loss of privacy to their private amenity outdoor space. It would also have an adverse effect on the living conditions of the future occupiers of the proposed dwelling with regard to outlook, daylight and sunlight and the provision of private garden space. It would therefore conflict with Policy EQ2 of the LP as set out above. It would also conflict with paragraph 130 of the Framework which seeks to ensure a high standard of amenity for existing and future users.

Other Matters

13. The Appellant considers that the Council's Flats and Houses in Multiple Occupation (HMO) Supplementary Planning Document (SPD) 2018 should be read in tandem with the New Housing SPD, with regard to the appeal proposal. That SPD enables factors such as the walking distance to a local centre and re-use of a vacant building that has wider significant community or regeneration benefits to be considered when determining whether a lower standard is acceptable. In this regard it is different to the New Housing SPD which does not make such provisions and which the Appellant considers to be inconsistent.
14. The description of development and submitted plans indicate that the proposal is for a 2-storey dwelling. As such, it is clear that the Flats and HMO SPD is not applicable to the scheme before me. Even if it were relevant, the Flats and HMO SPD is clear that the provision of outdoor space that is significantly below the standard would not normally be acceptable. The proposed poor quality and severely limited size of the outdoor space would not therefore be justified by any perceived flexibilities set out in the Flats and HMO SPD.
15. There are a number of nearby public spaces including Alexandra Park, Victoria Park and Crosby Coastal Park that the Appellant considers to be within

convenient walking distance to the appeal site. Whether or not this is the case, neither of the SPD's make any provision for the lack of private garden space to be offset or compensated for, by the presence of existing nearby public open space. Public spaces would not enable typical residential activities such as drying washing or socialising privately with friends and family and would not therefore provide an equivalent compensatory provision.

16. I have considered the various benefits put forward by the Appellant that the proposal would bring, including the re-use of a building in an accessible location where there are a range of local facilities. It is suggested that the proposed dwelling would add to the variety of local housing stock, appealing to first-time buyers, younger persons or couples not requiring or desiring private amenity space, that would be aware of the situation before taking up residency. Be that as it may, it cannot be assumed that occupants at the lower end of the housing market would not want or need the provision of quality outdoor space, or that the occupants' needs would not change over time. Adding to the range of local housing would be of little benefit given that it would do so in a poor-quality manner, to the detriment of future users. The suggested benefits would therefore attract no more than limited weight.
17. Reference is made to the current use of the property causing nuisance to local residents due to vehicle noise, movements and on-street car parking, and I note the signed proformas of support from interested parties. There is no substantive evidence before me that the existing office use generates a significantly larger number of vehicle movements and car parking demands than the proposed use, such that I could attach weight to this matter as a benefit. The office use is likely to largely occur during weekdays when residential occupiers may be out at work. The car parking demands from the different uses are thus likely to occur at different times, such that they are not wholly comparable.

Planning Balance and Conclusion

18. I have found that the proposed development would not result in the direct overlooking of adjacent habitable windows belonging to residential properties. Nevertheless, this lack of harm is neutral in the planning balance. Given that only limited weight is attached to the suggested benefits of the proposed development, namely the proximity to nearby shops and services, this would not outweigh the significant adverse effect to the living conditions of occupiers with regard to outlook, daylight and sunlight and private amenity space or neighbouring occupiers with regard to the privacy of their outdoor space. There are no material considerations that lead me to determine the appeal otherwise than in accordance with the development plan. The appeal is dismissed.

M Clowes

INSPECTOR