



Appeal Decision

Site visit made on 19 June 2023

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

Decision date: 06 July 2023

Appeal Ref: APP/Q1445/W/22/3312274

The Oval, 105A Woodland Drive, Hove, Sussex BN3 6DF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Joel Ariaman against the decision of Brighton & Hove City Council.
 - The application Ref. BH2022/01341, dated 25 May 2022, was approved on 25 October 2022 and planning permission was granted subject to conditions.
 - The development permitted is the erection of a three storey, 4 No. bedroom house, incorporating the demolition of part of the existing double garage to provide a single garage for the existing house; revisions to the boundary wall; parking and associated works (part retrospective).
 - The condition in dispute is No. 6 which states that: *Prior to first occupation of the development hereby permitted, pedestrian crossing improvements (dropped kerbs with paving and tactile paving) shall have been installed at the junction of and across Hill Brow with Woodland Drive.*
 - The reason given for the condition is: *To ensure that suitable footway provision is provided to and from the development and to comply with Policy DM33 of the Brighton & Hove City Plan Part Two and CP9 of the Brighton & Hove City Plan Part One.*
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Decision

1. The appeal is allowed and the planning permission Ref. BH2022/01341 for the erection of a three storey, 4 No. bedroom house, incorporating the demolition of part of the existing double garage to provide a single garage for the existing house; revisions to the boundary wall; parking and associated works (part retrospective) at The Oval, 105A Woodland Drive, Hove, Sussex BN3 6DF granted on 25 October 2022 by Brighton & Hove City Council, is varied by the deletion of condition No. 6.

Main Issue

2. The main issue is whether the disputed condition is necessary and reasonable having regard to the safety of pedestrians, cyclists and drivers using the junction of Hill Brow and Woodland Avenue.

Reasons

3. The officer's report on the appeal application explains that the development had proceeded under application ref. BH2019/00694 granted in April 2019. However, at an advanced stage it was considered necessary to regularise changes to the approved scheme and provide further information and this was addressed by the submission of the appeal application in May 2022.

4. The Highway Authority's comments as a consultee on the first application had recommended the imposition of the condition whereas the Authority's consultation comments on the appeal application had not. There is a time difference of over three years between the two and they were written by two different officers.
5. There is no evidence in this appeal as to whether the inconsistency of the Highway Authority's approach was because of an error of omission in respect of the recommendation on the second application, or because of a difference in the judgement of officers as to the appropriateness of the imposition of the condition. In either case I consider that the circumstances weigh in the appellant's favour.
6. However, the determining issue is the extent to which the condition accords with Government policy on the use of planning conditions. Paragraph 56 of the National Planning Policy Framework 2021 ('the Framework') says '*Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects*'. More detailed advice can be found in the online Planning Practice Guidance ('the PPG') on the 'Use of Planning Conditions'.
7. Paragraph 016 Reference ID: 21a 016-20140306 of the PPG explains that statutory consultees and other third parties can suggest conditions to mitigate potential impacts and make a development acceptable in planning terms. However, all the tests in paragraph 6 above have to be met and '*blanket standard conditions are inappropriate without proper consideration of whether they are necessary*'.
8. The grounds of appeal point out that the driveway to The Oval is some 40 metres from the junction of Woodland Drive with Hill Brow where the condition requires the pedestrian crossing improvements to be installed. At my visit I estimated that within a similar distance of this junction and including both directions along both roads there are more than a dozen properties. It was also apparent that the junction is a crossing point for members of the public from further afield. Indeed, the Council refers to pedestrians crossing the road to get to and from the bus stops on Dyke Road Avenue.
9. Taking all these factors into account and although recognising that the development itself has the potential to increase the footfall in the area, I consider that the requirement for the appellant to pay for the improvements is disproportionate. A condition requesting a contribution to a fund for this improvement or improvements generally might well have been appropriate, but the requirement for a permission for the erection of a single dwelling to fund the whole scheme would fail to meet the Government's tests of necessity, relevance to the development to be permitted and to be reasonable in all other respects.
10. For these reasons the appeal is allowed and permission Ref. BH2022/01341 is varied by the deletion of condition no. 6.

Martin Andrews

INSPECTOR