



Appeal Decision

Site visit made on 20 June 2023

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 10 July 2023

Appeal Ref: APP/Q1445/D/23/3321212

53 Ainsworth Avenue, Brighton BN2 7BG

- 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 Rowan Meyer and Ian Storey against the decision of Brighton & Hove City Council.
 - The application Ref: BH2022/03398 dated 28 October 2022, was refused by notice dated 6 February 2023.
 - The development proposed is upwards extension of ground floor to form new full first floor and levelling out of existing driveway.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There appears to be a small typo error in the decision notice which refers, under the first reason for refusal to the Brighton and Hove *Local* Plan Part Two whereas all other references are to the Brighton and Hove *City* Plan Part Two.
3. At the appeal stage amendments and additional information were submitted by the Appellants. These included a revised plan to amend the details of the opaque glass balustrading to the front terrace, closest to No 51 Ainsworth Avenue. Under the revised proposal, the balustrading would be increased to 1.8 m in height and the full length window serving the enclosed part of the terrace would be obscure glazed. In addition, a further Daylight, Sunlight and Overshadowing Report undertaken by XDA Consulting Ltd under ref: X185 and dated April 2023, was submitted at the appeal stage.
4. Whilst I appreciate that the changes have been made and additional material provided in direct response to the reasons for refusal, there is limited opportunity to accept amendments at the appeal stage and for further consultation at the appeal stage, particularly under a householder appeal. As these changes do relate to a reason for refusal with reference to the effect on the adjoining neighbours, and in the interests of fairness to all parties, I am unable to accept these amendments and will assess the proposal on the basis of the plans determined by the Council.

Main Issues

5. The main issues in this appeal are:

- a) The effect of the proposal on the living conditions of the neighbours at No 51 Ainsworth Avenue, with particular regard to loss of outlook, overlooking and loss of privacy and effect on daylight, sunlight and overshadowing, and
- b) The effect of the proposal on the street scene.

Reasons

Issue a) Living Conditions

6. The appeal property is a detached residential property on the north side of Ainsworth Avenue on a sloping site and within a predominantly residential area. The existing house has accommodation mainly at ground floor level with some accommodation in the roof and a garage and storage space at basement level. The relatively shallow rear garden rises steeply to the rear.
7. The proposal would remodel the existing house, primarily by changing and building out the existing pitched roof into a flat roof to introduce more accommodation at the upper floor level. I am advised that the ridge height of the existing would not change. The existing bay window at ground floor level would be squared-off and a terrace created above in place of the hipped roof, opening out from the upper floor. The external materials would be changed including the windows together with other external alterations.
8. The houses along this side of the road have a staggered siting, so that the appeal property sits partly forward of the property to the east at No 55 and the single storey property at No 51 sits forward of the appeal property. In addition, the road rises from west to east and so No 51 is at a lower level than the appeal property.
9. The main part of the existing property runs along the side of much of the rear garden of No 51. As a result of the roof changes, and although the ridge height of the appeal property would not be increased, there would be a considerably greater mass of built form adjoining No 51. Given the proximity of the appeal property to the boundary with No 51 and the limited depth of the rear garden, I consider that the proximity of the increased massing would be overbearing and would have an enclosing effect; this would materially harm the outlook of the neighbours at No 51 both from rear facing rooms as well as their rear garden.
10. Reference has been made to the relationship of the appeal property with the dwelling at No 55 on the other side which I have taken into account. However, the relationship between the siting of No 53 and the appeal property as well as the distance between the two is, in my view sufficiently different that the situation does not directly compare with the relationship between the appeal property and No 51. There is both a wider gap between No 55 and the appeal property and the side elevation of No 55 is partly parallel with the side elevation of the appeal property.
11. The Council has also raised concerns about the effect of the proposal on daylight and sunlight and overshadowing on the neighbouring property at No 51 and did not accept the conclusions in the information provided by the

Appellants, at the application stage. Although no technical evidence has been provided by the Council to substantiate its case, there is very limited information provided by the Appellants regarding the studies undertaken. As a result, I cannot be satisfied that these studies have comprehensively addressed the daylight, sunlight and overshadowing effects of the proposal. The statement accompanying the diagrams submitted at the application stage references the neighbours' right to light which is a different consideration and outside the planning remit. Taking a precautionary approach and considering the increased massing of the proposal and the proximity of the neighbouring property and garden, I cannot be satisfied that there would be no unacceptable impact on the neighbours, in terms of the impact on rear facing rooms and the rear garden, with regard to daylight, sunlight and overshadowing.

12. The front terrace would have a balustrade, with obscure glass, but given its limited height and its length, I consider that there would be the opportunity for views to be gained over the neighbours' property and garden, including views towards the rear garden. This overlooking and loss of privacy would unacceptably harm the neighbours' living conditions. However, were no other matters of concern, and planning permission were to be granted I consider that this matter could be resolved through the imposition of a condition to require revised details of the balustrading, to include an increase in its height to overcome this particular matter.
13. I am not persuaded that the use of the terrace would be any different in terms of noise and activity to use of the rear garden.
14. In respect of the neighbours at No 51, I have found that the proposal would materially harm the living conditions of these neighbours with regard to loss of light and overshadowing, overlooking and loss of privacy as well as in respect of the overbearing and enclosing form of the proposal and loss of outlook. The harm identified in respect of loss of privacy and overlooking would be possible to resolve through the imposition of an appropriate condition but this would not resolve my other findings. I therefore conclude that the living conditions of the immediate neighbours at No 51 would be unacceptably harmed. This harm would conflict with Policy DM20 of the Brighton and Hove City Plan Part Two as well as the National Planning Policy Framework and in particular paragraph 130, both of which amongst other matters seek a high quality of design which respects the amenities of existing and future occupiers.
15. I have considered the effect of the proposal on the surrounding properties to the front as well as to the rear, and am satisfied that given the distances with these properties, there would be no material harm to their living conditions, including in terms of overlooking and loss of privacy as well as loss of outlook.

Issue b) Street scene

16. The street has regularly spaced detached residential dwellings, including bungalows, chalet bungalows and houses but with a very diverse range of individual housing styles. The dwellings on the southern side of the road are generally set at a lower level than those on the north side, reflecting the slope of the land. A number of the properties have been extended and remodelled in a variety of styles, and also introducing a wider palette of materials. This is exemplified with the properties surrounding the appeal property with a two storey house of modern design to the east and a more traditional brick built bungalow to the west. The Appellants have also drawn my attention to other

permissions granted by the Council for changes to existing dwellings or replacement dwellings in the immediate vicinity, some of which have not yet been implemented, which indicate the wide range of styles and materials for which permission has been granted.

17. The proposal would substantially change and remodel the existing house with new materials including grey render, vertical timber as well as zinc or aluminium cladding. However, the footprint of the building would not be significantly altered, retaining the existing spacing with the neighbouring dwellings. The overall height of the dwelling would not be increased although there would be an increase in the overall massing, but given the range of property sizes in the vicinity, I do not consider that this would result in the dwelling appearing overly prominent in the street scene. The materials to be used are already found within the street scene.
18. The Council has raised a particular concern with the proposed terrace but, although not a common feature, these are found in the local area, including on the adjoining property. I do not therefore agree with the Council's view that this would be an inappropriate feature to include. I am satisfied that, taking into account the varied street scene, the proposed terrace as well as the overall property, as proposed to be altered, would not become unduly prominent in the street scene.
19. I am therefore satisfied that the proposed development would respect the varied street scene. It would accord with Policy CP12 of the Brighton and Hove City Plan Part One and Policies DM18 and DM21 of the Brighton and Hove City Plan Part Two, as well as the National Planning Policy Framework, and in particular Section 12, all of which, amongst other things, seek a high quality of design which respects the local context.

Other Considerations

20. I have had regard to the concerns raised by local residents and have addressed some of these above under my two main issues. There is no technical evidence to indicate that the proposal, which relates to the remodelling of an existing dwelling, would lead to traffic and highway concerns and the Council has raised no concerns in this regard. Concerns relating to effects on property values and loss of views are not planning related matters.

Conclusion

21. I have found that the proposal would respect the varied street scene, but this does not outweigh the harm I have found to the living conditions of the neighbours at No 51 Ainsworth Avenue. I have taken into account the Appellants' reasons for seeking the proposed changes and remodelling, but these do not persuade me to a different conclusion.
22. For the reasons given above and having regard to all other matters raised, I conclude that this appeal should be dismissed.

L J Evans

INSPECTOR