



Appeal Decision

Site visit made on 31 May 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2023

Appeal Ref: APP/Q1445/W/22/3310605

26 Sackville Gardens, Hove, Brighton & Hove BN3 4GH

- 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 Gary Brookes (Bale House CAD Ltd) against the decision of Brighton & Hove City Council.
 - The application Ref BH2022/00604, dated 08 February 2022, was refused by notice dated 10 May 2022.
 - The development proposed is roof conversion with rear dormer windows, front rooflights and retiling to form new self-contained 1 Bedroom flat with separate external staircase access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted revised plans with the appeal. These plans amend the design of the proposed development to enlarge one of the proposed rear dormers and to remove the canopy which was previously shown above the proposed external stair landing adjacent to the access for the proposed flat. In considering the acceptability of these amendments, I have had regard to the Wheatcroft¹ principles.
3. The proposed enlargement of one of the rear dormers would fundamentally alter the development previously consulted on by the Council because it would enlarge one of the few external elements of the proposal. This would prejudice those who were consulted during the Council's determination of the planning application, as those parties would not have the opportunity to comment on the revised proposal. This is compounded by the fact that interested parties (local residents) referred to the effect of the proposed dormers in their written representations to the planning application.
4. The Council's officer report asserted that the elevation plans were inconsistent and that it was unclear whether a canopy was proposed over the existing staircase on the northern elevation of the building. The appellant's revised plans remove this element of the proposal but also remove the canopy proposed over the new staircase to the south of the building. This fundamentally alters an aspect of the scheme (the external staircase) which the Council objected to in its reasons for refusal. The revision would prejudice parties who were consulted on the original planning application as they would be deprived an opportunity to make representations on the revision.

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

5. For these reasons, I have not accepted the revised plans and will consider the appeal based upon those plans which were before the Council at the time it determined the planning application.
6. Since planning permission was refused, the Brighton & Hove City Plan Part 2 (October 2022) has been adopted. The Council has provided copies of policies DM20, DM21 and DM26, which were referred to on the decision notice. The Council has also provided a copy of Policy DM1 which was not included within the reasons for refusal. The appellant has had sufficient opportunity to make representations in response and I have had regard to these policies in my consideration of this appeal.

Main Issues

7. The main issues are:

- The effect of the proposal on the character and appearance of the Sackville Gardens Conservation Area.
- Whether the proposed dwelling would provide an acceptable standard of living accommodation for future occupiers.

Reasons

The Conservation Area

8. The appeal site is located within the Sackville Gardens Conservation Area (the CA). Under section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am obliged to pay special attention to the desirability of preserving or enhancing the character and appearance of the CA.
9. The evidence before me, combined with the observations made during my site visit, indicates that the CA primarily derives its significance from the variation in architectural styles of the predominantly residential buildings. In many cases and given the available on-street parking, the principal elevations of buildings along Sackville Road have retained much of their original character.
10. Whilst there is variation in the appearance of residential buildings within the CA, there are also pockets of consistent character. These pockets establish an order and rhythm to the architecture of buildings in the CA. This ensures that the CA does not solely comprise an irregular scattering of unrelated architecture. As such, where there are pockets of consistent character, these also make a positive contribution to the significance of the CA.
11. 26 Sackville Gardens has been converted to flats, however, the building largely presents within the street scene as a single detached dwelling, with one main entrance. The primary physical indication that the building has been subdivided is the existing external staircase on the northern side of the building, providing access to a first floor flat. Nonetheless, given the relatively low height of this staircase, when viewed in the street scene it blends in with the residential properties to the rear and it is not a prominent feature of the building.
12. The neighbouring buildings on this side of Sackville Gardens have a relatively consistent appearance and whilst there are some alterations and additions to the sides of these properties they generally do not detract from the original distinct design and layout of the buildings. Indeed, the relatively even spacing between buildings (notwithstanding that some buildings are semi-detached)

enhances the character of the CA and emphasises this distinct pocket of character.

13. The proposed staircase would be an obtrusive feature, with the upper section clearly visible within the street scene. Given its prominent height it would jar with the existing building. Indeed, the staircase would harmfully detract from subtle consistency between the existing building and those which are located to the north and south.
14. The visual harm would be compounded given that the staircase would appear to overhang an existing driveway when viewed from the front. Given the relatively wide spacing between No 26 and the building to the south, the harm would be clearly apparent within the street scene, particularly to those using the adjacent footway. The presence of the existing staircase and others² within the surrounding area does not justify the harm caused. Particularly given that such staircases are not a prevailing or consistent feature of the CA.
15. For the avoidance of doubt, it is the scale and the positioning of the proposed external staircase which would cause harm to the significance of the CA. As such, whether the proposed staircase includes a canopy does not alter my findings. The 'victorian inspired design... incorporating ornate features' would not reduce the dominant scale or prominent positioning of the proposed staircase.
16. The proposed rooflights at the front of the building would not detract significantly from the character of the area. Indeed, there are many examples of dormer windows and roof-lights of varying design within Sackville Gardens. The fact that the roof lights would sit flush with the roof would significantly limit their visual impact.
17. Replacement of the concrete tiles with clay tiles would be a beneficial feature of the proposal. Not least because clay tiles appear to be an original design feature. However, even taking into account this benefit, the overall harm caused by the development (as a result of the staircase) would be 'less than substantial' within the terms of Framework Paragraph 202. The proposal would therefore fail to preserve the character and appearance of the CA.
18. Framework Paragraph 202 requires that less than substantial harm is weighed against the public benefits of a proposal. The proposed development would include social and economic benefits associated with the increase in housing stock as a result of one new dwelling. These benefits are increased given that the Council cannot demonstrate a five-year housing land supply³ (HLS). There would be a small increase in support for local services and facilities further afield as a result of an increased population. There would also be some temporary economic and social benefits through support for construction jobs.
19. However, given the relatively small scale of the development, these public benefits can only be attributed moderate weight, even in the context of a HLS shortfall. Conversely, the less than substantial harm to the heritage asset should be afforded great weight, in line with the provisions of Framework Paragraph 199. As a result, the modest public benefits of the proposed development would not outweigh the less than substantial harm.

² Including No.11 Sackville Gardens

³ The HLS position was 2.1 years at the time the Council determined the planning application and none of the evidence before me indicates any revision to that position.

20. The proposed development would therefore conflict with City Plan Part 1 Policies CP12 and CP15 as well as City Plan Part 2 Policies DM21 and DM26. These policies, insofar as they are relevant, collectively seek to ensure that development is in keeping with local character and preserves or enhances the character of Conservation Areas.

Standard of accommodation

21. The proposed flat would include one double bedroom with ensuite, a study/office, a living room/kitchen and a separate bathroom. The Council has considered the proposal on the basis that it consists of a two-bedroom property. However, the mere fact that the study/office is capable of accommodating a small bedroom is not a sufficient justification for this approach. This is particularly the case given the rise in a tendency for many people to work from home for at least part of the working week. The relatively small size of the study would further reduce the likelihood that it would be used as a bedroom. For these reasons the proposal comprises of a one-bedroom two-person flat.
22. City Plan Part 2 policy DM1 requires that new residential development complies with the nationally described space standards⁴ (the Technical Standards). These require that the proposed development provides a minimum Gross Internal Area (GIA) of 50sqm. The proposal has a GIA of approximately 68sqm, well in excess of the required minimum.
23. The Technical Standards also require that at least 75% of the GIA comprises a minimum floor to ceiling height of 2.3 metres. The evidence indicates that approximately 49sqm of the proposed GIA would have a sufficient floor to ceiling height. Yet this would be below 75% of the total GIA. However, to apply such a standard in this instance would be very illogical because 49sqm is almost 100% of the minimum GIA required. If deemed necessary this minor conflict with the Technical Standards could be resolved through the imposition of a planning condition, requiring a reduced GIA to be submitted and approved. Whilst this would be an odd approach it would ensure compliance with the Technical Standards.
24. For the reasons outlined above, the proposal would comply with City Plan Part 2 Policies DM20 and DM1 as well as the Technical Standards. These policies collectively seek to ensure that an adequate standard of accommodation is provided for future occupiers of residential development.

Other Matters

25. Various interested parties (neighbouring residents) objected to the planning application for reasons beyond those cited in the main issues of this appeal. However, given that I am dismissing this appeal on other grounds it is not necessary to consider these issues further.

Planning Balance

26. The Council's officer report confirms that at the time of the decision the Council could only demonstrate a housing land supply of 2.1 years. As such, Framework Paragraph 11d is engaged. Framework Paragraph 11di) states that permission should be granted, unless the application of policies in the

⁴ Technical Housing Standards – Nationally Described Space Standard (March 2015)

Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 clarifies that such policies include those relating to designated heritage assets.

27. I have found that the proposed development would result in less than substantial harm to the CA and nearby listed buildings. I have also undertaken the test at Framework Paragraph 202 and concluded that the limited public benefits of the proposed development would not outweigh this harm. This therefore provides a clear reason for refusing the development within the context of Paragraph 11d(i). As such, Framework Paragraph 11d(ii) is not engaged.

Conclusion

28. The proposed development would result in an acceptable standard of accommodation for future occupiers. However, it would not preserve the character and appearance of the area and would lead to less than substantial harm to the heritage asset. This harm would not be outweighed by the public benefits of the proposal.
29. As such, the proposal would conflict with the development plan taken as a whole. Whilst the Council cannot currently demonstrate a five-year HLS (based on the evidence before me) the approach in the Framework still indicates that there is a clear reason for refusing the development.
30. There are no other material considerations raised which indicate an alternative decision. As such, the appeal is dismissed.

Luke Simpson

INSPECTOR