



Appeal Decision

Site visit made on 3 July 2023

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2023

Appeal Ref: APP/Q1445/W/22/3311652

44 The Cliff, Brighton BN2 5RE

- 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 Dr Antonia Paoletta against the decision of Brighton & Hove City Council.
 - The application Ref BH2022/01221, dated 7 April 2022, was refused by notice dated 27 September 2022.
 - The development is erection of two single storey log cabins in rear garden area.
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Decision

1. The appeal is allowed, and planning permission is granted for erection of two single storey log cabins in rear garden area at 44 The Cliff, Brighton BN2 5RE in accordance with the terms of the application, Ref BH2022/01221, dated 7 April 2022, subject to the following condition:
 - 1) The two log cabins hereby approved shall only be used as accommodation ancillary to and in connection with the use of the main property as a single dwelling house and shall at no time be occupied as one or more separate or self-contained units of accommodation, including as holiday lets.

Procedural Matters

2. The development had already taken place at the time of my site inspection. I have therefore dealt with the appeal on the basis that planning permission is being sought retrospectively for the erection of the log cabins.
3. A signed unilateral undertaking was submitted during the course of the appeal. I sought the Council's views on this and have taken its comments into account.
4. Since the determination of this application, Saved Policy QD27 of the Brighton and Hove Local Plan has been superseded by Policy DM20 of the Brighton and Hove City Plan Part Two (CPP2). The emerging policies cited on the decision notice are now part of the development plan.

Main Issues

5. The main issues are:
 - a) the effect of the log cabins on the character and appearance of the area; and
 - b) the effect on the living conditions of the occupiers of adjoining properties, having regard to the use of the log cabins.

Reasons

Character and appearance

6. The appeal property lies on the south side of The Cliff, at the far eastern end adjacent to a pitch and putt golf course. The dwellings on this side of the road are predominantly large and detached, providing elevated views over Brighton Marina. The log cabins have been erected on a raised terrace, either side of an existing L-shaped outbuilding and adjacent to a sunken garden which is laid out with artificial grass and a pond, planting beds around the edges and slabbed areas containing patio furniture. The cabins are modest, single storey structures, not dissimilar to summerhouses or large sheds, with shallow pitched roofs and the external timber walls painted an off-white colour.
7. The density of the boundary vegetation, both on the appellant's land and outside of the plot, means that the cabins are screened in most public views, with only glimpses possible from the golf course and A259. Even then, the buildings are not visible in their entirety, and it is difficult to discern that there are multiple structures positioned alongside one another. The cabins are set at a lower level than the parent dwelling and other houses along The Cliff, but they are still viewed in the context of these properties and against the backdrop of taller greenery on the site boundaries. The eye is not drawn to the cabins, and they do not stand out as being incongruous. I have taken account of the seasonal effects of vegetation but do not consider that the visual impacts would be significantly worse or unacceptable at other times of the year.
8. I therefore conclude that the development does not cause material harm to the character or appearance of the area. There is no conflict with Policy DM18 of the CPP2, insofar as it seeks to ensure that new development demonstrates a high standard of design and makes a positive contribution to a sense of place and the visual quality of the environment.

Living conditions of neighbours

9. Each of the log cabins contains a small open plan space with a separate toilet and shower room at one end. This would facilitate overnight stays, but the accommodation is very basic. Access to the cabins is either through the parent dwelling or via a side gate and down some steps, and then across the rear garden. The appellant has explained that there is no other means of access into the garden since the previous rights to use a side gate situated on the eastern brick boundary wall of the plot were removed by the Council. As such, it would be difficult to use the cabins independently from No 44 without disturbing the occupants of that property or impinging on their privacy.
10. I saw nothing during my visit to suggest that the cabins have been used as separate units of accommodation. At the time of my inspection, they were being used for domestic storage. The buildings are some distance (circa 40m) from the parent dwelling, but they are connected by a path and the relationship is not such that they are unable to function as ancillary domestic outbuildings.
11. The Council's concerns stem from the L-shaped outbuilding which has already been the subject of an application for a Certificate of Lawfulness for existing use as an independent single dwellinghouse. I have not been provided with any details but am told that the application was refused and dismissed on appeal. Given this outcome, and the fact that the building does not form part of the

application, the planning history has limited bearing on this appeal. The log cabins are detached structures with no physical interconnection to the L-shaped building. Should they be used with the latter to create a new planning unit, that is a matter for the Council to pursue separately. That the three outbuildings might collectively provide the facilities needed for separate occupation is not a reason in itself to conclude that they would be used as such, or that a material change of use has occurred.

12. The appellant is adamant that the two log cabins would be used for purposes ancillary to No 44, and that there is no intention to use them as holiday lets. To this end, a signed unilateral undertaking (UU) dated 19 May 2023 has been submitted to provide that the buildings shall not be used or occupied other than as ancillary to the use of 44 The Cliff and to ensure that the buildings and main dwelling remain in common ownership.
13. The Council has suggested a condition, for use in the event that I am minded to allow the appeal, which states that the log cabins shall only be used as accommodation ancillary to and in connection with the use of the main property as a single dwelling and shall at no time be occupied as a separate or self-contained unit of accommodation. Conditions should not generally be used to duplicate a planning obligation, but in this case the condition would be complementary. Taken together, the UU and condition would achieve the Council's objective of ensuring that there is no additional activity likely to cause noise, disturbance or light nuisance for the occupiers of adjoining properties. The measures would ensure that there is no conflict with CPP2 Policy DM20 and its objective of preventing unacceptable loss of amenity.

Other Matters

14. There is an upper floor flat within No 44 which may historically have been an annexe, but which evidence suggests has been used as an Airbnb holiday let. The appellant explained that this use ceased in October 2022. However, it is not directly relevant to the planning merits of the log cabins.
15. I have taken account of all concerns raised by interested parties, including in relation to the use of the outbuildings as holiday accommodation, resultant noise and traffic impacts and the effects of works on wildlife. However, based on the information presented, these matters would not constitute reasons to dismiss the appeal.

Conditions

16. In the interests of certainty, and to protect the living conditions of neighbours, a condition is necessary to restrict the use of the log cabins to ancillary accommodation and prevent their use as one or more separate or self-contained units of accommodation, including as holiday lets.
17. The Council has suggested a condition to ensure that development takes place in accordance with the approved plans. However, this is not necessary in the case of development which has already taken place.
18. A condition has also been requested to remove permitted development rights for the erection of any gate fence, wall or means of enclosure. However, the motivation for this is to prevent the subdivision of the site to create a new planning unit which would require planning permission in any event. The condition therefore fails the test of necessity.

Conclusion

19. For the reasons given above I conclude that the appeal should be allowed.

Robert Parker

INSPECTOR