



# Appeal Decision

Site visit made on 4 October 2023

**by A Price BSc MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 October 2023**

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**Appeal Ref: APP/Q1445/W/22/3300219**

**Olivier House, 18 Marine Parade, Brighton BN2 1TL**

- 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 Farzin Sobhanpanah of Eagle Estates Ltd against the decision of Brighton & Hove City Council.
  - The application Ref BH2021/04506, dated 16 December 2021, was refused by notice dated 3 May 2022.
  - The development proposed is for the partial change of use of basement floor from office use (E) to 2no. two bedroom residential units (C3) with alterations to include replacement of rear windows with doors, demolition of an existing toilet block, cycle storage and associated works.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have used the Council's description of development as this is more concise.
3. The Council has no objection to the principle of development or the proposed external works. I have no reason to disagree with those findings and have therefore only had regard to the matters set out below.

## Main Issues

4. The main issue is whether or not the proposed development would provide adequate living conditions for future residents, with particular regard to daylight and outlook.

## Reasons

5. The proximity of the existing and proposed windows to the retaining wall of the lightwells to both the front and rear of the property is such that daylight to the proposed units would likely be compromised.
6. During my site visit, I noted the relatively poor levels of daylight within the basement floor. This was despite window blinds across the undivided floor being open and the weather outside being good. I have no doubt that the further subdivision of the rooms, and during inclement weather, that the daylight to this floor, and the proposed dwellings, would be worsened.
7. There is no evidence before me, such as a daylight assessment, of the existing or proposed daylight levels here. In the absence of such evidence to demonstrate that daylight levels would be satisfactory for future occupiers, I

am not persuaded that the living conditions for those future residents would be acceptable.

8. In respect of outlook, both units would be served by multiple existing windows along the front and rear elevations of the property. Despite this, the subterranean nature of the dwellings, together with the very limited depth of the lightwells onto which the windows face, means that future occupiers of these habitable spaces would experience a gloomy and oppressive outlook and an unacceptable sense of enclosure.
9. That the units would be dual aspect does not alter my conclusion in respect of outlook or daylight levels. The appellant sets out that planters are proposed outside each window. Even were this, or the suggested vertical landscaping, implemented, they would fail to overcome the very poor outlook here. On this point, I do not find it reasonable or sufficient to include a condition in this regard, as suggested. That other basement dwellings may exist within the city is not reason for me to accept a poor standard of accommodation here.
10. Overall, I conclude that inadequate living conditions would be provided as a result of the proposed development, contrary to the relevant provisions of Policy QD27 of the Brighton and Hove Local Plan (2005, retained policies March 2016) and Policy DM20 of the Brighton and Hove City Plan Part Two (2022). These policies, in summary, seek to ensure an appropriate standard of accommodation.

### **Other Matters**

11. The submitted evidence indicates that the Council cannot demonstrate a five-year housing land supply (currently at 2.1 years). As such, and noting the Government's objective of significantly boosting the supply of homes, the provisions of Framework paragraph 11.d are engaged. This sets out that where the policies which are most important for determining the application are out of date, permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
12. There are no policies in the Framework relevant to the site which protect areas or assets of particular importance, and which provide a clear reason for refusal. As such, it is necessary to apply Framework paragraph 11.d(ii).
13. The proposed development would represent a contribution of two extra dwellings to housing supply in an area with an acknowledged lack of future provision. There, too, would be some other social and economic benefits of the proposed development, including in supporting employment during construction and the bringing of trade to nearby services and facilities following occupation. I note that the site is also located in an accessible position near to various local and city centre services. However, these benefits and the contribution to housing supply in the city would inevitably be limited given the scale and nature of the development proposed.

14. I also accept that the proposed development would accord with other planning objectives, including in respect of space standards. Nevertheless, these are not matters in dispute between the Council and appellant.
15. Accordingly, and given the significant harm I have identified above, the adverse effects of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
16. That listed building consent has been granted for a scheme at the same appeal site does not alter my conclusion.
17. My attention has also been drawn to other schemes across the city that the appellant sets out provide a lower standard of residential amenity than the appeal scheme. I have set out above why I disagree. Moreover, even were another site identified which had a poor standard of accommodation, this would not justify a similarly poor standard of accommodation in all future developments. I have assessed the proposed development on the evidence before me and on its own individual circumstances.

### **Conclusion**

18. For the reasons above and having had regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

*A Price*

INSPECTOR