
Appeal Decision

Site visit made on 11 October 2023

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2023

Appeal Ref: APP/Q1445/W/23/3319713

31 Gladstone Place, Brighton BN2 3QE

- 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 Mrs Fatima Rahman (Rahman Enterprises Ltd) against the decision of Brighton & Hove City Council.
 - The application Ref BH2022/02434, dated 18 August 2022, was refused by notice dated 20 January 2023.
 - The development proposed is conversion of existing dwelling to form 2 No. one bedroom flats and 1 No. two bedroom flat (C3).
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The impact of the appeal scheme on the character and appearance of the host property and wider surrounding area;
 - The impact of the appeal scheme on the living conditions of neighbouring occupiers, with particular reference to noise disturbance and privacy impacts;
 - Whether the appeal scheme would provide satisfactory living conditions for future occupiers of the development, with particular reference to indoor and outdoor living space; and
 - The impact of the appeal scheme on the Council's supply of dwellings suitable for family accommodation.

Reasons

Character and appearance

3. The appeal property forms part of a two storey plus basement, pitched roof, residential terrace, which extends along the north side of Gladstone Place. It lies within a wider residential area comprising a number of straight, parallel roads comprising similarly designed period terraced housing.
4. The row of properties within which the appeal site is located is traditionally designed, with rendered walls under tiled pitched roofs. The roofscape characteristically comprises simple and uncluttered roof slopes which feature

dividing parapets and multi-potted chimneys, which are positive features of the original terrace roof. The appeal property is situated mid-terrace and forms an integral part of this line of houses which exhibits an overall high degree of uniformity of roofscape, materials and fenestration design and positioning.

5. I saw during my site visit, that the dormer and rear balcony have been constructed and that internal flat conversion works have commenced. I have dealt with the appeal accordingly, and on the merits of the appeal scheme.
6. The rear dormer occupies the entire rear roof slope, having no significant set-ins from the roof ridge, eaves or either side. As such, it visually overwhelms the original roof slope, significantly altering its character and replacing it with an incongruous and bulky flat roofed design. This is entirely out of keeping with, and disrupts, the uniformity of the original plain tiled sloping roofscape of the original terrace.
7. Due to its massing and scale, the dormer appears as an over-dominant and top-heavy addition, which is out of keeping and unduly harmful to the rear elevation of the building. Moreover, its incongruous appearance is exacerbated by the use of dark tile cladding which occupies a substantial part of the walls of the dormer. This, combined with the dark dormer fenestration frames and railings, strongly contrasts with, and visually overwhelms, the light rendered walls and window frames directly below. Further discordance occurs as a result of the introduction of a Juliet-balcony and the non-alignment of the dormer fenestration with the windows below.
8. Accordingly, the dormer materially harms the character and appearance of the host property and the area, including when viewed from the rear gardens of neighbouring properties and the proposed lower ground floor flat, and from the access road at the rear of the site which serves a nearby chapel, cemetery and mortuary.
9. The appellant has drawn my attention to other existing full span dormers within the vicinity of the appeal site, including on the adjacent property and nearby within Gladstone Place and on the rear elevation of properties on the south side of Newmarket Road. The appellant has also provided a map showing the location of existing dormer windows within a wider area of period properties within the vicinity of the cemetery.
10. The information before me is that some of these dormers benefit from planning or lawful development consent. However, I am not aware of the full circumstances of these cases or when they were constructed, noting that some may have been constructed under permitted development rights where related to single dwelling houses and that the circumstances in each proposal could be different.
11. In any event, whilst I accept that there are some roads which include a proliferation of full span rear dormers, including to the south and west of the cemetery, the fact that similar dormers may have been permitted in the wider area is not a reason, on its own, to allow unacceptable development on the appeal site.
12. I have considered the appeal scheme on its individual planning merits and in the context of the character and appearance of the existing building and the immediate locality. The existing dormers in Gladstone Place are not identical in

design to the appeal scheme in terms of their materials and fenestration. Moreover, although they are of a similar size and scale as the appeal dormer, I am not persuaded that they make a positive contribution to the character and appearance of the area, and their existence does not justify the harm that I have found.

13. Drawings submitted within the appeal documents indicate that the rear balcony has replaced a small platform and external steps which provided access from the ground floor of the dwelling to the rear garden. Such a feature would not be uncommon on terraced properties incorporating basement accommodation due to a desire to provide more convenient access to the rear garden, and would have comprised a subservient, unenclosed building feature, which did not appear unduly visually dominant.
14. In contrast, the appeal scheme balcony has introduced a significantly larger structure to the rear wall of the building. Due to a combination of the balcony width and depth and the height of the timber screens, the structure occupies a large proportion of the rear wall of the subsidiary projecting element at the rear of the building. It unbalances the visual symmetry of the rear two-storey outrigger which extends across the appeal site and the adjacent property at No.29.
15. These factors, combined with the chunky and dark coloured design of the stilts and the heavy appearance of the horizontal timber screens, has resulted in a discordant and overwhelming addition, which is harmful to the appearance of the rear of the building and that of the wider terrace.
16. The appellant has referred to other existing rear balconies and raised terraces to the rear of Gladstone Place and the opposite rear of Newmarket Road. However, there is insufficient evidence before me that the details circumstances of these structures are directly comparable with those of the appeal scheme.
17. There is a difference of opinion between the main parties as to whether the dormer window was constructed under householder permitted development rights under Schedule 2, Part 1 of the GPDO. The Council considers that planning permission is required. The appellant's statement of case confirms that the planning application sought retrospective permission for the dormer as part of the proposed flat conversion, but that, due to the reversion of the use of the building back to that of a single dwelling, the dormer, or a modified version thereof, maybe considered to be permitted development comprising a fallback position which is a material consideration.
18. No formal application for a certificate of lawfulness with respect to a rear dormer at the appeal property has been determined by the Council, and the determination of what could potentially be built under permitted development rights and what is the lawful planning use of the property are not matters for me to decide within the context of an appeal made under Section 78 of the Act. As such, the potential fallback position carries limited weight.
19. For the above reasons, I conclude that the appeal scheme results in significant harm to the character and appearance of the host property and the wider surrounding area. It is therefore contrary to Policy CP12 of the *Brighton and Hove City Plan Part One* (2016), Policies DM18 and DM21 of the *Brighton and Hove City Plan Part Two* (2022) (the City Plan Part 2) and guidance within the

Design Guide for Extensions and Alterations Supplementary Planning Document (2020) (Design SPD).

20. These policies and guidance, amongst other aims, require all new development to raise the standard of architecture and design in the city and make a positive contribution to the visual quality of the environment. New extensions should be well designed and scaled, sited and detailed in relation to the property to be extended, adjoining properties and to the surrounding area, and use materials sympathetic to the parent building.
21. For similar reasons, the proposal would also be contrary to Policies of the *National Planning Policy Framework 2023* (the Framework) which seek to secure high quality design as set out in Chapter 12.

Neighbouring living conditions - noise

22. The existing plans indicate that the former raised platform was open and of a narrow width and provided access to the rear garden from one of the ground floor bedrooms of the dwellinghouse. As such, it was not of a design and size that would provide a safe, practical and convenient outdoor living space. Moreover, it was used in association with the single household occupancy of the building as a dwellinghouse.
23. The balcony, the subject of the appeal scheme, is notably deeper and is enclosed. There is sufficient space to provide furniture and domestic paraphernalia associated with outdoor dining and socialising, and its position leading directly off the kitchen/dining area of the proposed ground floor flat would readily lend itself to these outdoor functions. This would be the sole area of outdoor living space associated with the ground floor unit, and, as such, I consider it has the potential to be well-used by the occupiers.
24. This would give rise to an increase in open air noise and activity at upper floor level, which would have the potential to significantly harm the living conditions of the occupants of neighbouring properties due to disturbance impacts. In this respect, I consider that the expected noise impacts would be greater than those associated with similar activities at a lower garden level, where buildings, landscaping and boundary treatments all contribute to providing noise buffers, and given the proximity of the balcony to principal rear elevation windows in the adjacent properties to each side, and the proposed dwellings within the appeal building. Such neighbour living condition impacts would reasonably be expected to be greatest during warm fine weather when the balcony would be in heavier use and windows of neighbouring properties are more likely to be open.
25. The appellant has drawn my attention to a number of appeals¹ and planning applications² in respect of roof terrace proposals. Full details of the proposals have not been provided to me within the evidence, nor how each relates to neighbouring dwellings. On the basis of the information provided, I am not persuaded that these schemes are directly comparable with the current appeal proposal, having regard to factors including their design, layout and spatial relationship to neighbouring residential properties. Notwithstanding this, I have

¹ APP/Q1445/D/22/3293841

² BH2022/03644, BH2022/02434, BH2018/03469, BH2013/00937, BH2010/02158, BH2010/03147, BH2015/03947 and BH2009/00741

determined the current appeal on its own merits, taking into account the appeal site specific factors.

26. For the above reasons, I therefore conclude that the appeal scheme would materially harm the living conditions of the occupiers of neighbouring properties, with particular reference to noise disturbance impacts. As such, it does not accord with Policy DM20 of the City Plan Part 2, in so much as this policy seeks to ensure that development, including change of use, would not cause unacceptable loss of amenity to, inter alia, proposed, adjacent or nearby residents or occupiers.
27. This is generally consistent with the Policies of the Framework which seek to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users (Paragraph 130).

Neighbouring living conditions – privacy

28. Following my site visit, I am satisfied that the existing 1.7m high screens along each side of the balcony are of sufficient height to prevent overlooking directly to the sides of, and towards the rear elevation windows of, neighbouring properties. Overlooking of the rear garden of the lower ground floor flat and neighbouring rear gardens is currently possible given the lower height of the rear timber screen. However, I have noted the appellant's willingness to alter this element of the appeal scheme, and, noting that the immediate view obtained from the balcony is predominantly over the roofs of the urban townscape to the north, I have no cogent reason to doubt that the appellant would be prepared to raise the height of the rear screen.
29. As such, noting that the provision of 1.7m screening is a commonly accepted mode of addressing privacy matters in respect of development proposals, I am satisfied that, subject to an acceptable balcony design in all other respects, the matter of privacy is capable of being satisfactorily addressed by means of a condition to ensure appropriately designed balcony screening. This does not alter my above findings on character and appearance and noise impacts, which are determining factors in my decision.
30. For the above reasons, I conclude that, subject to a planning condition to secure appropriate screening around the edges of the balcony, the appeal scheme would not materially harm the living conditions of the occupiers of neighbouring properties, with particular reference to privacy impacts. As such, the proposal would accord with Policy DM20 of the City Plan Part 2 in so much as this policy seeks to ensure that development, including change of use, would not cause unacceptable loss of amenity to, inter alia, proposed, adjacent or nearby residents or occupiers.
31. This is generally consistent with the Policies of the Framework which seek to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users (Paragraph 130).

Living conditions of future occupiers – private outdoor living space

32. The rear garden area would be given over for the use of the lower ground floor flat and the ground floor flat would benefit from the balcony for private outdoor living space. However, no private outdoor living space would be provided for the upper maisonette unit, which is the largest of the proposed dwellings.

33. Policy DM1 of the City Plan Part 2 requires new residential development to provide useable private outdoor amenity space appropriate to the scale and character of the development. Supporting Paragraph 2.12 states that in considering the type and amount of useable private amenity space, the Council will have regard to the type, scale, location and context of residential development and recognises that it may be difficult to provide outdoor amenity space where development involves the conversion of existing buildings, particularly with regard to upper floors.
34. Moreover, the Council has not directed me to any adopted development plan policies or supplementary planning guidance in respect of minimum garden size standards for flatted developments, and none are contained within Policy DM1.
35. I have noted two planning permissions³ granted by the Council for flat conversions very close to the appeal site, where the Council accepted family-sized units spread over two floors of the building without private outdoor living space due to their central location close to public amenity space.
36. Given the similarities between those developments and the current appeal scheme and my observations of the site locality during my site inspection, I have no reason to disagree with the Council's assessment on this matter nor doubt the availability of compensatory public open space provision as an alternative to on-site outdoor living space, in respect of the approved schemes. There is therefore no cogent reason to take a different view in respect of the current proposal before me.
37. Whilst the aforesaid approvals were determined under Policy HO5 of the former Brighton and Hove Local Plan 2005, I do not find that this policy has been substantially altered by its replacement, having regard to this matter.
38. With all the above in mind, whilst it would be desirable for the proposed maisonette to be provided with individual private outdoor living space, in the particular circumstances of the appeal site and the appeal proposal, I do not find the proposed lack of such provision to be likely to have a materially harmful impact upon the living conditions of future occupiers of the development.
39. For the above reasons, I conclude that the appeal scheme would provide satisfactory living conditions for future occupiers of the development, having regard to the provision of outdoor living space. As such, the proposal would accord with Policy DM1 of the City Plan Part 2, in so much as this policy seeks to ensure that new residential development provides useable private outdoor amenity space appropriate to the scale and character of the development.
40. This is generally consistent with guidance within the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users (Paragraph 130).

Supply of family housing

41. Policy DM3 of the City Plan Part 2 supports proposals for the conversion of dwellings into smaller units of self-contained accommodation, recognising that this is an efficient use of available land to increase housing supply. The supporting text to the policy explains that there remains a high level of demand

³ BH2017/01920 and BH2019/02678

for smaller dwellings comprising 2 or 3 bedroom units, which are suitable for family accommodation. Accordingly, in respect of conversions of larger residential units, such as the appeal property, into smaller dwellings, there is a requirement to retain a unit of accommodation which is suitable for family occupation, in the interests of ensuring housing choice within the city.

42. Amongst other requirements, the retained family dwelling must have a minimum of 2 bedrooms and comprise a 4-person unit of 70sqm or larger and comply with the *Nationally Described Space Standards* (2015) (the NDSS) in respect of minimum gross internal floor areas and storage, which is a requirement of Policy DM1 of the City Plan Part 2, which is cross-referenced within Policy DM3.
43. I have noted that Policy HO9 of the former *Brighton and Hove Local Plan 2005* (retained policies March 2016), the previous, and now superseded, relevant policy in respect of residential conversions and the retention of smaller dwellings, did not include minimum bedspace/floorspace requirements with respect to the required retained two-bedroom family occupation dwelling.
44. I have also noted that other converted dwellings nearby in Gladstone Place benefit from permission granted under Policy HO9 and have resulted in the creation of 2B3P units, which were accepted by the Council at that time as comprising family units. Moreover, the appellant has stated that the appeal scheme was in accordance with the adopted plan in place at the time of the application submission.
45. However, I must determine the appeal in accordance with the current, and recently adopted, development plan policies, noting that, due to the very advanced stage that the emerging City Plan Part 2 had reached by then, it would have been afforded great weight in the decision-making process at the time of the appellant's submission of the planning application.
46. The Council's concerns are that, in respect of the proposed first and second floor maisonette, the proposal would not provide a unit suitable for family accommodation or provide a high standard of accommodation. This is on account that it fails to provide a 2B4P dwelling due to the failure of the smaller bedroom to meet the minimum NDSS double or twin room size of 11.5 sqm, and overall floor space requirement of 79 sqm where the family unit is spread over two floors. The proposed absence of private outdoor living space and no proposed installation of a bath also compound the Council's aforesaid concerns.
47. The arguably more rigorous accommodation standards introduced into policies DM3 and DM1 of the current adopted local plan compared to those of the former Policy HO9, include the introduction of the NDSS as a policy requirement, and this accords with advice in footnote 49 of the (the Framework). As such, I do not find this unreasonable, in the interests of ensuring that new dwellings achieve high standards of accommodation.
48. There is no dispute between the parties in respect of the proposed room sizes. Moreover, the appellant has confirmed that the proposed Unit 3 is intended to comprise a 2B3P unit. As such, it would meet the NDSS minimum bedroom and overall floor space requirements for a 2B3P residential unit spread over two floors.

49. With the above in mind, I have no reason to disagree with the appellant's assertion that the proposed maisonette would be realistically capable of accommodating a 3 persons family, having regard potential permutations in respect of the occupancy of the dwelling bedrooms, including by couples with a single child and lone parents with 1 or 2 children.
50. Moreover, Census evidence before me, which is not refuted by the Council, appears to suggest that smaller households are currently commonplace in England and that, in respect of the characteristic household sizes within Brighton and Hove, the appeal scheme as a whole would have regard to the housing needs of approximately 83% of the community.
51. I have noted the Council's concerns regarding the lack of a bath. However, this is not a policy or NDSS requirement, and my view is that it is not uncommon practice for householders to choose not to install a bath. As such, I do not consider this significantly reduces the ability of Unit 3 to function as a family unit. Neither do I find that a lack of private outdoor living space, in this urban location, would have such an impact, given my conclusion on the third main issue above.
52. For the above reasons, I conclude that, since the minimum size of the family unit to be retained according to Policy DM3 of the City Plan Part 2 is that of a 2B4P unit, there would be conflict with the development plan. However, based upon the above factors, I find that this would not significantly undermine the objectives of this policy to ensure high standards of accommodation and the retention of housing choice within the city. As such, I do not find that there would be harm arising to the extent that it would, by itself, justify refusal of the appeal scheme.

Other Matters

53. The Council's most recent housing land supply statement as confirmed in the March 2023 SHLAA is that it is unable to demonstrate a five-year supply of deliverable housing sites. It considers that it has 1.8 years of housing supply.
54. Paragraph 11 of the Framework applies, which states that relevant policies for the supply of housing should not be considered up to date where a five-year housing land supply cannot be demonstrated. Paragraph 11 states that where relevant policies are out of date, permission should be granted unless 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 the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted.
55. The appeal site is not subject to policies in the Framework that protect areas or assets of particular importance that provide a clear reason for refusing the development. Given the lack of a 5-year housing land supply, Paragraph 11 d) of the Framework is engaged.
56. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be in an urban area

- where access to facilities is likely to be greatest. It would make a positive contribution towards the Council's housing supply, and it could be built out relatively quickly, having regard to Paragraph 69 of the Framework.
57. There would also be economic benefits as a result of the construction and occupation of the new dwellings. By providing a two bedroom family unit and two smaller one bedroom dwellings, the proposal would also contribute to the Framework objective of creating mixed and balanced communities.
58. However, whilst the Council's supply of deliverable housing is acutely low, two additional dwellings would make a very small contribution towards addressing the housing supply deficit. Moreover, a high standard of design is also a key aspect of sustainable development. The harm I have identified to the character and appearance of the area would be significant. As a result, the social objective of sustainable development of fostering well-designed and beautiful places, would not be achieved.
59. In addition, for the reasons set out above, the appeal scheme would have a harmful effect upon the living conditions of neighbouring residents and future occupiers of the appeal scheme. This would conflict with the requirements of the Framework to achieve well-designed places in which developments create places with a high standard of amenity for existing and future users.
60. Whilst the Framework encourages the effective use of land in meeting the need for homes, and requires the Council to approach decisions in a positive and creative way, these matters are not unqualified and would not address or outweigh the aforementioned harm that I have identified to the character and appearance of the area and the living conditions of neighbours and future residents.
61. I have not found harm in respect of living conditions having regard to the provision of private outdoor living space for the appeal scheme, or the impact of the appeal scheme on neighbouring privacy. However, this is not sufficient justify or outweigh the harm that I have found in respect of the first two main issues.
62. Having given careful consideration to the balance of factors, I consider that, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

63. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR