



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: 3rd November 2023

Appeal Ref: APP/Q1445/W/22/3312732

Panorama House, 1D Vale Road, Portslade BN41 1BA

- 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 Ms O Golan of Mulberry One Capital Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2022/02344, dated 19 July 2022, was refused by notice dated 13 September 2022.
- The development proposed is described on the application form as 'conversion of units 9 and 42 into two self-contained flats. Removal of existing front door and installation of a new door and window to unit 42. Provision of hedging surrounding the new window to unit 42. Provision of obscure glazed screening at rear of Unit 9.'

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was submitted the Brighton & Hove City Plan Part Two was adopted, on 20 October 2022. Its policies therefore carry full weight. I have taken this into account in my consideration of the appeal.

Main Issues

The main issues are:

- whether the proposed development would provide a satisfactory standard of accommodation for future occupiers, with particular regard to outlook;
- the effect of the proposed development on the living conditions of neighbouring occupiers, with particular regard to outlook and amenity space;
- the effect of the proposed development on existing access; and
- the effect of the proposed development on character and appearance.

Reasons

Standard of accommodation

Unit 9

3. Unit 9 is situated on the ground floor of the building and is single aspect. It features large, albeit currently boarded over, windows. These would serve the proposed living area and bedroom. Under the previous appeal¹, it was proposed that the windows would look out over the communal courtyard. That

¹ APP/Q1445/W/21/3283766

arrangement was found to be unacceptable by the previous Inspector due to the mutual overlooking that would occur between the proposed unit and users of the existing courtyard.

4. The proposal before me seeks to overcome this by introducing an area of private outdoor amenity space, separated from the wider courtyard by an obscured glass screen. Adequate privacy would be achieved as a result of this intervention.
5. Notwithstanding this, the height of the proposed screening, at 1.7 metres high, together with the very limited depth of the private amenity space proposed, would mean that the future occupiers of the habitable spaces would experience a gloomy and oppressive outlook and an unacceptable sense of enclosure. That there would be some limited outlook above the screening, at an oblique angle, would not overcome or outweigh this harm. I acknowledge that screens similar to that proposed are often used in highly urban locations to protect residents from overlooking. I also acknowledge that in this case the screening would unlikely impact on daylight levels. However, as the proposed unit would be single aspect, I find that the standard of accommodation here would be unacceptable.

Unit 42

6. The existing unit is served by a single window. Under the previous appeal, a further window was proposed. The position of that window was found to be unacceptable from a privacy perspective. The proposal before me seeks to retain the existing window (and fit obscured glass within it) and insert a new window in the location of the existing entrance door, which would be relocated. This would overlook the small amenity area outside Unit 42, away from the main walkway as previously proposed. The window would be surrounded by proposed vegetative screening.
7. Based on the information before me and my observations on site, I am of the view that the proposed arrangement would provide satisfactory outlook for this studio unit. The proposed landscaped screen here would not, in my view, result in the same harmful sense of enclosure as solid or obscured glass screening would. Moreover, a similar arrangement exists outside neighbouring properties within the wider development, albeit often of a lower height.
8. Consequently, although I conclude that the standard of accommodation proposed for Unit 42 would be satisfactory, that of Unit 9 would not. The proposed development would therefore fail to accord with the relevant provisions of Policy DM20 of the Brighton and Hove City Plan Part Two (CP, 2022). This policy, in summary, seeks to provide a satisfactory standard of accommodation for future occupiers.

Living conditions of neighbouring occupiers

9. As discussed above, it is proposed to install a 1.7 metre high screen of obscured glass around a patio area adjacent to Unit 9. This would extend along the full width of the unit, tapering off to the south. Despite the angled position of the southern part of the proposed screen, this would harmfully reduce outlook from the adjoining residential unit to the south, which currently has unobstructed outlook over the rear courtyard. Due to the position of the

proposed screen relative to the windows of the adjoining dwelling to the north, there would be no harm to the occupiers of that dwelling in this regard.

10. In respect of the effect of the proposal on the existing courtyard amenity space, this is clearly in use by neighbouring properties as outdoor amenity space, whatever the ownership position. Even were this area to be reduced in size as part of the proposed development, the overall size of the amenity space would remain large and there would be adequate provision overall.
11. The appellant has set out that the use of permitted development rights forms a fallback position and that screening could be installed on the site without the need for planning permission. Nevertheless, I have seen no substantive evidence, such as a successful certificate of lawful development, to convince me that the appellant could reasonably implement a similarly harmful scheme under their PD rights in this instance, particularly as the appeal property forms a flat. The appellant's argument in respect of ownership does not change my conclusion on this matter.
12. Consequently, although I find that adequate amenity space would be retained for the adjoining units, the loss of outlook to existing occupiers would be harmful and contrary to the relevant provisions of CP policy DM20 which, in summary, seeks to protect the living conditions of neighbouring occupiers.

Access

13. The Council's second reason for refusal relates to access being impeded by the proposed landscaping.
14. CP Policy DM33 seeks to promote and provide for the use of sustainable transport and active travel, with new developments designed in a way that is safe, comfortable, convenient and accessible for all users.
15. The proposed development would introduce an additional area of planting outside Unit 42 in the interests of privacy. There is no evidence before me, including from the Council's highway specialists, to demonstrate that this would physically affect or compromise the walkways to adjoining units. The existing access to Unit 42 would be relocated as proposed under this scheme and would therefore be unaffected.
16. I am mindful of the previous Inspector's comment in this regard, and that they were unconvinced by the introduction of any landscaping or defensible space being created here, without prejudicing the existing walkway. However, that Inspector did not have a proposal or any details of landscaping before them, and this was based on a hypothetical eventuality. I have had regard to the proposal before me and am not of the view that it would harm the accessibility of neighbouring units here. The proposed landscaping would be located outside of windows and not entrances. Moreover, there would be no harm to the safety of pedestrians as a result of the proposal.
17. Overall, based on the evidence before me, I conclude that the proposal would not harmfully impede access within the existing walkways or the access to existing residential properties. I therefore find that the proposal would meet the relevant provisions of CP Policy DM33 which, when taken as a whole, seeks to encourage sustainable transport options and provide comfortable, convenient and safe access.

Character and appearance

18. The proposal would be located within the confines of the wider development of Panorama House, out of sight from the public realm. Although the external changes would be visible from some nearby private vantage points, and in the case of Unit 9, from the adjacent communal garden, those changes are minimal. Based on the evidence before me and my observations on site, the proposed window and door openings and screening would not appear out of keeping or incongruous in this established residential setting.
19. Overall, the proposal would have an acceptable effect on the character and appearance of the site and area, in accordance with the relevant provisions of CP policies DM1, DM21 and DM22. These policies, when taken as a whole, seek to ensure high quality design in development.

Other Matters

20. The submitted evidence indicates that the Council cannot demonstrate a five-year housing land supply. As such, and noting the Government's objective of significantly boosting the supply of homes, the provisions of Framework paragraph 11.d.ii 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 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.
21. 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. I note that the proposal would make an efficient use of land, also supported by the National Planning Policy Framework. However, these benefits and the contribution to housing supply in the district would inevitably be limited given the scale and nature of the development proposed. 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.
22. I accept that there are no objections from a highway or refuse perspective. I have no reason to disagree with those findings, which are not in dispute between the Council and appellant. Nevertheless, the lack of harm in these regards does not outweigh or overcome the harm I have identified in respect of living conditions.

Conclusion

23. 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