



Appeal Decision

Site visit made on 14 November 2023

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st December 2023

Appeal Ref: APP/Q1445/W/23/3322964

10 East Street, Brighton and Hove, Brighton BN1 1HP

- 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 N Blencowe, The Baron Homes Corporation Ltd, against the decision of Brighton and Hove City Council.
 - The application Ref BH2022/02958, dated 16 September 2022, was refused by notice dated 16 May 2023.
 - The development proposed is Change of use of the space above the rear of an existing shop (Class E) to residential flats (C3) to create 2no 1b/2p flats.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the living conditions of future occupiers of the proposed development would be sufficient, with particular regard to daylight and outlook for Flat 1 and daylight, outlook and privacy for Flat 2.

Reasons

3. Situated in Brighton, the appeal site is in a built-up area close to numerous buildings. The proposed flats would be positioned in the rear part of the first-floor of the building.
4. Flat 1 would be served by west- and south-facing windows which all look towards surrounding built form. Nevertheless, Flat 1 would have sufficient daylight and outlook due to the size of its windows, the degree of separation provided by the stagger of built form, the varied roof forms of surrounding buildings and gaps between them. The commercial nature of the yard/alley and the height and position of the surrounding buildings do not change this.
5. However, the two west-facing windows that would serve the bedroom of Flat 2 are significantly closer to the wall of the opposite building than the west-facing windows that would serve Flat 1. The notably lesser degree of separation, with the narrowing of the intervening yard/alley, combined with the smaller size of the windows and the height of built form opposite, means that outlook from those two windows and the amount of daylight reaching them is significantly restricted. Although I noted that the sky could just be seen when craning one's neck, I was struck on my site visit by how enclosed and overshadowed the bedroom of Flat 2 would be. In coming to this view, I have taken into account the security screens and storage in the room and the height and pitched roof of the building opposite.
6. Flat 2's living/kitchen area would have two windows (A and B) facing into a courtyard. Although the courtyard is relatively small, the windows have reasonable levels of outlook and daylight given their size and the degree of separation to, and

height of, surrounding built form. However, another window (window C) also looks onto the courtyard and its position means that it has direct views of windows A and, despite the angle, B. Whilst it currently serves a storeroom, the granting of Prior Approval for conversion to residential means that window C, which would serve a bedroom within the Prior Approval unit, would result in significant overlooking of Flat 2's living/kitchen room. The slightly higher position of window C and lower floor level of Flat 2, whilst serving to limit overlooking of the Prior Approval flat from Flat 2, does not lead me to a different conclusion.

7. To provide future occupiers of Flat 2 with sufficient privacy, it has been put to me that window A could be obscured glazed and that either window B could be obscure glazed or a privacy screen erected between windows B and C. Although obscure glazing the windows would limit outlook and daylight, this would be acceptable for window A given it would serve Flat 2's non-habitable kitchen area. However, obscure glazing window B, even a part of it, would result in unacceptably limited outlook and daylight in Flat 2's living area.
8. Whilst the erection of a privacy screen between windows B and C could prevent overlooking, such a screen would, as shown in the appellant's appeal statement, need to be relatively large, even accounting for the angles involved. As such, the size of screen required to ensure sufficient privacy in the living area of Flat 2 would unacceptably limit the amount of daylight reaching window B and its outlook.
9. Accordingly, whilst a screen may provide sufficient privacy for Flat 2's living area, it would result in insufficient daylight and outlook in that room. Such a screen, irrespective of its acceptability elsewhere, would also be liable to harm the living conditions of the occupiers of the Prior Approval flat through loss of daylight and outlook. Neither option to provide sufficient privacy for Flat 2's living area would therefore be appropriate, and securing either by condition would thus not make the development acceptable.
10. I recognise that there is an additional north-facing window that would serve the proposed living/kitchen room of Flat 2. However, this window is not shown on the submitted plans and I have limited details regarding it. I also observed on my site visit that it appeared to be obscure glazed and positioned near to (and face towards) surrounding buildings. This window cannot therefore be relied upon to offset the inadequate living conditions of Flat 2's living/kitchen area by providing sufficient alternative daylight, outlook and privacy to that room.
11. The built-up nature of the locality indicates that other nearby homes may have restricted outlook, as well as limited daylight and/or privacy. It has been put to me that this does not reduce their desirability or popularity. Be that as it may, this does not mean that the levels of outlook, daylight and privacy in Flat 2 would be acceptable, even taking account of its location in the built-up, historic centre of Brighton. That future occupiers of the flat may not necessarily be at home during daylight hours does not lead me to a different conclusion.
12. Both flats would have adequate internal space and Flat 1 would have sufficient daylight and outlook. Nevertheless, I conclude that the living conditions of future occupiers of the proposed development would, for the above reasons, not be sufficient with particular regard to daylight, outlook and privacy for Flat 2. I therefore find that it conflicts with Policies DM1 and DM20 of the City Plan Part Two, Brighton & Hove City Council's Development Plan (CPPT). Amongst other aspects, these seek the delivery of high quality homes which provide acceptable amenity for proposed residents. The lack of reference to outlook, daylight and privacy in these policies, and the references to outlook and views in relation to new development rather than a change of use in the supporting text to Policy DM20 do

not lead me to a different conclusion. These policies are also broadly consistent with the National Planning Policy Framework (Framework) requiring developments to provide a high standard of amenity for future users.

Other matters

13. The site is in the Old Town Conservation Area (CA). However, the Council does not allege that the development, which would not involve any external changes to the building, would have an adverse effect on the CA. Based on the available evidence, I have no reason to disagree. Accordingly, I am satisfied that the proposal would preserve the significance of the designated heritage asset.
14. The proposed development would provide various benefits. The creation of two additional flats would contribute to the supply, mix and range of housing in the district. The flats would be in an accessible and desirable city centre location. Although currently providing storage for the ground-floor retail unit, it is said that the appeal proposal would also make use of a redundant site.

Planning Balance

15. The living conditions of future occupiers of the proposed development would be insufficient, with particular regard to daylight, outlook and privacy for Flat 2, and this equates to significant harm. Despite contributing to the area's range of dwelling types with sufficient internal space, as sought by CPPT Policy DM1, the available evidence and the policy conflicts I have identified lead me to conclude that the proposed development conflicts with the development plan as a whole. However, the Council cannot demonstrate a five year supply of deliverable housing sites and the shortfall is substantial. Consequently, because of the provisions of footnotes 7 and 8, paragraph 11d)ii of the Framework should be applied.
16. As identified above, the scheme would provide various benefits. Those benefits would align with what various local and national policies seek to achieve, including the Framework's provisions promoting sustainable transport, making effective use of land and delivering a sufficient supply of homes. However, given the scale of the development, its benefits and contribution to housing supply in the area would be relatively limited. Conversely, the harm arising from the inadequate living conditions for future occupiers of Flat 2 would be significant and contrary to the provisions in the Framework relating to development providing a high standard of amenity for future users. Consequently, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development does therefore not apply in this instance.

Conclusion

17. The proposal conflicts with the development plan read as a whole and there are no material considerations which carry sufficient weight to warrant a decision otherwise than in accordance with it. The appeal is therefore dismissed.

T Gethin BA (Hons), MSc, MRTPI

INSPECTOR