



Appeal Decision

Site visit made on 6 December 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

Appeal Ref: APP/Q1445/W/23/3319176

17 Buckingham Road, Brighton & Hove BN1 3RH

- 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 Dexter Corporation Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2022/02722, dated 23 August 2022, was refused by notice dated 30 November 2022.
 - The development proposed is demolition of existing garage and erection of a detached two storey plus basement, one bedroom dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In December 2023, following the deadline for final comments, a revised version of the National Planning Policy Framework (the Framework) was published. The parties have been given the opportunity to comment on the changes to the Framework, which have been taken into account in my decision.
3. The description of development stated in the banner above is taken from the decision notice. I have chosen to replicate this description rather than the description specified on the application form as it provides additional detail about the proposal.

Main Issues

4. The main issues in the appeal are:
 - whether the proposed development would preserve or enhance the character or appearance of the West Hill Conservation Area,
 - the effect of the proposal on nearby trees, and
 - the effect of the proposal on the living conditions of future occupiers, with particular regard to daylight, outlook and privacy.

Reasons

Conservation Area

5. The appeal site is within the West Hill Conservation Area (CA). It is also within the grounds of 17 Buckingham Road (No 17) which is a semi-detached property, rendered, with cantered bays to the ground and first floors and channelled stucco to the ground floor. These features are characteristic of houses on this side of the road between Leopold Road and Albert Road. No 17 also benefits from a low boundary wall which is a common feature in the CA.

6. The CA includes a residential area which is characterised by a variety of high-quality buildings with traditional detailing, largely built in the 19th Century. The Character Statement¹ indicates that Buckingham Road contains examples of continuous terraced housing balanced by the more spacious semi-detached villas on the opposite side of the road. Buckingham Road has many street trees, this along with the generous garden plots give the area a sylvan character and adds to the sense of spaciousness.
7. As the proposal is in the CA, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the area, as set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
8. The appeal site comprises a detached garage which is sited adjacent to and downhill from No 17 and partly obscures its traditional detailing at a lower level which includes channelled stucco and cantered bay windows.
9. The garage would be demolished and would be replaced by a contemporary style dwelling on the sub-divided plot. Although the proposal would have a similar footprint to the detached garage it would be two storey in height and extend into the boundary wall. This would erode the spaciousness of the plot.
10. Moreover, given the surrounding topography, the first floor of the proposed dwelling would be at a similar level to the ground floor of No 17. The first floor of the proposed dwelling would project forward of the ground floor and would be in line with the bay windows, as such it would screen the traditional detailing of the host dwelling.
11. Furthermore, the proposal would extend into the boundary wall, and include reglit glass and pink rendered walls. As such the proposal would be a bulky and alien addition in this prominent location at the junction with Albert Road.
12. It has been brought to my attention that there are a few side extensions, including additional dwellings, or the erection of outbuildings in the vicinity of the appeal site. However, these are either attached to, set back from the main elevation, or ancillary to the use of the host property. Furthermore, given the limited evidence available, I cannot be certain that they were all permitted under the development plan before me. Therefore, these examples are materially different and the presence of development which is harmful to the significance of the CA would not justify a proposal which would cause further harm.
13. Also, other appeal decisions, including a couple which are a significant distance from the appeal site have been put before me. It was concluded that those proposals did not cause harm to a designated heritage asset and therefore they are materially different to the appeal proposal.
14. Overall, as a result of its extent, location and setting, the proposal would fail to preserve or enhance the character or appearance of the CA. I conclude that the proposal is contrary to policies CP12, CP13, and CP15 of the Brighton & Hove City Plan Part One, Brighton & Hove City Council's Development Plan, March 2016 (CPP1), and CPP2 policies DM18 and DM26. Amongst other things, these policies indicate that all new developments will be expected to conserve the city's built heritage.

¹ West Hill Conservation Area Character Statement, October 2005

Heritage balance

15. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which is supported by the Planning Practice Guidance (PPG), requires decision makers to pay special attention to the desirability of preserving or enhancing the character or appearance of designated conservation areas within which development may occur. Moreover, paragraph 205 of the Framework states that great weight should be given to an asset's conservation, and that this is irrespective of whether harm is substantial or less than substantial.
16. I have found that the proposed development would fail to preserve or enhance the character and appearance of the CA. In accordance with paragraph 208 of the Framework, I am required to assess the extent of such harm. I find that the harm would be less than substantial. These are to be balanced against the public benefits arising from the proposal and I will return to this later in my decision.

Trees

17. There are several tall trees lining Albert Road which make a key contribution to the sylvan character of the CA due to their size and prominence. There are two trees close to the appeal site which are included in the National Elm collection.
18. The Elm tree closest to the junction with Buckingham Road has a stem defect and would experience further intrusion into its root protection zone as a consequence of the proposal. This would be likely to affect its health and result in pressure to fell the tree in the longer term. However, even if a replacement tree could be secured by condition it would take a significant amount of time to mature in order to provide a similar contribution to the CA.
19. I conclude that the proposal would harm the sylvan character and health of the Elm tree. It would therefore be contrary to CPP1 Policy CP15 and CPP2 policies DM22 and DM26, which, amongst other things, indicate that development proposals will be required to retain trees taking into account a number of factors.

Living conditions

20. The proposal would conform with the nationally described space standard. However, the main living area of the proposed dwelling would be in the basement and there would only be two rooflights serving this space. One rooflight would be modest in size and provide light through the hallway at ground and first floor levels, the other would provide light directly from the outside. Due to their size and location, it is likely that the daylight and sunlight provided by the rooflights would result in a gloomy living space that would be reliant on internal lighting. This would particularly be the case at darker times of the day and year.
21. Moreover, the outlook from the main living area would be restricted to these rooflights. Given there would be no alternative outlook to the side or front of the main living area, the proposal would result in a feeling of oppression and enclosure for future occupiers.
22. Furthermore, people accessing No 17 would have to walk directly past the rooflight over the main living area, which would offer views across most of this area. Whilst the footfall passing near to the rooflight would be limited it would

nonetheless result in overlooking onto the main living area. Consequently, future occupiers of the proposed dwelling would experience a loss of privacy.

23. Overall, the proposed dwelling would harm the living conditions of future occupiers. It would be contrary to CPP2 Policy DM20 which indicates that planning permission will only be granted where it will not cause an unacceptable loss of amenity to the proposed residents.
24. For similar reasons, the proposal would not accord with paragraph 135 of the Framework, where it advises that planning decisions should ensure that developments create places with a high standard of amenity for future users.

Planning Balance

25. Having found that the development would result in 'less than substantial harm' to a designated heritage asset, according to various Court decisions, this does not equate to a 'less than substantial planning objection'.
26. The appellant has brought to my attention paragraph 70d of the Framework. The proposal would provide one new dwelling on a suitable site within a settlement in a relatively short period of time. Nonetheless, given the scale of the proposal, I afford this benefit limited weight.
27. Environmental benefits would include sustainability measures such as a green roof and energy efficient lighting. There would also be economic benefits related to the construction of the proposal and the patronage of services by the future occupiers of the dwelling. I afford these benefits moderate weight even though the employment opportunities are likely to be short-term.
28. There would also be a benefit to the CA through the demolition of the garage, which is currently making a poor contribution to the CA due to its lack of traditional detailing and screening of features on No 17. However, only minimal weight is ascribed to this benefit as its effect on the CA as a whole is limited.
29. In accordance with the balancing exercise contained in Paragraph 208 of the Framework, I conclude, even when considered in combination, that the benefits do not outweigh the 'less than substantial harm' to the CA.
30. The Council can only demonstrate 1.8 years supply of deliverable housing land. Therefore, footnote 8 of the Framework establishes that the policies which are most important for determining the application are out-of-date. In this instance, paragraph 11 d) i) is engaged and it advises granting permission unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development. Footnote 7 of the Framework details that these policies include designated heritage assets. As above, the proposal would cause harm to the CA. Therefore, the provision of paragraph 11 d) ii) of the Framework, as replicated by CPP1 Policy SS1, is not engaged.

Conclusion

31. Therefore, for these reasons, I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR