



Appeal Decision

Site visit made on 5 January and 31 January 2024

by N Perrins BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th March 2024

Appeal Ref: APP/Q1445/W/23/3320418
18-19 Ship Street, Brighton BN1 1AD

- 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 Mr V Haq (The Ship Street Partnership) against the decision of Brighton & Hove City Council.
 - The application Ref: BH2022/00712, dated 21 February 2022, was refused by notice dated 30 January 2023.
 - The development proposed is alterations and extensions to form 1no C3 dwelling and redevelopment of existing C3 unit.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. I have not considered it necessary to invite observations from the main parties as regards any relevance, this is in view of the determining issues at play and the extent of the Council's current housing supply shortfall.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of neighbouring occupiers on Ship Street and Ship Street Gardens, having particular regard to outlook and perception of overlooking.

Reasons

4. The appeal property is a part two and part three storey building located on the western side of Ship Street comprising commercial use on the lower and ground floors, and residential use on the upper floors. To the rear of the building is a two storey extension comprising separate flats on both the ground and first floors. The rear extension has a contrasting design to the building's three storey front section, with glazed elevations that slope away from the site's boundaries. Above the rear extension is a roof terrace with metal balustrades. Adjoining the site to the south are rear gardens that serve properties along Ship Street and Ship Street Gardens.
5. The proposal would make alterations to the rear extension to change the first floor flat from a 1 bedroom dwelling to a 3 bedroom dwelling. The rear

extension would also be extended upwards to create a third storey to provide a 2 bedroom dwelling in place of the existing terrace.

6. The existing rear extension, due to it being two storeys in height and comprising elevations that slope away from the site's boundaries, does not currently result in an overbearing or harmful sense of enclosure to the adjoining garden areas. In contrast, the proposal would increase the height of the rear section to three storeys. The proposal would also replace the existing sloped elevations with predominantly upright flank walls for the majority of the development's depth along the southern and northern elevations. This would bring the development and its increased height and mass towards the site boundaries, including to the west where the much larger Hippodrome building stands.
7. The effect of this would create a highly visible and domineering development when viewed from the rear garden areas of the closest properties along Ship Street and those that border the site on Ship Street Gardens. When the scale, height and depth is then considered with the distance to the much larger Hippodrome building to the west, the proposal would unacceptably increase the sense of enclosure around the rear gardens of the aforementioned properties.
8. I have reviewed the appellant's information on nearby building heights. Whilst I acknowledge that the proposed height would not be out of keeping with existing heights in the nearby area, the information provided does not conclusively demonstrate whether these other buildings maintain acceptable relationships with neighbouring properties. I also note that the majority of these examples have sloped pitched-style roofs as opposed to the flat roof design proposed in this case. These examples, therefore, do not demonstrate the appeal proposal to be acceptable as I am not persuaded that the context is the same and I must judge the appeal before me on its own merits.
9. Whilst I have found that there would be an unacceptable increase in the sense of enclosure to the aforementioned properties to the south, I do not find that the rear garden area of Flat 1 within the appeal site would be adversely affected to any material extent given the width of the proposal and inclusion of balconies above, which would reduce the appearance of scale on the property's west elevation when experienced from Flat 1's garden space.
10. With regard to the perception of overlooking, the windows on the southern elevation would serve a bathroom, utility room and kitchen on both first and second storeys. The appellant has confirmed that they would accept a condition to ensure these windows are obscure-glazed. I am satisfied that obscure glazing would address actual overlooking from these rooms. Moreover, the site is in a city centre location and there are various buildings around the site that have windows looking across the rear of properties. It is to be expected in such a location that there might be windows on other properties nearby that can be seen from rear garden areas. The existing terrace when used would also be far more intrusive than the proposed windows with obscure glazing. Therefore, in view of the site-specific context, I do not find there would be any material harm to living conditions arising from actual or perceived overlooking.
11. However, for the above reasons, the proposal would result in an overbearing form of development that would increase the sense of enclosure to the neighbouring rear garden areas of properties situated to the south on Ship

Street and on Ship Street Gardens to the detriment of the outlook experienced by their occupiers contrary to Policy DM20 of the Brighton & Hove City Plan Part 2 (2022), which only supports development where it would not cause unacceptable loss of amenity to existing, adjacent or nearby users, residents or occupiers.

Other Matters

12. The site is in the Brighton Old Town Conservation Area (the CA) and falls within the settings of listed buildings¹. The duties under Sections 66 (1) and 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) require that special regard be paid to the desirability of preserving listed buildings, their settings, and any features of special architectural or historic interest that they possess, and that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. The Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. From the information before me, I am satisfied that the proposal, due in-part to the rear extension remaining subservient to the main building, would not harm the significance of any nearby listed building or the CA. Therefore, I conclude that the proposal is acceptable in heritage terms and would preserve the settings of listed buildings and the character of the CA in accordance with the requirements of the Act, the development plan and the Framework.
13. I note representations to the planning application raised a number of additional concerns with the development albeit these did not form part of the Council's reasons for refusal. However, as I have found the proposal unacceptable in accordance with my reasoning above and below, it is not necessary for me to consider these other matters any further here.

Planning Balance and Conclusion

14. The Council can currently demonstrate only 1.8 years of deliverable housing supply. In these circumstances Paragraph 11 of the Framework states that 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 as a whole.
15. In terms of adverse effects, the proposal would harm the living conditions of multiple occupiers to the south of the appeal site along Ship Street and Ship Street Gardens by reason of its height, scale and depth and increased sense of enclosure around rear garden areas. The development would be contrary to the Policy DM20 in this regard, a policy that is consistent with the Framework in so far as it promotes high standard of amenity for existing and future users. I thus attach substantial weight to this conflict and associated harm.
16. Set against this, the development would provide one additional dwelling on a small brownfield site in an accessible location in a context where there is a very significant housing supply shortfall, as well as increase the size of the existing flat to potentially be suitable for occupation by a family. In addition, the proposal would generate some economic benefits during the construction phase

¹ including: the Grade II* listed Brighton Hippodrome; and the Grade II listed Numbers 16 and 17 and attached railings, Ship Street

and through local expenditure by future residents. I do not consider that material privacy improvements would avail via the replacement of the existing roof terrace due to the planned imposition of new second floor openings, and any possible benefits in a passive surveillance sense would be minimal. Nevertheless, in cumulative terms, even though a single additional unit would not make a clear and noticeable difference to the identified housing supply deficit, the scheme's benefits attract great weight.

17. I have reviewed the examples of other appeal decisions provided by the appellant where the presumption in favour of sustainable development has been applied to grant planning permission elsewhere in the city. However, none of these examples involved the identification of a significant adverse impact on living conditions as would be the case here. Thus, the examples do not provide persuasive justification in favour of the proposal before me.
18. Taking all matters into consideration, and notwithstanding the great weight I have attributed to the scheme's benefits, I conclude that the adverse impacts of the development would significantly and demonstrably outweigh the benefits when considered against the Framework as a whole. Therefore, the Framework's presumption in favour of sustainable development does not apply, and there are no material considerations that indicate that the proposal should be determined other than in accordance with the development plan.
19. For the reasons given above I conclude that the appeal should be dismissed.

N Perrins

INSPECTOR