



Appeal Decision

Site visit made on 24 June 2024

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th July 2024

Appeal Ref: APP/Q1445/W/23/3332949 29 Wilmington Way, Brighton, BN1 8JH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mrs Saveria Sonnessa against the decision of Brighton & Hove City Council.
 - The application Ref. is BH2023/01928.
 - The development proposed is erection of 1no detached, two storey, two bedroom including a lower ground floor (C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have adopted the description of development as set out in the application form.
3. Since the application was refused and the appeal lodged, the National Planning Policy Framework (Framework) has been revised in December 2023. Most of the policies remain unchanged, albeit some of the paragraph numbering has changed. Whilst some of the housing policies have changed, these do not affect the main issues raised by this appeal or the application of the tilted balance, which is a matter I address under the heading 'Planning balance'. For these reasons, I have not invited any further comments from the parties.

Main Issues

4. The main issues are the effect of the proposed development on (a) the character and appearance of the site and surrounding area, and (b) the living conditions of existing and future occupiers.

Reasons

Character and appearance

5. The appeal site is located on the northern side of Wilmington Way and occupies a corner location with its western (side) boundary facing onto Mayfield Close. The host comprises a two storey semi-detached property within a generous plot. Similar traditional two storey semi-detached properties and plots are to be found on Wilmington Way. To the north of the appeal site is a small cul-de-sac of chalet style bungalows. These properties sit at a higher level to the host property as the land rises from south to north. As a consequence, the rear garden to the host also rises to the north with its rear boundary broadly level

- with the road behind. The area exhibits, therefore, all the characteristics of a typical suburban location with a large degree of spaciousness and openness around the properties and a high level of greenery from their well landscaped gardens, and the tree lined road verges.
6. The appeal proposal involves the construction of a detached two storey two bedroom dwelling within the rear garden to the host. It would include a lower ground floor to reflect the change in site levels and to reduce the height of the new building. A sunken patio area and area of lawn would be sited to the south of the new building, abutting the retained rear garden to the host. No on-site parking is shown for the new dwelling.
 7. Even though the proposal would be set lower into the site, it would introduce a large amount of new building into the rear garden. It would be two storeys and would extend above the existing and proposed boundary walls/fencing, and would thus be highly visible from public vantage points. This large mass of building would be introduced into a location where there is currently no such development, other than a small glazed greenhouse. As a consequence, the proposed development would be completely out of keeping with the urban grain and the prevailing pattern and rhythm of development on Wilmington Way. The proposal would impact on the sense of openness that prevails on site and the contribution that the rear garden makes, with its neighbours, to the spaciousness of the area and its greenery, features that make a positive contribution to local distinctiveness and character.
 8. That impact is accentuated by the proposed plot size, not only for the new dwelling but also the reduced plot size for the host property. Whilst I accept that there are more compact plot sizes on Mayfeild Close, to the north, both new plots would be significantly smaller than those that prevail on Wilmington Way. They would not, therefore, be in keeping with the general pattern of development and the openness that results from the more generous plots that characterise the appeal sites immediate local context.
 9. The proposed dwelling, together with its sunken patio, hardstanding, access, cycle and refuse storage, would occupy a large part of the new plot. The new building would be sited close to the common boundary with 31 Wilmington Way (No.31) (to the east) and to the back edge of the pavement to Mayfield Close. As a consequence of all these factors, the proposal would appear cramped and contrived, and would represent a poor quality of urban design that fails to deliver or contribute positively to the character of the area or to reinforcing local distinctiveness. Overall, the proposal would be denser than existing development, it would not sit comfortably on the site and would lead to the overdevelopment of the site.
 10. Paragraph 135 c) of the Framework states that innovation or change should not be discouraged but the paragraph also states that new development should be: visually attractive, function well and add to the overall quality of the area; be sympathetic to local character including the surrounding built environment and landscape setting; establish or maintain a strong sense of place; and secure a high standard of amenity for existing and future users. For the reasons set out above, the appeal proposal would fail to comply with the overall requirements of paragraph 135.
 11. Whilst I also acknowledge the housing benefit of a new dwelling, which I return to later, Annex 2 to the Framework excludes rear gardens from the definition of

previously developed land. Paragraph 72 of the Framework also states that plans should consider the case for setting out policies to resist inappropriate development of residential gardens “*for example where development would cause harm to the local area*”. Similar advice is set out in paragraph 128 (d) of the Framework.

12. In relation to the proposed amenity space, the Appellant refers to other schemes approved in the area with the same or less amenity space. The fact that similar sized amenity areas exist elsewhere is not justification in itself for the appeal proposal. In the case of Mayfield Close those plots were designed as part of a planned development and in any case the Close does not provide the immediate local context for the appeal site. Moreover, as is required each application should be considered on its merits having regard to local circumstances and the development plan policies that prevail at the time. Furthermore, due to the fact that the proposed amenity space would in part be sunk and enclosed by high retaining walls, fencing and landscaping, I am not convinced that it would be functional or secure the high standard of amenity space that you would expect for a new dwelling that could potentially be occupied by a young family.
13. Accordingly, I find that the appeal proposal would result in significant harm to the character and appearance of the area contrary to policy CP14 of the Brighton & Hove City Plan Part 1 (March 2016) (BHLP1) and policy DM18 of the Brighton & Hove City Plan Part 2 (October 2022) (BHLP2). These policies seek to ensure, amongst other matters, that new development is of an appropriate density for the character of the area, secures a high quality of design that helps maintain or create a coherent townscape, makes a positive contribution to a sense of place and the visual quality of the environment, and responds to local context and urban grain.

Living conditions – existing and future occupiers

14. As I confirmed earlier, the proposed building would be sited close to the common side boundary with No.31 and in reducing the extent of the existing rear garden, it would also introduce built development close to the retained rear garden and main rear wall of the host. The impact of the proposed building in this location would be accentuated by the change in levels with the new dwelling sitting at a higher level, albeit partly set into the site. Even with the latter, the proposal would be highly visible to the occupiers of both the host and No.31 and would harmfully affect their outlook. The poor building relationships that arise and the lack of sufficient distance separating the host and the new dwelling is, in my view, a further indicator of the cramped nature of the layout and overdevelopment of the site.
15. The close proximity of the new building to the host would also result in direct overlooking of the rear windows on the upper floor of the new dwelling from the upper floor windows of the host property. Whilst it's not that clear, there appears to be less potential for the windows of the host, which I understand serve bedrooms, to directly overlook the proposed lawn and patio area of the new dwelling. Even so, the overlooking that would occur results in a poor level of amenity for future occupiers.
16. The upper floor windows to the proposed dwelling would also result in the direct overlooking of the upper floor bedroom windows to the host, and based on my observations on site, to a lesser extent the same upper floor windows on

No.31. That overlooking would occur from a location where no such views exist at present. This level of overlooking would not be mitigated by the distance involved and based on my reading of the submitted plans, it would also not be mitigated by the proposed boundary fencing and landscaping. Whilst I have had regard to the diagrams reproduced in the Appellants Grounds of Appeal, the second of these appears to show that the upper floor bedroom windows to the host would fall within the sphere of vision of the proposed upper floor windows to the new dwelling.

17. Accordingly, I find that the proposed development would result in significant harm to the living conditions of existing and future occupiers of the host property, No.31 and the proposed dwelling, contrary to policy DM20 of the BHL2. This policy states that new development will be permitted where it would not cause an unacceptable loss of amenity to proposed or existing occupiers and neighbours.

Planning balance and conclusions

18. The Council acknowledge that they are unable to identify a 5-year supply of housing land and that the relevant housing policies of the development plan are out of date. In these circumstances, paragraph 11 d) ii of the Framework requires planning permission to be granted unless *"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."*
19. The appeal proposal would boost housing supply in a sustainable, make more effective use of the land, generate short term employment during construction and increase local spend, benefits that are supported by other policies in the development plan and Framework. Combined and mindful that only one new dwelling would be created, I accord modest weight to these benefits. Even so, the adverse impacts of the appeal proposal on the character and appearance of the area and on the living conditions of existing and future occupiers would be significant. As I have found, these adverse impacts lead to conflict with a number of development plan policies which remain up to date as they are consistent with those in the Framework and thus should be accorded significant weight.
20. In my view, the harm I have identified would significantly and demonstrably outweigh the benefits of the appeal scheme, when assessed against the policies in the Framework taken as a whole. Consequently, the presumption in favour of sustainable development envisaged in the Framework does not apply in this instance. The Framework is not a material consideration in this instance that indicates a decision other than in accordance with the development plan.
21. For the reasons given above and having taken all the matters raised into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR