



Appeal Decision

Site visit made on 25 July 2024

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 August 2024

Appeal Ref: APP/Q1445/W/24/3341971

48 St. Aubyns, HOVE, BN3 2TE

- 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 Mssrs F and W Nonoo against the decision of Brighton & Hove City Council.
 - The application Ref is BH2022/00487.
 - The development proposed is demolition of garages at rear of site and erection of terrace of 2no two storey dwellings (C3) with associated landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of garages at rear of site and erection of terrace of 2no two storey dwellings (C3) with associated landscaping at 48 St. Aubyns, HOVE, BN3 2TE in accordance with the terms of the application, Ref BH2022/00487, subject to the conditions in the attached schedule.

Preliminary Matters

2. During the course of the application process the parties agreed a change to the scheme from an initial four dwellings to two dwellings. The building heights have also been reduced. Consequently, the parties have agreed a change in the description of development and the plans submitted initially from "demolition of garages at rear of site and erection of terrace of 4 dwellings" to "demolition of garages at rear of site and erection of terrace of 2no two storey dwellings (C3) with associated landscaping". As the Council determined the application on the basis of this revised description and scheme I have proceeded to determine the appeal on this basis.
3. In addition to this a number of revised plans were sent to the Council prior to the determination of the application but which were not referred to by the Council in their decision. These amended plans show a power supply fitted to the entrance steps along with other very minor aesthetic changes. The changes to the plans do not amount to a fundamental or substantial change to the scheme and their acceptance would not cause unlawful procedural unfairness to anyone involved. As such, I have determined the appeal on the basis of the revised plans.
4. The Council's Decision Notice refers to a conflict with Policy CP19 of the Brighton & Hove City Plan Part One, March 2016 (LP). However, the Council's statement explains that this reference was incorrect and should instead have referred to Policy CP15 of the LP. I have had regard to this in my consideration of the appeal.

Main Issue

5. The main issue in this appeal is the effect of the proposal on the character and appearance of the area; including whether or not the proposed development would preserve or enhance the character or appearance of the Old Hove Conservation Area.

Reasons

6. The appeal site relates to a large plot of land which fronts St Aubyns and backs onto Vallance Road. The plot currently accommodates No 48 St Aubyns, an attractive three storey detached building which appears to have been split into flats. The appeal site also includes a number of blocks of terraced, single storey garages to the rear. Access to the rear of the site is along a driveway between No 48 and No 60 St Aubyns.
7. The appeal site is situated within the Old Hove Conservation Area (CA). The evidence provided by the appellant sets out that the Old Hove Conservation Area Character Statement states "St. Aubyns was built between the 1860's and the 1890's and consists mainly of large terraced houses set back slightly from the street with a wealth of good details including front balconies, fine railings and heavily panelled front doors. The northern end of the street contains a number of large street trees and the original swan neck lamp posts are still in use down the entire length of the street. The views down St Aubyns to the sea and up to the churchyard of St. Andrew's are particularly important."
8. The building at No 48 is of an attractive symmetrical design with interesting articulation such as double height bay windows on either side of a grand, traditional, front door area. The building is set within a spacious plot and makes a positive contribution to the significance of the CA. However, the garages to the rear are dilapidated and the surrounding area is overgrown. Though this area is somewhat screened from view it nevertheless detracts from, and causes harm to, the significance of the CA.
9. The proposal is for the demolition of the garages to the rear of the site and the construction of a pair of two storey dwellings which would be accessed from the existing driveway on St Aubyns. The proposal would be located in a highly sustainable area well served by public transport and local facilities.
10. The parties agree that the Council's most recent housing land supply position is published in the SHLAA Update 2022 which shows a five-year housing supply shortfall of 7,711 (equivalent to 1.8 years of housing supply). The proposed dwellings would contribute to boosting the supply of housing in the area.
11. The front elevations of the buildings would face the side of the property at No 4A Vallance Road and the rear elevations would back onto the rear garden area of the property at No 46 St Aubyns. Due to the topography of the land the proposed dwellings would be somewhat lower than surrounding properties.
12. The dwellings would be of an attractive, simple and practical design which would respond well to the design and materials of surrounding buildings. Furthermore, the proposed buildings would be of a modest scale and would be notably smaller than surrounding properties, thus reflecting the existing arrangement on site and retaining the primacy of the existing buildings. Additionally, the dwellings would have green flat roofs thus further assisting them to assimilate well within their surroundings. Consequently, the proposed

- development would respect the design hierarchy and ensure that the more grand properties nearby would remain visually dominant.
13. The properties would have well-proportioned footprints thus ensuring that the built form would not dominate the plot whilst also creating properties of a reasonable size. The properties would each have new brick boundary walls surrounding a front garden area and a reasonably sized rear and side garden which would wrap around the properties. The garden areas surrounding the pair of properties would ensure that a notable gap would remain between the boundary of the site and the built form. A substantial degree of separation would also remain between the proposed properties and nearby buildings. As such, the proposed development would reflect the prevailing pattern and design of development, maintaining the sense of spaciousness. The proposal would, therefore, sit comfortably within the wider area.
 14. When viewed from St Aubyns glimpse views of the proposed dwellings would be possible. However, due to the slope of the site and the intervening buildings, views from this area would largely be of the brick boundary walls and the garden areas serving the proposed properties. These views would be a marked improvement on the existing views of garages and overgrown hard surfacing.
 15. At present, the rear of the property at No 48 is visible from Vallance Road behind, the proposed dwellings would sit in the gap between No 48 and Vallance Road. The ground level at the appeal site is substantially lower than that at Vallance Road. For this reason, and due to planting and other boundary treatments and structures nearby, views from Vallance Road would be limited to a section of the upper part of the side elevation of the proposed pair of dwellings. From this view point, the proposed dwellings would appear as a subordinate structure which would fit comfortably within its context.
 16. The removal of the existing garages which have a negative impact on the character and appearance of the area would be a positive factor. The replacement development would be two, well-proportioned, sympathetic dwellings which would preserve the dominance of the existing building at No 48 and the sense of spaciousness which characterises the CA. It therefore follows that the proposal would not cause harm to the character and appearance of the area and would preserve and enhance the character and appearance of the CA.
 17. Consequently, the proposal would comply with the aims of Policy CP15 of the Brighton & Hove City Plan Part One, March 2016 (LP) and Policies DM18 and DM26 of the Brighton & Hove City Plan Part Two, October 2022 (LP2). Amongst other things these policies seek to ensure that new development demonstrates a high standard of design, raises the standard of architecture and design in the city and conserves or enhances the city's built heritage including conservation areas.

Other Matters

18. I note that concern has been raised regarding the effect of the proposal on parking in the area. However, the evidence before me indicates that the site is located in a controlled parking zone where the issuing of new parking permits can be controlled by the Council.

19. I acknowledge that concerns have been raised regarding the effect of the proposal on the living conditions of neighbouring residents with particular regard to light, privacy and noise and disturbance. However, due to the layout of the proposed dwellings and the ground levels and particular circumstances on site I can see no reason to disagree with the Council's view that the development would not cause unacceptable harm in this regard.
20. I am also aware of concern expressed regarding the effect of the proposal on property values. This, however, is not a material planning consideration.

Conditions

21. The National Planning Policy Framework (NPPF) makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests: necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.
22. In the interests of precision and clarity I have undertaken some minor editing and rationalisation of the conditions proposed by the Council. Alongside the standard time limit condition, I have imposed a condition specifying the relevant plans as this provides certainty.
23. Given the sensitive location of the appeal site I have imposed a condition requiring the details of materials to be submitted to and approved in writing by the Council in order to ensure the development has a satisfactory appearance. For the same reasons I have imposed a condition requiring details of boundary treatments, tree protection and landscaping. I have also imposed a condition requiring details of the ground levels in and around the site with the aim of protecting the amenity of neighbouring residents and ensuring that the development would not cause harm to the character and appearance of the area.
24. In order to ensure the provision of satisfactory facilities for the storage of waste and cycle parking I have added a condition requiring details to be submitted to, and approved by, the Council.
25. Due to the location of the appeal site within a CA and within close proximity to other dwellings I have included a condition restricting permitted development rights which will allow the Council to control future development in the interests of protecting the character and appearance of the area and the living conditions of neighbouring residents.
26. To safeguard the privacy of the occupiers of neighbouring properties I have included a condition requiring some of the windows to be obscure glazed and non-opening.
27. To ensure satisfactory provision of homes for people with disabilities and to meet the changing needs of households and to comply with Policy DM1 of LP2 I have imposed a condition requiring the development to be completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings). I have also added a condition in respect of water efficiency to ensure that the development makes efficient use of water and to comply with Policy CP8 of the LP. To ensure that the development is sustainable I have also required details of the photovoltaic panels shown on the plans to be submitted and approved (and implemented) by the Council.

28. I have included a condition requiring a Construction Environmental Management Plan with the aims of protecting amenity and highway safety throughout the construction of the development. Due to the use of the site as garages I have imposed a condition relating to land contamination in order to safeguard the health of future residents.
29. In order to prevent an increased risk of flooding and to prevent pollution of controlled waters by ensuring the provision of a satisfactory means of surface water disposal I have imposed a condition requiring the submission of a surface water drainage scheme.
30. To increase the biodiversity of the site, to mitigate any impact from the development and to comply with Policy DM37 of LP2, Policy CP10 of the LP and Supplementary Planning Document 11 – Biodiversity and Nature Conservation, June 2022 I have imposed a condition requiring details of the green roofs and a scheme to enhance the nature conservation interest of the site.
31. The Council suggested a condition requiring a footpath layout plan to be submitted, implemented and made available for use prior to construction of the development and thereafter retained for use at all times. However, given the small scale of the scheme I do not consider that, on the basis of the evidence before me, such a condition would meet the tests of the Framework. I have omitted this condition.
32. The Council suggested that a condition stating that access to the flat roofs over the dwellings hereby approved shall be for maintenance or emergency purposes only and the flat roof shall not be used as a roof garden, terrace, patio or similar amenity area. However, the proposed roofs would not include any safety railings and access would not be readily available. As such, I have not imposed a condition as I do not consider that it would meet the tests of reasonableness or necessity.
33. The Council also suggested a condition stating that the hard surface hereby approved shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property. However, the Council officer's report states that the site is located in an area with very low risk of flooding from ground water and a low risk from surface water. I have also imposed a condition requiring a surface water drainage scheme and there is no evidence before me to suggest that in these circumstances the condition in respect of the materials is necessary. Therefore, I have not included this condition as it would fail to meet the tests set out in the Framework.

Conclusion

34. For the reasons set out above, and having regard to all other matters raised, I allow the appeal.

L J O'Brien

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: TA1386-01E: Location Plan and Block Plan, TA1386-10F: Proposed Site Plan, TA1386-11E: Proposed Ground Floor Plan, TA1386-12E: Proposed First Floor Plan, TA1386-13E: Proposed Elevations, TA1386-14E: Proposed Elevations, TA1386-15D: Proposed Side Elevation, TA1386-16D: Proposed Side Elevation, TA1386-17D: Proposed Cross Section, TA1386-18C: Proposed Streetscene.
- 3) Notwithstanding any details shown on the approved plans, no development above ground floor slab level of any part of the development hereby permitted shall take place until details of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority, including (where applicable):
 - a) Samples/details of all brick, render and tiling (including details of the colour of render/paintwork to be used)
 - b) samples of all cladding to be used, including details of their treatment to protect against weathering
 - c) samples/details of all hard surfacing materials
 - d) samples/details of the proposed window, door and balcony treatments
 - e) samples/details of all other materials to be used externallyDevelopment shall be carried out in accordance with the approved details.
- 4) The development hereby permitted shall not commence until full details of existing and proposed ground levels (referenced as Above Ordnance Datum) within the site and on land and buildings adjoining the site by means of spot heights and cross-sections, proposed siting and finished floor levels of all buildings and structures, have been submitted to and approved by the Local Planning Authority. The development shall then be implemented in accordance with the approved level details.
- 5) The development hereby permitted shall not be occupied until a scheme for the storage of refuse and recycling has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out and provided in full in accordance with the approved details prior to first occupation of the development and the refuse and recycling storage facilities shall thereafter be retained for use at all times.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extension, enlargement, alteration of the dwellinghouses or provision of buildings etc incidental to the enjoyment of the dwellinghouses within the curtilage of the dwellinghouses as provided for within Classes A - E of Part 1 of Schedule 2 to the Order shall be undertaken without planning permission obtained from the Local Planning Authority.

- 7) Prior to the occupation of the development hereby permitted details of the positions, height, design, materials and type of boundary treatment to be erected shall be submitted to and approved by the local planning authority. The boundary treatment shall be completed as in accordance with the approved details prior to occupation of the development.
- 8) The first floor bathroom windows in the west facing elevation and the bedroom windows in the east facing elevation of the development hereby permitted shall be obscure glazed and non-opening, unless the parts of the window(s) which can be opened are more than 1.7 metres above the floor of the room in which the window is installed, and thereafter permanently retained as such.
- 9) Prior to occupation of the development hereby permitted, a scheme for landscaping shall be submitted to and approved in writing by the Local Planning Authority. The approved landscaping shall be implemented in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. The scheme shall include the following:
 - a) details of all hard and soft surfacing to include the type, position, design, dimensions and materials and any sustainable drainage system used.
 - b) a schedule detailing sizes and numbers/densities of all proposed trees/plants including food-bearing plants, and details of tree pit design, use of guards or other protective measures and confirmation of location, species and sizes, nursery stock type, supplier and defect period.

Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 10) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the Local Planning Authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 11) The development hereby permitted shall not be occupied until details of secure cycle parking facilities have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.
- 12) The development hereby permitted shall not be occupied until the dwellings hereby permitted have been completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) and shall be retained in compliance with such requirement thereafter. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate

Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.

- 13) None of the residential units hereby approved shall be occupied until each residential unit built has achieved as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption.
- 14) Prior to first occupation of the development hereby approved, details of the photovoltaic panels referred to in the plans hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The photovoltaic panels shall then be installed in accordance with the approved details.
- 15) No development shall take place, including any works of demolition, until a Construction Environmental Method Plan has been submitted to, and approved in writing by the Local Planning Authority. The Plan shall provide for:
 - i) The phases of the Proposed Development including the forecasted completion date(s)
 - ii) A scheme of how the contractors will liaise with local residents to ensure that residents are kept aware of site progress and how any complaints will be dealt with reviewed and recorded (including details of any considerate constructor or similar scheme)
 - iii) A scheme of how the contractors will minimise disturbance to neighbours regarding issues such as noise and dust management vibration site traffic and deliveries to and from the site
 - iv) Details of hours of construction including all associated vehicular movements
 - v) Details of the construction compound
 - vi) A plan showing construction traffic routes

The approved Construction Environmental Method Plan shall be adhered to throughout the construction period for the development.

- 16) No works pursuant to this permission shall commence until there has been submitted to and approved in writing by the Local Planning Authority:
 - (a) A desk top study documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Contaminated Land Research Report Nos. 2 and 3 and BS 10175:2011+A1:2013 - Investigation of Potentially Contaminated Sites - Code of Practice;

And if notified in writing by the Local Planning Authority that the desk top study identifies potentially contaminant linkages that require further investigation then,
 - (b) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with BS 10175:2011+A1:2013;

And if notified in writing by the Local Planning Authority that the results of the site investigation are such that site remediation is required then,

(c) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such a scheme shall include nomination of a competent person to oversee the implementation of the works.

- 17) The development hereby permitted shall not be occupied or brought into use until there has been submitted to, and approved in writing by, the Local Planning Authority a written verification report by a competent person approved under the provisions of condition (1)c that any remediation scheme required and approved under the provisions of condition (1)c has been implemented fully in accordance with the approved details (unless varied with the written agreement of the Local Planning Authority in advance of implementation). Unless otherwise agreed in writing by the local planning authority the verification report shall comprise:

- a) built drawings of the implemented scheme;
- b) photographs of the remediation works in progress;
- c) certificates demonstrating that imported and/or material left in situ is free from contamination.

- 18) Other than demolition works, no development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority.

The submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation; and,
- iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved details. The sustainable drainage system shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.

- 19) The development hereby permitted shall not be occupied until a scheme to enhance the nature conservation interest of the site has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall accord with the standards described in Supplementary Planning Document 11 – Biodiversity and Nature Conservation, June 2022 and shall include the provision of at least one bee brick per dwelling. The approved scheme shall be implemented in full prior to the first occupation of the development hereby approved and thereafter retained.

- 20) No development above ground floor slab level of any part of the development hereby permitted shall take place until details of the construction of the green roofs have been submitted to and approved in writing by the Local Planning Authority. The details shall include a cross section, construction method statement, the seed mix, and a maintenance and irrigation programme. The roofs shall then be constructed in accordance with the approved details and shall be retained as such thereafter.