



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: 19 August 2024

Appeal Ref: APP/Q1445/W/23/3333801
10 Norwich Drive, Brighton, BN2 4LA

- 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 Mr Gary Edmonds (Chanel Glazing Ltd) against the decision of Brighton & Hove City Council.
 - The application Ref is BH2022/03704.
 - The development proposed is side/rear extension and conversion of house to create 2no. houses.
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Decision

1. The appeal is allowed and planning permission is granted for side/rear extension and conversion of house to create 2no. houses at 10 Norwich Drive, Brighton, BN2 4LA, in accordance with the terms of the application Ref BH2022/03704 and the plans submitted with it, and subject to the conditions listed in the Annex to this decision.

Preliminary Matters

2. I have adopted the description of development from the application form.
3. Since the appeal was lodged the National Planning Policy Framework (Framework) was revised in December 2023. However, most of the changes relate to paragraph numbering, albeit some of the housing policies have changed. Even so, none of the latter affect the main issues raised by this appeal.
4. The Appellant's Statement of Case (ASOC) contended that the proposed rear amenity space for each new house was adequate as they owned the land to the east and the intention was to use this land as amenity space for the new units. This land was shown 'blue' on the Site Plans. An Inspectors Request was sent to the Appellant inviting them to include this land within the red line so that it could be considered as part of the proposal. The revised plans incorporating the extended red line were forwarded to the Council on 22 July 2024. Whilst no response was received to that email, the Council previously indicated that, notwithstanding the larger amenity space for each unit, this change would not address their objections to the impact of the proposal on the character and appearance of the area or its failure to meet minimum space standards. The Council also indicated that they did not consider the change from the blue line to a red line to be appropriate at such a late stage and that it may require re-consultation.

5. Paragraphs 16.1 – 16.2 of the 'Procedural Guidance: Planning Appeals – England' (updated 11 January 2024) states it is important that what is considered by the Inspector is essentially the same as that considered by the Local Planning Authority and interested parties at the application stage. Paragraph 16.3 continues with reference to the 'tests' that will be considered when revised plans and information is submitted, 'tests' that have been refined in the judgement of *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin).
6. The alteration of the blue line to a red line does not involve any changes to the proposed extensions or the conversion of the existing house into two houses. Both would remain as 3-bed houses. The front layout would also remain the same and at the rear the proposed 'patio' areas would simply be extended to include a larger rear garden to both units. Moreover, no changes are proposed to the 'description of development' for which planning permission is sought.
7. Whilst even minor changes to a scheme can result in substantive differences to the plans on which a Council's decision was made, in this instance the revision to extend the red line to include the blue land, does not, in my view, include any substantive changes to the development for which planning permission is sought. Had this change to the red line boundary been made at the application stage, it would not, in my judgement, have necessitated any re-consultation with either consultees or interested parties. I am also of the view that had the blue land been included at the application stage it is unlikely to have given rise to any concerns from interested parties. As the lawful use of the blue land is as garden land, the change would simply result in that area continuing to be used as existing and in a layout that would mirror that on 12 Norwich Drive.
8. The above findings are supported by the fact that no representations from interested parties were submitted at the application stage or indeed at the appeal stage or in response to the ASOC when this change was put forward. As a consequence, in accepting these revised plans there would be no unlawful procedural unfairness to any of the parties involved in the appeal process.
9. In view of the above, I am satisfied that my consideration of the appeal can and should relate to the extended red line and the revised plans that show this. I have, therefore, proceeded to determine the appeal on that basis.

Main Issues

10. The main issues are the effect of the proposed development on: (a) the character and appearance of the site and surrounding area; and (b) whether the development would secure a satisfactory standard of internal and external accommodation.

Reasons

Character and appearance

11. The appeal site comprises a two storey semi-detached property on the eastern side of Norwich Drive, with gardens to the front and rear. The surrounding area comprises largely similar two storey semi-detached properties, although, as I observed on the wider 'estate', there are some examples of terraces of three or four properties and a block of flats that do not, in my, view detract from the character and appearance of the area. Indeed, it is not uncommon to find the prevailing pattern of development within 'estates' comprising detached

- or semi-detached properties that are then interspersed with small terraces or block of flats, adding further interest and variety to the character of the area.
12. Most of the surrounding properties date from the same period, but there are differences in terms of the pallet of materials used, roof forms, frontage detailing and layout, with a number of front gardens having been altered to accommodate off-street parking. A number of properties have been extended, including the adjoining property 12 Norwich Drive (No.12), which forms the other half of the semi with the host. The gaps that exist between properties also varies throughout the area, with a number sited tight up against their neighbours boundary, often following the construction of side extensions or separated from them by, for example, single storey garages.
 13. Within this context, the scale, bulk and extent of the proposed extensions to facilitate the creation of an extra new house would, in my view, integrate well with the established built character of the surrounding area. Whilst I accept that the proposal would result in a change to the streetscene, the level of change would be modest. The proposal would broadly replicate the extensions carried out to No.12 and would be symmetrical to that development, creating a small coherent terrace of properties. Whilst No.12 appears from the road as two units, I understand it has been converted into four flats.
 14. The existing front garden to the host would be retained, as on No.12 and set aside for planting, refuse and cycle storage, with pedestrian ramps to the new units to make them wheelchair accessible. A side pedestrian gate would retain access to the rear of the new southern house and both houses would be served by a patio area at the rear, together with a larger garden area through the inclusion of the 'blue' land. In relation to the latter, a further benefit of its inclusion is that it would tie this land to the new houses, rather than leaving it as potentially separate and subject to further development pressure.
 15. The proposed two storey side extension would not extend any closer to 8 Norwich Road (No.8), to the south of the appeal site, than the existing single storey side extension to the host. Whilst the new extension would have a larger footprint, height and scale, a reasonable gap would be retained between the extended host and No.8. Moreover, as the main house to No.8 has a slightly different orientation, there is an even larger gap between it and the boundary with the host.
 16. As I confirmed earlier, the relationship of the proposed extension would not be dissimilar to other extensions in the area, some of which have been built right up to the common boundary without impacting on the character or appearance of the area. Moreover, I could not find any reference in the reason for refusal or in the Council's Delegated Report (CDR) to allege that this aspect of the proposal would conflict with the Council's design guidance in relation to extensions.
 17. Overall, the proposal would not be out of keeping with the character and built form of its neighbours or the surrounding area, and would retain a sense of openness around the wider plot. Whilst the new plot sizes would be smaller than those on some surrounding sites, this should not in my view be a defining factor and the introduction of narrower plots would not result in any significant harm to the character or appearance of the area. As such, the form and layout of the development would be acceptable and it would not appear cramped or result in significant harm to the built rhythm of the area.

18. The Council contend that the proposal represents an overdevelopment of the site. I accept that this issue, as with those addressed above, involves an element of planning judgement, but even so there is no substantive evidence before me to support that statement. The proposed layout shows that two houses can be accommodated on the appeal site whilst still retaining sufficient land for front and rear gardens (the latter with the inclusion of the 'blue' land), pedestrian access and ramps, refuse and cycle storage and landscaping, all within a sustainable and accessible location. For these reasons, the proposal would sit reasonably comfortably on the appeal site and would not result in its overdevelopment.
19. The Council have referred to policies CP1 (Housing Delivery), CP12 (Urban Design) and CP14 (Housing Density) of the Brighton & Hove City Plan Part One (March 2016) (BHCP1) and policy DM1 (Housing Quality, Choice & Mix) of the Brighton & Hove City Plan Part 2 (October 2022) (BHCP2). These policies require, amongst other matters, that new development: is of a high quality of design; is at a density that is appropriate to the identified character of the neighbourhood (determined on a case by case basis); has regard to its local context in terms of scale, space about buildings and urban grain; and maximises the opportunities for the development and use of land to ensure efficient and effective use of sites including optimising residential densities. For the reasons set out above, I am satisfied that the appeal proposal would accord with these policy requirements.
20. Further support for my findings are provided by the Framework, including paragraph 135 which, in referring to new development being sympathetic to local character, states that this should not prevent or discourage appropriate innovation or change. The National Design Guide (NDG) (January 2021) reinforces the Framework, for example, at paragraph 44 by emphasising that well designed places do not need to copy their surroundings and that it is appropriate for new development to include innovation and change to reflect how we live today.
21. Paragraph 123 of the Framework also states that planning decisions should promote the effective use of land in meeting the need for housing. Paragraph 129 continues by stating that in locations where there is a need for new homes and an anticipated shortage of land to meet those needs, decisions should ensure that developments make optimal use of the potential of each site, with minimum density standards for locations that are well served by public transport. Combined, these policies provide further support for the proposal.
22. The Council contend that there are differences between the appeal proposal and the development approved and now built at No.12. Firstly, that the latter is subdivided into four flats and not two houses. As I confirmed above, from the road No.12 appears as two units. Whilst No.12 has a larger plot externally the rear has, I understand, been divided into individual gardens to serve two of the units, with what appears to be a communal amenity area for the two other flats at the front. Secondly, the Council contend that No.12 was approved under different development plan policies. That does not appear to be correct, as the original permission (ref. BH2017/00605) was approved in September 2017 after the adoption of BHCP1 and it is principally the policies of the latter that the Council rely on in its first reason for refusal.

23. Accordingly, I find that the appeal proposal would not be cramped or out of keeping with the pattern of development in the surrounding area and would not represent an overdevelopment of the site, and would thus accord with policies CP1, CP12 and CP14 of BHCP1, policy DM1 of BHCP2, and the corresponding policies in the Framework and NDG.

Standard of accommodation

24. The Council have referred to policy DM1 of BHCP2, which, amongst other matters, requires new development to meet the nationally prescribed space standards and provide usable private outdoor amenity space. The Council contend that the proposed dwellings fail to meet minimum space standards for the overall floor area for 3-bed dwellings set over 3 floors and also includes inadequate amenity space. The inclusion of the 'blue' land and its reuse as garden area to serve the new units would address the latter point, albeit I note there are no specific amenity standards in the policy or its supporting text.
25. In relation to the internal layout, the Council have indicated that the proposed bedrooms comply with the minimum space standards, but that the total floor area does not, with the southern house being 84.39 square metres and the northern house being 85.34 square metres, whereas the minimum space standard is 90 square metres. The Appellant disagrees with the Council's findings and refers to their Design & Access Statement which states that both units would provide a total floor area of 91.5 square metres.
26. There is no detailed evidence before me from either party to explain how their respective totals have been reached, albeit I assume the Appellant has based their calculation on the submitted floor plans. There is also nothing that tries to explain the difference in the calculated floor areas. As such, it is difficult for me to reach any firm findings on this issue. Even so and assuming that the Council's figure is correct, I am not convinced that the shortfall of some 5 square metres would on its own be sufficient to justify the refusal of planning permission. In that scenario, the conflict with policy DM1 would, in my view, be minor, as the proposal would comply with the policy's other requirements.
27. Accordingly, I find that the appeal proposal would secure a good standard of internal and external accommodation and would thus comply with the overall aims and objectives of policy DM1 of the BHCP2.

Planning balance

28. The Council acknowledge that they are unable to identify a 5-year supply of housing land. Paragraph 5 of the Council's Statement of Case (CSOC) indicates that the latest update shows a supply of 1.7 years. As such, paragraph 11 d) of the Framework states that where the relevant policies of the development plan are out of date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole; or where the policies in the Framework that protect areas and/or assets of importance provide a clear reason for refusing permission.
29. There are no protected areas/assets of importance on the appeal site. As I have already found, the appeal proposal would not result in any significant adverse impacts to the character and appearance of the host property or the

surrounding area, and would secure a good standard of internal and external accommodation.

30. Turning to the benefits, these include a small contribution to future housing provision; economic investment from the construction of the development; a highly accessible and sustainable development; and the effective use of land. Combined, I accord these benefits limited weight.
31. In the context of paragraph 11 d) ii of the Framework the appeal proposal would not result in any significant adverse impacts and the presumption in favour of sustainable development applies, which combined with the benefits of the scheme point towards the grant of planning permission.

Conditions

32. The Council has suggested various conditions which I have considered against the advice in the Framework and the Planning Practice Guidance (PPG) chapter on the 'Use of planning conditions'. I have also had regard to the Appellants Final Comments which did not raise any objections to the conditions listed in Appendix 1 to the CSOC.
33. There are, in my view, a number of essentially standard conditions, some of which require details to be submitted and approved by the Council, others which require approved details to be provided before the development is first occupied and others that simply seek to control the permitted development. These conditions include those relating to the following matters: approved plans, landscaping scheme, use of porous materials, cycle parking, refuse storage, water & energy efficiency and usage, and bird and bee bricks/boxes. All of these conditions are reasonable and necessary in the interests of securing a high quality development, ensuring excellence in terms of sustainable design, construction and transport, and to reflect the details set out in the application.
34. Whilst the PPG advises that permitted development rights should only be taken away in exceptional circumstances, I am satisfied that those circumstances exist here and that a condition to prevent the enlargement, extension or alteration of either of the new houses is reasonable and necessary in order to retain control over future development, to reflect the findings reached above and in the interests of neighbours living conditions. I have, however, adopted a more standard wording.
35. A condition that requires the submission and approval of samples of all materials to be used, before the development progresses above slab level, is not, in my view, necessary or reasonable. The pallet of materials to be used is shown on the approved plans/application form, and include, as referred to in the CDR, white painted render or brickwork, concrete roof tiles and grey powder coated windows/doors, either to match existing or to match that on No.12. As such and given the pallet of materials to be found locally, I do not consider that any further approval is required. I have, therefore, replaced the suggested condition with a standard materials condition.
36. I am also not convinced that a condition which requires the proposed internal layouts to be implemented in strict accordance with the approved floor plans is either necessary or reasonable, specifically as it would essentially duplicate the approved plans condition.

Conclusion

37. For the reasons given above and having taken all the matters raised into account, I conclude that the appeal should be allowed.

G Roberts

INSPECTOR

Annex - Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: ADC 1416/09 Rev.A; ADC 1416/LP Rev.A; ADC 1416/03 Rev.C; ADC 1416/04 Rev.BB.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used on the existing host building and otherwise be in accordance with the materials shown on the approved plans and listed in the application form.
- 4) Prior to the first 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 some 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
 - C. Details of all boundary treatments to include type, position, design, dimensions and materials.

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

- 5) The hard surfacing 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 surfacing to a permeable or porous area or surface within the curtilage of the property.
- 6) The development hereby permitted shall incorporate at least three swift bricks or boxes within the external walls which shall be retained thereafter.

- 7) At least one bee brick shall be incorporated within the external walls of the development hereby permitted and shall be retained thereafter.
- 8) Notwithstanding the details submitted, the development hereby permitted shall not be occupied until details of secure cycle parking facilities for the occupants of, and visitors to the development 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.
- 9) 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 accordance with the approved details prior to the first occupation of the development. These facilities shall thereafter be retained for use at all times.
- 10) None of the residential units hereby permitted 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.
- 11) The development hereby permitted should achieve a minimum Energy Performance Certificate (EPC) rating 'B' for new build residential.
- 12) Notwithstanding the provisions of Schedule 2, Part 1, Classes A-E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) no extensions, enlargement or alterations shall be carried out to the dwellinghouses hereby permitted other than those expressly authorised by this permission.

End of Annex.