

# Appeal Decision

Site visit made on 12 August 2024

**by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 September 2024**

---

## **Appeal Ref: APP/Q1445/W/24/3343455**

### **6B College Place, Brighton BN2 1HN**

- 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 Steve Fuller, Fullers Plastering, against the decision of Brighton & Hove City Council.
  - The application Ref. is BH2023/01659
  - The development proposed is the demolition of existing garage, storage and workshop buildings and the erection of a terrace of 3 No. residential units (C3) and office unit (E).
- 

### **Decision**

1. The appeal is dismissed,

### **Preliminary Matters**

2. The application plans have been in part superseded by amended drawings that are before me in this appeal and are revisions to the plans considered in the Officer's Report and listed in the Decision Notice. However, the Council's Statement of Case has had regard to the amended plans and says that neither these nor the appellant's Statement of Case overcome the objections that led to the refusal of permission. The Council also says that the differences are not such as to result in any procedural unfairness to third parties. I accept this latter point and will therefore determine the appeal on the basis of the amended details.
3. Following the submission of a Daylight and Sunlight Assessment, the Council has withdrawn its objection on this issue. I shall not therefore include this matter as part of my appraisal of the appeal.
4. The Council's failure to demonstrate a 5-year housing land supply in the city requires this factor to be taken into account in this appeal. I have considered the issue in the 'Planning Balance and Conclusion' section of this Decision.

### **Main Issue**

5. The main issue is the effect of the proposed development on the living conditions for neighbouring occupiers as regards outlook and privacy.

### **Reasons**

6. The appeal scheme seeks the two-storey development of a terrace of three dwellings on an existing B2 industrial site, and with its residential context the Council has no 'in principle objection' to a scheme comprising three new
-

dwelling together with a small office unit. Nonetheless, concerns remain as to the proximity of the terrace to the rear elevations of properties in Clarendon Place. In the Council's view, this would result in an unacceptable effect on both the outlook and privacy for the occupiers of these existing dwellings, whilst there is an additional objection as regards a loss of privacy to No. 3 College Road to the south.

7. As regards the development as a whole, I saw on my visit that the appeal site is heavily constrained by the surrounding residential properties, thereby limiting its development potential. On the other hand, the replacement of the industrial use by residential units clearly has significant benefits and this may justify support for some flexibility and relaxation of the normal desirable minimums, including distances between the existing and proposed buildings.
8. With that said and turning firstly to the effect on the properties in Clarendon Place in terms of increased enclosure, the existing rear wall along their rear boundary which separates the rear curtilages from the appeal site already restricts the outlook from windows in the basement and ground floor flats and the limited area of outdoor space in the form of gardens and courtyards. From this poor starting point, the first floor element of the proposed terrace rear elevation would through its greater height result in a significant further restriction of outlook at a recessed distance from the boundary of only about 2.5m.
9. The Officers' Report estimates that the overall distance between the terrace first floor rear elevations and the outriggers of the properties in Clarendon Place would at one point be as little as 4.5m and more generally a typical back-to-back separation distance of between 5m and 6m. Such distances are more typical of the internal dimensions of an average sized dwelling's living room or main bedroom than a separation between principal elevations of neighbouring properties. And although the appellant's grounds of appeal refer to amended plans in an attempt to resolve the objection, I note that these distances are not disputed and remain as part of the proposal.
10. Indeed, paradoxically, I consider that the Plan Ref. AL-140D bird's eye view 3D perspectives serve only to illustrate just how constrained and inadequate the space between the two lower floors of Clarendon Place properties and the appeal building would be. Without more information on these existing dwellings or an opportunity to visit them on my visit, it is difficult to assess with precision the extent of harm to living conditions. Nonetheless, I am satisfied that in most if not all cases the relationship would be unacceptable, but especially in the case of the windows and outside areas of the basement flats.
11. Given this very small gap between the existing and proposed buildings, a mutual shortfall in privacy is almost inevitable. The appeal scheme's solution in the amended plans is to install fixed louvres to the upper parts of the first floor windows. However, the Council made the point with the proposed shutters in the unamended scheme that this would be a contrivance, symptomatic of overdevelopment, that would only partially reduce overlooking and then with the drawback of restricting the outlook from and daylight to the proposed houses. I see little difference to this effect with the proposed louvres and additionally see some potential for them being tampered with so as to improve the daylight. Having carefully appraised this part of the proposal and with some

regret I see no reasonable basis for exercising the discretion to which I refer in paragraph 7 above.

12. Turning briefly to the effect of the appeal scheme on No. 3 College Road, the front bedroom window of Unit 1 would increase overlooking into the garden of this property. However, this is a particularly large garden on the context of this location and there is already screening from a mature tree. On balance the adverse effect would not be sufficient in itself to warrant dismissal of the appeal.
13. Paragraph 12 above notwithstanding, overall on the main issue I find that the living conditions for existing occupiers would be unacceptably harmed as regards both outlook and privacy. This would conflict with Policy DM20 of the Brighton & Hove City Plan Part 2 and with paragraph 135f) of Government policy in the National Planning Policy Framework December 2023 ('the Framework').

### **Other Matters**

14. The appeal site falls within the East Cliff Conservation Area and accordingly regard must be had to the statutory requirement for development to at least preserve its character or appearance. There is the additional consideration of the impact on the grade II listed 6-7 College Place.
15. To my mind the squat appearance of the terrace building set against the much larger frame of Clarendon Place would appear somewhat incongruous. However, I acknowledge firstly that because of its wholly backland position the building would not harmfully affect the townscape of this part of the city and secondly that the Council's heritage team are of the view that this reduction to two storeys from the previously proposed three is more appropriate. The team also see no harmful effect being caused to the listed building.
16. With this in mind, and because it is beyond dispute that the removal of the existing industrial use and buildings on the site would be of material benefit, I find that the conservation area would be at least preserved and that there would be no conflict with Policies DM27 of the City Plan Part 2 & CP15 of the City Plan Part 1 or with Section 16 of the Framework. However, my favourable conclusion for the appellant in this regard does not outweigh my finding on the main issue.
17. In addition to most of the local residents supporting the Council's objection as regards the main issue in the appeal, there are concerns in respect of rights of way and a couple of other matters that do not fall within my remit in determining this appeal. In the event, my Decision does not prompt a necessity for their immediate resolution.

### **Planning Balance and Conclusion**

18. The appellant and the Council both refer to the situation in Brighton whereby the most recent housing land supply position published in 2022 shows a five-year housing supply shortfall of 7,711 (equivalent to 1.8 years of housing supply). In March 2021 the City Plan Part 1 reached five years since its adoption and Government policy is that that where strategic policies are more than five

years old, local housing need should be assessed using the Government's standard method in place of the Local Plan housing requirement.

19. As the Council is currently unable to demonstrate a five-year housing land supply, increased weight should be given to housing delivery when considering the planning balance in the determination of planning applications, in line with the presumption in favour of sustainable development set out in paragraph 11 of the Framework.
20. However, I consider that despite the benefit of three new homes that the appeal development would provide, permission should not be granted under paragraph 11 d) ii. This is because the unacceptable impact in terms of the harm to neighbours' living conditions in this particular proposal would significantly and demonstrably outweigh the benefit of the incremental increase in the City's housing supply, when assessed against the policies in the Framework taken as a whole.
21. The appeal is dismissed accordingly.

*Martin Andrews*

INSPECTOR