



Appeal Decision

Site visit made on 25 September 2024

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

an Inspector appointed by the Secretary of State

Decision date: 2nd October 2024

Appeal Ref: APP/Q1445/W/24/3345776

236 Dyke Road, Brighton and Hove, East Sussex, BN1 5AE

- 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 Ms Stuart-Hutchenson against the decision of Brighton and Hove City Council.
 - The application Ref is BH2023/02714.
 - The development proposed is subdivision of existing flat into two dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for subdivision of existing flat into two dwellings at 236 Dyke Road, Brighton and Hove, BN1 5AE in accordance with the terms of the application, Ref BH2023/02714, subject to the conditions in the attached schedule.

Main Issue

2. The main issue in this appeal is whether or not the appeal site is suitable for conversion into smaller units with particular regard to local planning policy.

Reasons

3. Policy DM3 of the Brighton and Hove City Council Development Plan: City Plan Part Two, October 2022 (CPP2) sets out the criteria which must be met before planning permission for the conversion of dwellings into smaller units of self-contained accommodation will be granted. Criterion a) within this policy states that the original floor area must be greater than 120sqm or the dwelling must have four or more bedrooms as originally built. The policy defines the original floor area by setting out that the original floor area excludes later additions such as extensions, garages (including converted garages) and loft conversions since the dwelling was built or as built on 1st July 1948.
4. The plans indicate that the appeal property, 236 Dyke Road, is a four-bedroomed dwelling set over two floors; with three bedrooms downstairs and an additional bedroom with ensuite at first floor level. This property is part of a larger building which was initially built as a single dwelling circa 1925 but was split into two separate dwellings (236 and 236A Dyke Road) in the early 1980s.

5. In April 2010 an application for “conversion of existing maisonette at ground floor and part first floor level to create 1no one bedroom flat and 1no two bedroom maisonette, incorporating pitched roof to converted garage and front and rear rooflights” was refused by the Council. This refusal was made on the basis of a previous local plan policy¹, similar to DM3 of CPP2, as the Council held that the dwelling had fewer than three bedrooms and, due to the limited height within the loft room, a useable floor area of less than 115sqm.
6. Further work to the property was carried out following an application in July 2010 for “proposed conversion and refurbishment works to incorporate a hipped pitched roof to the existing garage with new window and door openings and a new front dormer and 3 rooflights”.
7. The current proposal is for the conversion of the existing dwelling to form one one bedroom flat and one two bedroom flat, alterations to existing garage to form habitable space including revised fenestration and installation of PV panels. The Council refused this application on the basis that the proposed subdivision fails to meet Policy DM3 of the CPP2 as the existing property has an original floorspace of below 120sqm and less than 4 bedrooms.
8. There is some confusion and dispute between the parties regarding which iteration of the existing property should be considered “original” for the purposes of Policy DM3 of the CPP2.
9. In my view, it is clear that the original dwelling is not the dwelling as it stands currently as alterations have taken place since the dwelling was “built” in the 1980s. The plans submitted as part of the 2010 application which show the existing dwelling provide the most reliable information regarding the original dwelling at No 236 following its conversion in the 1980s. These plans indicate that the dwelling had two bedrooms, a reception room, a sitting room, a kitchen, a garage and a bathroom at ground floor level and an attic room/study above.
10. The parties appear to be in agreement that at ground floor level the property as originally built following the conversion has a Gross Internal Area (GIA) of approximately 102.3sqm.
11. The appellant has provided a plan which they suggest shows the usable floor space² on the first floor of 20.40sqm. However, this plan appears to show the reconfigured space following the 2010 alterations as it does not reflect the existing first floor plan under application BH2010/02071 but rather the first floor accommodation as it currently exists as shown on plan ref ADC 1534/01 A submitted as part of this appeal. At the time of the 2010 application the Council determined that the existing first floor usable space was approximately 15sqm. The evidence before me does not contain calculations based on this arrangement to dispute this. However, given the diminutive size of this space and the minimal headroom the Council found that the first floor should not be included as usable floor space.
12. Were I to include the first floor space which would appear to have been part of the original floorspace, the GIA of the dwelling would be around 117.3sqm (102.3 plus 15). This would fall short of the 120sqm set out within Policy DM3

¹ Policy HO9 of the Brighton and Hove Local Plan

² As calculated in accordance with the Nationally Described Space Standards.

of the CPP2. The property as originally built would also have fewer than four bedrooms and would also not accord with Policy DM3 in this respect.

13. There is some argument regarding whether or not the property as it was built in around 1925 should constitute the 'original' dwelling for the purposes of Policy DM3. Should I be minded to find that the term original could refer to this iteration of the building, it would seem to me that, given the size of the converted units, the building may have indeed fallen within the criteria of Policy DM3 of the CPP2. However, I do not have sufficient information before me to reach this conclusion with any degree of certainty. Moreover, even if I were to consider the original dwelling to be defined as the house as it was circa 1925, the dwelling has already since been subdivided.
14. For the reasons set out above, I consider that the proposal would not be suitable for conversion into smaller units with particular regard to local planning policy. The proposal would conflict with the criteria set out within Policy DM3 of the CPP2 which seeks to manage the subdivision of single residential units in order to ensure that conversions provide a high standard of accommodation and promote and retain housing choice in the city.

Other Matters and Planning Balance

15. I note that the proposal would accord with other aspects of Policy DM3 of the CPP2. It would, for example, provide a unit of family accommodation with a minimum of two bedrooms. The accommodation provided would also accord with the minimum standards set out within Policy DM1 of the CPP2 which requires all residential units to meet the nationally described space standards.
16. There is no dispute between the parties that the Council cannot demonstrate a five year housing land supply. As such, the National Planning Policy Framework (The Framework) advises that planning 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 taken as a whole.
17. The proposal would provide one additional unit of good quality residential accommodation in a highly sustainable location which would assist, to a limited degree, in boosting the supply of housing in the area. The proposal would provide a smaller dwelling suitable for family accommodation for which there is a high level of demand³. This would be a benefit of the scheme.
18. On the other side of the balance, I have found that the proposal would fail to accord with the criteria for identifying properties which are suitable for conversion into smaller units set out within Policy DM3 of the CPP2.
19. Though I have found conflict with this policy, in my view, the proposal would, nevertheless broadly accord with the overarching aims of this policy. The supporting text to Policy DM3 of the CPP2 recognises that the conversion of larger properties into smaller residential units plays an important part in increasing housing supply, contributes toward the provision of a wider range of housing and helps to meet the needs of a growing number of smaller households and states that residential subdivision is also consistent with the objective of making the best use of the land available within the city.

³ As set out in the supporting text to Policy DM3 of the CPP2.

20. Furthermore, the supporting text to Policy DM3 of the CPP2 is also clear that its aim is to prevent the subdivision of the much needed smaller family dwellings. In this instance, irrespective of whether the 'original' property meets the criteria for subdivision, the property has been changed over time and the proposal before me would provide a unit of smaller family accommodation rather than remove it. In my view, the harm in respect of the conflict with local planning policy would, therefore, be minimal.
21. Therefore, I consider that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As such, it follows that, despite the conflict with policy, material considerations indicate that the appeal should be allowed.

Conditions

22. The Framework 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.
23. 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.
24. In order to improve energy efficiency and to comply with CPP2 Policy DM44, I have imposed a condition requiring the proposed development to achieve a minimum Energy Performance Certificate (EPC) rating of 'C'. 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 CPP1.
25. To promote the Council's aims to conserve, restore and enhance biodiversity and to comply with Policy CP10 of the CPP1 and Policy DM37 of the CPP2 I have included a condition requiring the installation of a bee brick within an external wall.
26. The Council suggested a condition restricting the internal layouts of the approved dwellings. However, I have imposed a condition requiring the development to be completed in accordance with the approved plans and, in my view, further controlling the internal layout of the properties would be overly restrictive and not necessary in this instance. As such, I consider that the suggested condition would not meet the tests set out in the Framework and I have not imposed the condition.

Conclusion

27. 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: ADC 1534/01 Rev A, ADC 1534/02 Rev B, ADC 1534/03, ADC 1534/04, ADC 1534/LP Rev A.
- 3) The development hereby approved should achieve a minimum Energy Performance Certificate (EPC) rating 'C'.
- 4) 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.
- 5) At least one bee brick shall be incorporated within the external wall of the development hereby approved and shall be retained thereafter.