



Appeal Decision

Site visit made on 17 September 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th November 2024

Appeal Ref: APP/Q1445/W/24/3338985

69 The Droveway, Hove, Sussex BN3 6PR

- 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 APMD Developments Ltd against the decision of Brighton & Hove City Council.
 - The application Ref is BH2023/00179.
 - The development proposed is demolition of existing house and the construction of 8 apartments together with 8 parking spaces, 16 secure cycle parking spaces and associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the course of the appeal, a signed Section 106 legal agreement was provided to secure a financial contribution of £260,700 index linked in lieu of affordable housing.

Main Issues

3. The main issues are the effect of the appeal proposal on:
 - the character and appearance of the area;
 - the trees within and adjacent to the appeal site; and,
 - the living conditions of the occupants of 71 The Droveway with particular regard to privacy and outlook.

Reasons

Character and Appearance

4. The Droveway is lined with mostly two storey detached houses set well back from the street in substantial plots. These plots, along with the wide street, grassed verges and street trees give the area a spacious and verdant character. No. 69 The Droveway is typical of the houses in the street and has steep hipped tiled roofs and a projecting gable. These design features are prevalent on the surrounding houses and result in a homogenous and attractive street scene.
5. Although the proposed building would occupy a similar footprint to the existing house and would be of a similar overall height, the bulk at roof level would be significantly greater than the existing dwelling. The form of the roof, including

the high eaves level, would not reflect or respect the more traditional hipped roof forms characteristic of the street. Given the topography, when viewed from Goldstone Crescent, the building would appear unduly dominant in the streetscene, largely due to the additional bulk and detailed design of the roof level.

6. The Urban Design Framework Supplementary Planning Document 2021 (SPD 17) in this respect, sets out that design development should be informed by the identified character of the city's neighbourhoods and local context. The appeal site is located within the 'Tongdean' character area, a low rise, low density residential suburb. The appeal scheme would comprise a simple form with a brick finish at ground floor with render above, substantial windows to the front elevation with more modestly sized fenestration to the sides and rear. There would be little in the way of any design interest in the elevations which would respond to the typical design features found in the area such as hipped tiled roofs, gables and bays.
7. My attention has been drawn to several dwellings located on The Drove way which feature the use of render or other cladding. I acknowledge that these materials are typical of the area. However, their use in the appeal scheme would not overcome the harm to the character and appearance of the area caused by the scale and bulk of the design.
8. I have also been referred to the completed four-storey flatted development at 55-57 Goldstone Crescent, which abuts the appeal site to the rear. This example has some similarities with the appeal scheme in terms of overall height and bulk. However, the eaves and ridge height of the Goldstone Crescent scheme is comparable to the adjacent buildings and it sits relatively comfortably within the streetscene. There are distinct differences in the roof design, materials and staggered form of development when compared to the appeal scheme. Whilst I acknowledge that the appeal proposal would occasionally be seen in the same view as the Goldstone Crescent flats, the appeal site would have a different context when viewed solely from The Drove way itself. As such I do not find it to be directly comparable.
9. The proposed parking area to the front and side of the building would replace some of the existing garden. The presence of hardstanding in front of single houses is a reasonably common feature in the area. Nevertheless, the extent of proposed hardstanding in this location to be able to accommodate eight cars, cycle and bin storage would be significant and would result in the erosion of the green, verdant character of the area.
10. For the reasons set out above, the appeal proposal would harm the character and appearance of the area. The scale and bulk of the proposed building at roof level, along with its detailed design and extent of hardstanding would significantly harm the streetscene and verdant character of the area. It would be contrary to Policies CP12 and CP14 of the Brighton and Hove City Plan Part One (2016) (City Plan Part 1) and DM18 of the Brighton and Hove City Plan Part Two (2022) (City Plan Part 2) as well as SPD 17 insofar as they require a high standard of design and a positive contribution to a sense of place.

Trees

11. There is a Norway Maple subject to a Tree Preservation Order (TPO) located within the appeal site, close to its front boundary and vehicular access. There

is also a Wheatley Elm located in the grass verge adjacent to the vehicular access and a further one some way to the east, also within the grass verge. All these trees are substantial in size and make a significant contribution to the visual amenity of the area.

12. A copy of a statement from an arboricultural consultant has been provided within the appellant's statement of case regarding the Norway Maple tree stating that there was some evidence of a hollow trunk with the presence of vermin and is not suitable for retention. Notwithstanding this, documents accompanying the appeal scheme indicate that the tree would be retained. Little detail has been provided in evidence to show the canopy spread or root protection area and any necessary incursions, construction methodology or detail of any necessary pruning or other work. Similarly, although further away from the appeal site, there is little detail regarding potential effect of the proposals upon the root protection area or canopy of the Wheatley Elm trees.
13. In the absence of sufficient detail regarding the effect of the proposals upon the Norway Maple and Wheatley Elms, the appeal scheme would conflict with Policy DM22 of the City Plan Part 2 which requires that development proposals retain trees including protected trees. For the same reasons the development would not be in accordance with the Trees and Development Sites Supplementary Planning Document adopted 2006 which sets out the level of information required to support planning applications where trees would potentially be affected.

Living Conditions

14. The adjacent house, 71 The Droveaway, is located on the corner of Goldstone Crescent and due to the topography is at a lower level than the appeal site. It has a side elevation which faces the appeal site, and a very open outlook to the both the Droveaway and Goldstone Crescent. The appeal scheme shows bedroom and bathroom windows from ground to third floor, along with a secondary living room window at third floor, which would face no. 71.
15. There are already several windows, mostly serving bedrooms, in the existing house from ground to second floor facing no. 71. Given the position of the proposed building, the windows would be no closer than those already present in the existing house. The position of the secondary living room window at third floor would be slightly offset relative to the existing side windows of no. 71. In any event, the main living room window of the third floor flat would face the street, and the secondary window would not be harmful to the privacy of the occupiers of no. 71. Consequently, I do not find that there would be any harmful loss of privacy through the introduction of living accommodation on the upper floors of the appeal site. Although there would be an increase in bulk at roof level, the degree of setting back of both buildings from the shared boundary would provide sufficient separation to mitigate any loss of outlook.
16. As a whole therefore, the appeal scheme would be acceptable in terms of its effect on the living conditions of the occupants of no. 71. It would be in line with the provisions of Policy DM20 of the City Plan Part 2 insofar as it seeks to protect the amenity of residents adjacent to a proposed development.

Other Considerations

17. Set against the harm identified, the proposal would deliver a net gain of seven new dwellings. The scheme would be an efficient use of land in a sustainable location. This would support the Government's aim of significantly boosting the supply of homes. However, the addition of seven homes would provide a limited contribution in this context and I attach moderate weight to this benefit. The appeal proposals include a financial contribution towards off-site affordable housing, secured by legal agreement. Although a requirement of planning policy, given the identified need for affordable housing in the Borough, it is a benefit of the appeal scheme to which I attach moderate weight.
18. There would be temporary and ongoing economic benefits from the development through construction and use of local shops and services, but given the modest number of dwellings, those benefits would be limited. There would be some biodiversity benefits including the use of bird boxes and bee bricks, to which I attach moderate weight.

Planning Balance

19. The appeal proposal would cause harm to the character and appearance of the area by virtue of its incongruous form and scale at roof level and its detailed design. It has also not been demonstrated that the proposal would not result in damage to the protected Norway Maple tree, which provides a significant contribution to the visual amenity of the area. I have judged the magnitude of these harms as significant.
20. According to the Framework the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning development process should achieve. It also requires that developments are sympathetic to local character and are visually attractive in terms of good architecture and layout. In addition to good design, the Framework encourages the retention of existing trees wherever possible. Therefore, the conflict between the proposal and Policies CP12 and CP14 of the City Plan Part 1, and Policies CM18 and DM22 of the City Plan Part 2 should be given significant weight in this appeal.
21. The Council acknowledges that they cannot demonstrate a 5-year supply of deliverable housing sites; the reported supply is equivalent to 1.7 years. Therefore, paragraph 11d)ii of the Framework is applicable. In these circumstances footnote 8 of the Framework establishes that the policies which are most important for determining the application are deemed out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. As described above the benefits associated with seven additional dwellings would be moderate even taking account of the Framework's objective of boosting significantly the supply of housing, and the Council's housing land supply position. The Framework states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities, along with encouraging the retention of existing trees.

23. Consequently, the harm to the character and appearance of the area and to the protected tree would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

24. The proposal would conflict with the development plan as a whole and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given, the appeal should be dismissed.

L Francis

INSPECTOR