



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: 19th November 2024

Appeal Ref: APP/Q1445/W/24/3337815

Land Rear of 8 Eileen Avenue, Saltdean BN2 8AD

- 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 Mrs Sharon Aides against the decision of Brighton & Hove City Council.
 - The application Ref is BH2023/02159.
 - The development proposed is the erection of one 2-bedroom detached dwelling (C3) with access via Lenham Avenue.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant has provided a Financial Viability Assessment (FVA) with the appeal to support their case regarding the capacity of the scheme to provide a financial contribution towards the provision of affordable housing. The FVA has introduced new evidence that was not before the Council or interested parties at the time the planning application was determined. This is a material matter affecting the determination of this appeal and the additional information has not been consulted upon.
3. Accordingly, in the interests of procedural fairness I will not accept the FVA and I proceed to determine the appeal having regard to the same information on which the Council made its decision and to which interested parties had access.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area;
 - whether the proposal would have safe and convenient access;
 - the effect of the proposal on the living conditions of the existing occupiers of the flats at 8 Eileen Avenue with regard to amenity space;
 - whether the proposal would provide acceptable living conditions for future occupiers with regard to amenity space; and,
 - whether the proposal would make adequate provision for affordable housing.

Reasons

Character and Appearance

5. The appeal site comprises land to the rear of 8 Eileen Avenue. The plot is currently undeveloped, separated from 8 Eileen Avenue by close boarded fencing. The appeal proposal is for a single storey two-bedroom house with pedestrian and vehicular access from the grassed track leading from Lenham Avenue. A reinforced mesh system installed in the track would provide vehicular and pedestrian access. A parking space, cycle and refuse storage would be provided, along with a small garden to the front, rear and side.
6. The building adjoining the appeal site to the north at 8 Eileen Avenue comprises a house converted to 5 flats pursuant to a planning permission in 2021¹. The extract from the approved site plan for the flat conversion provided in evidence shows the appeal site as forming garden land to that scheme.
7. The area is suburban in character, with largely detached two storey and chalet-style 20th Century dwellings with front and rear gardens. Although plot sizes are variable, the pattern of development generally allows for sizeable and undeveloped rear gardens with the occasional outbuilding. The low density of development, grass verges and substantial gardens give the area a suburban and very spacious character.
8. The footprint of the proposed house would occupy a significant proportion of the plot. The presence of the proposed dwelling on this plot would have the effect of urbanising the site, particularly when considered in conjunction with the flatted development at 8 Eileen Avenue. The form of development proposed would harm the existing open, green character and appearance to the rear of dwellings on Eileen Avenue and would not respect or reflect the established urban grain of the area. It would create a much higher density of development than is common in the surrounding streets.
9. In terms of the detailed design and use of materials, the simple form of the single storey with a flat green roof would be appropriate given the variety of built form in the area. Nevertheless, this would not alleviate the harm arising from the cramped form of development.
10. For the reasons set out above, the proposal would be uncharacteristic of the pattern of development locally and would significantly harm the character and appearance of the area. The proposal would conflict with Policies CS12 and CS14 of the Brighton and Hove City Plan Part One (2016) (City Plan Part 1) and Policies DM18 and DM19 of the Brighton and Hove City Plan Part Two (2022) (City Plan Part 2). Taken together, and amongst other things, these policies seek to ensure that new development responds positively to the urban grain, and where it is higher density than typically found in the locality, to ensure that development respects, reinforces or repairs the character of the neighbourhood.

Access

11. The sole means of access to the proposed dwelling would be via a grassed track inlaid with mesh to support vehicles. Due to the potentially uneven

¹ Reference BH2020/02590 dated 12 February 2021.

nature of the mesh and grass, lack of separate pedestrian footway, provision for cyclists and lack of lighting, I am not persuaded that the proposed access would genuinely be convenient and accessible for all as the sole means of access to the dwelling.

12. I have been referred to an appeal decision² which, although dismissed, showed a mesh laid within a grassed area to support a driveway. This arrangement was solely for the driveway, and as far as the evidence suggests, did not extend to a track providing the only vehicular and pedestrian access to the house. As such, I do not consider this a directly comparable scheme.
13. The provision of access via a grassed track inlaid with mesh would conflict with the aims of Policy DM33 of the City Plan Part 2 which, in relation to pedestrians and wheelchair users, encourages development to provide for safe, comfortable and convenient access to/from proposed development for all pedestrians, irrespective of their level of personal mobility and cognition. Given the lack of suitable access to the proposed development, the harm would be significant in this context.
14. I note the Council have referred to Policy CP9 of the City Plan Part 1 and DM36 of the City Plan Part 2 in their reason for refusal. I do not consider these policies are determinative. CP9 relates to strategic sustainable transport objectives, whilst DM36 specifically relates to parking, which is not a matter in dispute.

Living Conditions – occupiers of 8 Eileen Avenue

15. The Council states in its officer report that the flats were granted planning permission on the basis that the communal garden was necessary to provide adequate amenity for future occupiers. The appellant does not dispute that the appeal site was intended to be garden land. The two ground floor flats have access to patio areas and the three first floor flats each have a balcony. Two of those flats are two-bedroomed (1 x 3 person and 1 x 4 person) and capable of accommodating small families. Without the communal garden, the balconies serving these flats would be their only outdoor amenity area.
16. In comparison with the original planning permission for these flats, there would be a diminution in the quantity and quality of the outdoor recreational space available to the flats. The resultant amenity space would not be appropriate to the size of the flats or scale of the development.
17. The proposals would therefore harm the living conditions of the occupiers of 8 Eileen Avenue by diminishing the quality and quantity of the outdoor amenity space as provided by the original planning permission. This would conflict with Policy DM1 of the City Plan Part 2 insofar as it requires the provision of amenity space appropriate to the scale and character of the development. I consider the magnitude of this harm to be significant given that the extent of the amenity space in question.

Living Conditions – future occupiers

18. The garden would comprise a narrow strip to the rear and one side of the house, along with a grassed area to the front, part of which would comprise a

² Reference APP/Q1445/W/20/3246606 dated 20 July 2020

parking area. Whilst providing a degree of separation from the boundaries with adjacent plots, the strip of garden to the side and rear of the house would not provide any meaningful amenity space in practical terms due to its limited width. The proposed garden to the front would however provide a more effective and functional amenity space, even if a car were parked on the proposed mesh system driveway. The size and configuration of the garden as a whole would provide private, useable amenity space with sufficient space for sitting out and allowing washing to dry.

19. Given the modest size of the dwelling, accommodating a maximum of 3 people, the proposal would be in line with the aims of City Plan Part 2 Policy DM1 insofar as it requires the provision of outdoor amenity space appropriate to the scale and character of development.

Affordable Housing

20. The appellant contends that the appeal should be considered as a stand-alone scheme separate from the flatted development at 8 Eileen Avenue. The sites have each been the subject of planning applications for residential development within a reasonably short timescale of each other. I consider this would constitute the piecemeal development of a site which cumulatively results in the quantity of housing crossing the threshold that triggers the requirement of affordable housing as set out in Policy CP20 of the City Plan Part 1.
21. This policy sets out that the Council expects the provision of affordable housing on all sites with 5 or more additional dwellings. It aims for 20% affordable housing as an equivalent financial contribution on sites of between 5 and 9 (net) dwellings. This part of the development plan was adopted in 2016 and the Council confirms that the matter of seeking affordable housing on sites providing fewer than 10 new homes was considered in the plan examination and was agreed as appropriate given local circumstances.
22. Policy CP20, however, pre-dates the current version of the National Planning Policy Framework (the Framework). Framework paragraph 65 states that affordable housing should not be sought for residential developments that are not major developments, unless they are within designated rural areas (where policies may set out a lower threshold of 5 units or fewer). The trigger point of 5 dwellings as set out in CP20 is not major development; the policy is therefore inconsistent with the Framework.
23. Little substantive evidence has been provided by the Council to demonstrate that the current local circumstances justify a lower threshold for affordable housing provision than that set out in the Framework. The development does not provide for any affordable housing and is in conflict with Policy CP20. However, on the basis of the evidence before me and the inconsistency with the framework, this policy conflict attracts limited weight.

Other Considerations

24. Set against the harm identified, the proposal would deliver a net gain of one new dwelling. 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. The addition of a single dwelling would contribute to the Council's housing stock and as such I attach moderate weight to this benefit.

There would be temporary and ongoing economic benefits from the development through construction and use of local shops and services, but given the single additional dwelling, those benefits would be limited. The use of rooftop solar photovoltaic panels would be a benefit to the sustainability of the proposed dwelling, to which I attach moderate weight.

Planning Balance

25. The appeal proposal would be harmful to the character and appearance of the area and the living conditions of the occupiers of the flats at 8 Eileen Avenue. Furthermore, the proposal would not make appropriate provision for safe and convenient access. I have judged the magnitude of these harms as significant.
26. The appeal scheme also fails to make provision for affordable housing and is in conflict with Policy CP20 of the City Plan Part 1.
27. Paragraph 225 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. 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 states that developments should ensure a high standard of amenity for existing users as well as providing safe and convenient access. Therefore, the conflict between the proposal and City Plan Part 1 Policies CS12, CS14, and City Plan Part 2 Policies DM1, DM18, DM19 and DM33 should be given significant weight in this appeal. Given the divergence of City Plan Part 1 Policy CS20 with the provisions of the Framework regarding affordable housing provision, I attribute the conflict with this policy limited weight.
28. The Council acknowledges that they cannot demonstrate a 5-year supply of deliverable housing sites and state that the reported supply is equivalent to 1.7 years. In these circumstances, paragraph 11d)ii of the Framework is applicable. 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.
29. The benefits associated with a single additional dwelling would be moderate given the Framework's objective of boosting significantly the supply of housing, and the Council's housing land supply position.
30. 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. It also seeks to ensure that places are created that have a high standard of amenity and that safe and suitable access to the site can be achieved for all users.
31. The harm I have identified to the character and appearance of the area, to the living conditions of occupiers at 8 Eileen Avenue, to safe and convenient pedestrian access, and to a more limited degree the lack of affordable housing provision, 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

32. 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