



Appeal Decision

Site visit made on 28 January 2025

by **S Harley BSc(Hons) M.Phil MRTPI ARICS**

an Inspector appointed by the Secretary of State

Decision date: 10 February 2025

Appeal Ref: APP/Q1445/W/24/3351060

94 Overhill Drive, Brighton, BN1 8WJ

- 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 R Symonds, Sanctum Homes, against the decision of Brighton & Hove City Council.
 - The application Ref is BH2023/02852.
 - The development proposed is the erection of a dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwelling at 94 Overhill Drive, Brighton BN1 8WJ in accordance with the terms of the application, Ref BH2023/02852, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal site is part of the former garden of No 94 Overhill Drive and is referred to in the evidence as No 94B. The description of development in the banner above is taken from the planning application form. On the Decision Notice the Council describes the scheme as "*Erection of 2 no dwellinghouses (1 x 2 storey, 1 x single storey) and alterations to No.94 incorporating single-storey rear extension and rear dormer. New and altered vehicle crossover. Associated landscaping.(Part-retrospective).*" This is because of other proposals at No 94. However, these have a separate planning permission Ref BH2022/03246 and the permitted house has been built. It's address is now No 96 Overhill Drive (referred to in evidence as 94A) and the appeal site would subdivide the garden of this newly built property. I have therefore considered the appeal proposal to be the erection of one dwelling.
3. The Decision Notice refers to drawing Ref 160 I. However, the appellant has confirmed there is no such drawing although there is a drawing Ref 160 J. I have considered the appeal on this basis.
4. The main Parties have had the opportunity to comment on the revised National Planning Policy Framework (the Framework) which came into force in December 2024. Comments made have been taken into account.
5. Since the refusal of the appeal proposal a Certificate of Lawfulness for a proposed single storey outbuilding¹ has been granted for a taller outbuilding in a similar position but extending up to the side boundary with a black resin flat roof planning Ref BH2024/01959. At 2.5m such an outbuilding would be taller than the appeal

¹ Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO)

proposal and more visible from the road and from ground floor windows at Mill Cottages. It could be built without the express need for planning permission. This so called “fallback” is a material consideration of considerable weight as it seems to me there is more than a theoretical chance of being built given the investment in the application for the Certificate.

Main Issues

6. The main issues are: the effect of the proposal on the character and appearance of the area; whether or not satisfactory living conditions would be provided for future occupants; and the effect on living conditions of occupiers of neighbouring properties.

Reasons

7. The appeal site is in a suburban residential area within a Built Up Area Boundary. It is some 300m from Patcham Local Shopping Centre and there are a variety of services and facilities within relatively easy reach. Residential development would be acceptable in principle provided other planning policies and material considerations are satisfied.

Character and appearance

8. The area is predominantly residential although there is a school behind the appeal site and to the side of Nos 1-3 Mill Cottages. Many of the houses are semi-detached but there are a few exceptions such as three houses now joined together at Nos 92-96 (evens) Overhill Drive and Mill Cottages, the latter of which are the oldest nearby properties. Houses in the area are generally traditional two storey with pitched or hipped/clipped roofs; many have been extended and there various facing materials. There is much variation in appearance although many of the houses have gardens to front and rear and/or driveways to the side or front.
9. Planning permission was refused for a chalet-style dwelling with rooms in the roof space. The dwelling now proposed would be single storey with a flat roof and would be positioned close to the back edge of the footpath and to the rear boundaries of Mill Cottages. There would be no side or front gardens and no off street parking. It would be attached to No 96.
10. The footprint of the building would cover much of the available open land within the curtilage so there would be relatively small rear gardens for the proposed dwelling and the newly built No 96. The density of development within the former curtilage of No 94 would be in excess of most of the surrounding properties including Mill Cottage which have larger front gardens. There would be no opportunities for tree or shrub planting in front or to the side of the proposed dwelling of the kind in many other gardens nearby. In these ways the proposal would differ in character and appearance to nearby properties.
11. The appeal site is a broadly triangular plot on a curve of the Overhill Drive where the carriageway forks and merges with Overhill Way and Highview Avenue South. Due to the topography the appeal site and its immediate neighbours are close to the highest points of the estate. However, the proposed single storey dwelling would be set down within the site behind the existing garden wall so the proposed building would not be prominent or intrusive in the views from the street. The physical structure would be below an existing wall so would not substantially affect

the readable gap between No 96 and Mill Cottages. Openings would be different heights, shapes and sizes to that of the host property and the proposed building would have a wider front elevation. However, because of the boundary wall, these differences would not be so noticeable as to result in material harm to the area or the host property.

12. Policy CP14 of the Brighton & Hove City Plan Part 2 2022 (CPP2) requires new residential development to be of a density appropriate to the identified positive character of the neighbourhood. The Urban Design Framework 2021 Supplementary Planning Document (SPD17) identifies Patcham as a low density suburban neighbourhood suitable for localised, incremental development and enhancement. Medium densities of 50-100 dwellings per hectare may be achievable where compatible with the site context and particular emphasis given to spacing between buildings and visual permeability. In this case, the lack of available space for tree/shrub planting combined with the lack of space for off-street parking and the small garden that would remain for future occupiers of No 96, are indicative of a cramped and contrived development out of character with the more spacious surroundings.
13. The building would be of brick which would be in keeping with local facing materials. The flat roof would be quite extensive. However, if set down within the site it would not be unduly prominent when viewed from the highway. There is an approximately 2m high boundary wall separating the appeal site from the backs of Mill Cottages which are parallel to the side boundary of the appeal site. There is no planning policy entitlement to a particular view but the provision of a living green roof would mean the character of the outlook from neighbouring first floor windows would be that of green space.
14. Policy DM18 of the CPP2 advises what matters is not so much the absolute size of a new building or development, but its size relative to its surroundings, and how apparent the scale of a building or development would be. In this case the proposal is small scale and would not be visually prominent.
15. I conclude that, although the proposal would result in a higher density than locally and the design would not be characteristic locally, there would be relatively little material harm to the character and appearance of the area. Moreover, the fallback position would be more harmful. I therefore find limited conflict with Policies CP12 and CP14 of CPP1; Policies DM1, DM18, DM19 or DM21 of the CPP2; the Urban Design Framework Supplementary Planning Document SPD17 and the Framework to the extent that they seek good design that protects the character and appearance of the area.

Living conditions

Future occupiers of the appeal building

16. The internal layout of the proposed two bedroom three person dwelling would meet the Nationally Described Space Standards and the requirements of Policy DM1(c) of the CPP2. Habitable rooms would have acceptable proportions and levels of light. Although there would be windows on two walls the outlook for occupiers of bedroom two would be constrained by a lowered floor level and boundary walls. There would be some conflict with the high quality homes sought by Policy DM1 of the CPP2 in this respect.

17. The setting down of the finished floor level of the proposed dwelling would result in the need for five steps down to the front door. This would conflict with the aim of Policy DM1(d) of the CPP2 which seeks accessible and adaptable accommodation in accordance with Building Regulation M4(2). However, I note that the surrounding area is not flat and many properties have steps to the front door. The appellant advises that the steps could be replaced by a ramp. Without further details it is not clear how practical a ramp would be but this might be a future option.
18. Policy DM1(f) requires useable private outdoor space and the supporting text indicates this should have regard to local context although the policy does not set specific numerical values for external amenity. The garden for the proposed dwelling would be some 26.8sqm. Whilst relatively small this would provide for a seating area suitable for a two bedroom three person dwelling and space to hang washing with some planted borders.

Occupiers of neighbouring properties

19. The garden of the new No 96 would be significantly reduced as result of the proposal. In my judgement a garden of some 35sqm would be very small for a four bedroom five person property notwithstanding public open space in the area. It would be significantly out of character with the local suburban more spacious context. I remain of this view even though seating, a drying area, cycle parking could be provided and that the theoretical amount of amenity space per potential occupier would be lower than that of No 94 following implementation of the separate planning permission. Accordingly the quality of the accommodation for occupiers of No 96 would be somewhat undermined and there would be conflict with Policies DM1 and DM20 of the CPP2 in this respect.
20. As the building would be set at lower land levels and would have a living green roof the impact on light and outlook for occupiers of Mill Cottages and those living further away would not be harmful in planning policy terms.
21. There would be more residents in closer proximity to Mill Cottages. However, it is unlikely that there would be significant levels of noise disturbance from general day-to-day occupation of the proposed dwelling in planning policy terms.
22. Even though many of the nearby properties have off street parking, when I visited the site around midday, there were a number of cars parked on the street. I was unable to visit during school pick-up and drop off times but, in my experience, it is very likely that there would be a high degree of traffic and footfall congestion and that it would be difficult to find parking spaces at such times. Local residents are likely to be substantially inconvenienced at these times and I acknowledge the strength of local feelings in this respect. However, local planning policy sets only maximum on-site parking standards. Any journeys or overspill parking arising from additional residents and deliveries as a result of the appeal proposal combined with the separate planning permission would not be justifiable reasons for refusal in this case. Moreover local congestion could be managed in other ways and so I give this matter relatively little weight in the context of this appeal.
23. For the above reasons I conclude that that satisfactory living conditions would not be provided for future occupants; and there would be a harmful effect on the living conditions of future occupiers of No 96. Accordingly the proposal would not result in high quality homes and there would be conflict with Policy DM1 and DM20 of CPP2 in these respects.

Other Matters

24. The Council has indicated that it can demonstrate about 1.7 years deliverable housing land supply which is a substantial shortfall compared to the five year supply sought by the Framework. Calculations in accordance with the revised Framework may indicate an even greater housing need. In accordance with Paragraph 11(d) of the Framework planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
25. Local residents have expressed concern about the sequential way the planning applications were submitted and decided. However, this is a matter for the developer. The developer is entitled to make a profit and this is itself would not be a reason to refuse the proposal.
26. Concerns have been raised about water pressure and whether the drainage system could cope. Neither the Council nor Southern Water raise objections in principle and I have seen no substantive evidence to lead me to any other conclusion in this respect.
27. It has been asserted that allowing the appeal could set a precedent for other development that could change the character of Overhill Drive from suburban to urban. However, from what I saw at my visit the width of the appeal site is not typical of the area so it is unlikely that many other properties would be able to accommodate such development. Accordingly this attracts little weight in my assessment.
28. The formerly Saved Policies of the Brighton & Hove Local Plan 2006, such as Policy QD27, have been superseded by CPP1 and no longer apply.

Conditions

29. I have considered the conditions proposed by the Council and the appellant in the light of the Planning Practice Guidance. It is not necessary to apply conditions relating to No 96 (referred to in the proposed conditions as No 94A) as that property has a separate planning permission. I have also removed duplicate provisions. The proposed condition 10 for vehicle parking is not necessary as no vehicle parking would be provided.
30. As well as the standard condition specifying the time limits for the commencement of development compliance with the approved plans is necessary to provide certainty (1 and 2). It is necessary for materials to be approved, for boundary treatments to be appropriate and for landscaping in the interests of the appearance of the area (3-5).
31. The Framework indicates conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In this case it is necessary because of the constrained amount of amenity space provided (8). It is also necessary to restrict the use of the flat roof to protect the living conditions of occupiers of Mill Cottages (7).
32. Provision of refuse/recycling storage is necessary in the interests of health and safety and to encourage the re-use of materials (6). Water and energy efficiency are necessary to make efficient use of resources and to reduce costs (12 and 13). However, an Energy Performance Certificate (EPC) rating 'C' would meet the

requirements of Policy DM44 of the CPP2. The inclusion of a bee brick is necessary to enhance the biodiversity of the site (14). Hard surfaces should be designed to minimise run-off in the interests of reducing flooding (9).

33. Cycle storage is required to encourage travel by means other than that of private motor vehicles (10).
34. I have used the condition proposed by the appellant in relation to accessibility measures as this accords more completely with the guidance. The condition is necessary to meet the needs of those with disabilities and the changing needs of households (11).
35. Details of the construction and maintenance of the living green roof are necessary to ensure it is satisfactorily implemented and maintained to contribute to ecological enhancement and sustainability (15).

Planning Balance and Conclusion

36. I have found that the proposal would appear cramped and contrived and out of character with the more spacious surroundings although the harm to the character and appearance of the area would be limited as the proposed building would not be prominent or intrusive in views from the street and would not result in material harm to the character and appearance of the host property. The outlook from one of the bedrooms of the proposed dwelling, the means of accessing the dwelling and the amount of amenity space retained for No 96 would be less than ideal. However, future occupiers would be aware of the limitations of outlook and stepped access and the amenity space available for No 96 would provide seating and drying areas. There would be conflict with development plan policies in these respects. Together these adverse harms are material considerations that carry moderate weight against the proposal.
37. However, the proposal would provide a dwelling of much needed size in an accessible location when the strategy for housing delivery has been unable to provide a five year supply of deliverable housing land. In a small way the proposal would support the Government's objective of significantly boosting the supply of homes. This attracts great weight in favour of the proposal.
38. The efficient use of land would be optimized, albeit at the expense of amenity space, and small windfall sites such as this can often be built out quickly. The Framework supports windfall sites and indicates densities may have to increase to meet identified housing need. There would be some economic benefits during construction and from extra expenditure in the locality although these economic benefits would be limited given the scale of the development. Together these are matters that carry moderate weight in the context of this appeal.
39. I conclude that the adverse impacts I have identified above would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. In reaching this conclusion I have had particular regard to two of the key policies of directing development to sustainable locations and making effective use of land. There would be some conflict with development plan policies but in this case the material considerations of the Framework outweigh this conflict. The appeal should succeed.

S Harley INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with plans Ref 085 001 Rev B; 085 002 Rev D; 085 150 Rev K; 085 151 Rev H; 085 160 Rev J.
- 3) Notwithstanding any details shown on the approved plans, no development above ground floor slab level of the dwelling hereby permitted shall take place until details of all materials to be used in the construction of the external surfaces of the building have been submitted to and approved in writing by the Local Planning Authority, Development shall be carried out in accordance with the approved details.
- 4) Notwithstanding the approved drawings, the dwelling hereby permitted shall not be occupied until a plan detailing the positions, height, design, materials and type of all existing and proposed boundary treatments has been submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be provided in accordance with the approved details prior to occupation of the development and shall thereafter be retained at all times.
- 5) Prior to occupation of the dwelling 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 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;

Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) The dwelling hereby permitted shall not be occupied until the refuse and recycling storage facilities indicated on the permitted plans have been fully implemented and made available for use. These facilities shall be retained for these uses at all times thereafter.
- 7) Access to the flat roof over 94B hereby approved shall be for maintenance or emergency purposes only and the flat roof shall not be used as a roof garden, terrace, patio or similar amenity area.
- 8) No extension, enlargement or other alteration of the dwellinghouse as provided for within Schedule 2, Part 1, Classes A, B, C and 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) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.

- 9) The hard surface area 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 surface to a permeable or porous area or surface within the curtilage of the property.
- 10) The dwelling hereby permitted shall not be occupied until the cycle storage facilities shown on the approved plans have been fully implemented and made available for use. The cycle storage facilities shall thereafter be retained for use by the occupants of, and visitors to, the development at all times.
- 11) The dwelling hereby permitted shall not be occupied until it has been completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) and shall be retained in compliance with such requirement thereafter. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.
- 12) The dwelling hereby permitted shall not be occupied until a minimum Energy Performance Certificate (EPC) rating 'C' has been achieved.
- 13) The dwelling hereby permitted shall not be occupied until it has achieved as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption.
- 14) The dwelling hereby permitted shall not be occupied until at least one bee brick has been incorporated within the external walls and this shall be retained thereafter.
- 15) No development above the ground floor slab level of 94B hereby permitted shall take place until details of the construction of the green roof has been submitted to and approved in writing by the Local Planning Authority. The details shall include a cross section, construction method statement, the seed mix, and a maintenance and irrigation programme. The roof shall then be constructed in accordance with the approved details and shall be retained as such thereafter.

End of Schedule