



Appeal Decision

Site visit made on 21 January 2025

by **C Rose BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 February 2025

Appeal Ref: APP/Q1445/W/24/3346661

91 Payne Avenue, Hove, BN3 5HD

- 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 Mr David Hersh, B'Ezras Hashem Ltd against the decision of Brighton & Hove City Council.
 - The application Ref is BH2023/02778.
 - The development proposed is erection of two additional storeys to create 2no one bedroom flats and 1no two bedroom flat (C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading above is taken from the appeal form and decision notice as this more clearly describes the proposal than that given on the application form.
3. During the course of the appeal an updated version of The National Planning Policy Framework (the Framework) was published on the 12 December 2024. In light of this, the main parties were given the opportunity to comment on any implications for the appeal. I have taken the responses into account.

Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

5. The appeal site comprises a flat roofed 3-storey block of flats at the end of Payne Avenue. It is located to the northern side of the residential street in a predominately residential area.
6. Adjoining the appeal site to its east is a three-storey building of a similar design and height comprising No.89 Payne Avenue. On the opposite side of Payne Avenue to the appeal site is a small terrace of two-storey dwellings with pitch roofs. The remainder of Payne Avenue comprises terraces of a similar design and height to the two-storey dwellings. At the western end of Payne Avenue is a larger block of flats known as Rayford House that is 4-storey in height with a recently constructed recessed 5th storey. Rayford House is set at a slightly lower level than the appeal site.
7. The appeal property benefits from planning permission¹ for the construction of an additional storey containing 2 flats.

¹ BH2024/00154 and previously BH2021/00528

8. Due to its position, bulk and height, Rayford House dominates the end of the street when viewed on approach along Payne Avenue. It has a much greater scale and height than the adjacent and nearby terraced properties. The appeal property, by reason of its flat roofed form, rendered finish and height, creates a suitable transition in height and form between the terraced properties and Rayford House. This would remain the case if the additional consented upper floor were constructed as the height of the appeal property would remain below that of Rayford House but only a single storey higher than No.89 Payne Avenue. As a result, it would retain a suitable transition in height, and stepping up of storey heights, between the two-storey terraced properties and No.89 to the east of the appeal site and Rayford House to the west. It would also retain a suitable transition in heights between the two-storey terrace on the opposite side of Payne Avenue and the appeal building.
9. However, by reason of the provision of an additional fifth floor, the appeal proposal would result in the appeal property being two-storeys higher than the adjacent building at No.89 Payne Avenue. This would result in an abrupt and unsympathetic increase in floor heights and bulk between No.89 Payne Avenue and the appeal site. Furthermore, it would result in the height of the appeal property exceeding the height of the closest part of Rayford House removing the gradual stepping up of heights along the northern side of Payne Avenue.
10. While the additional height in relation to Rayford House would be minimal in plan form and would remain lower than the highest part of Rayford House, from street level, the additional height and bulk would appear out of scale with Rayford House and would overly dominate the street scene and visual relationship with the terrace of the opposite side of Payne Avenue. As a result, the additional bulk and height from the upper floor would appear incongruous in the street scene.
11. Although I acknowledge that the upper floor is proposed to be recessed to reduce its prominence, it would still remain visible from the street. Furthermore, the combination of the increased height and the proposed dark standing seam metal cladding would be noticeable against the sky and would appear top-heavy and be conspicuous in contrast to the white rendered finish of the appeal building, No.89 Payne Avenue and the remainder of the street. I acknowledge that the upper floor of Rayford House comprises the use of some similar dark materials but given the proposed use of dark materials across the whole of the upper floor, combined with the increased bulk at the end of Payne Avenue, this would not adequately mitigate the top-heavy and conspicuous nature of the upper floor.
12. I have had regard to the Council stating that the general design approach would be acceptable in isolation and accept that in isolation the design approach would add interest to the building. However, due to the increased height and bulk, as detailed above, the proposal would not improve the general locality.
13. In conclusion on this matter, the upper floor of the proposal would have a significant harmful effect on the character and appearance of the area. As such, it would conflict with Policy CP12 of the Brighton and Hove City Plan Part One Brighton and Hove City Council's Development Plan March 2016 and Policy DM21 of the City Plan Part Two Brighton and Hove City Council's Development Plan October 2022. Amongst other things, these seek to ensure that development proposals raise the standard of architecture and design in the city, be well designed and scaled, sited and detailed in relation to the property to be extended, adjoining properties and to the surrounding area and takes account the existing character of the area.

Other Considerations

14. The lack of harm to living conditions of neighbouring and future occupiers, provision of secure and suitable refuse and cycle storage, and compliance with energy and water efficiency standards are requirements of local and national planning policy and guidance. In light of this, and given the small scale of the proposal, I give these matters limited weight

in my consideration. I also give very limited weight to the mention of the provision of a large green sedum roof as this is not reflected on the plans.

15. It is clear from the Council's reason for refusal that the principle of three dwellings in this location is acceptable and that it is well served by services and facilities. I also acknowledge that the proposal would provide much needed housing, boost the supply of housing, make an efficient use of land, and benefit the local economy from construction works and future occupiers using local services and facilities. These benefits, and related support from paragraphs 110, 115, 127, 128 and 129 of the Framework seeking the efficient use of land and the location of development served by a range of services and facilities, weigh moderately in favour of the proposal.
16. In contrast, I have found that the appeal proposal would cause significant harm to the character and appearance of the area. The relevant policies in this regard are largely consistent with the Framework where it states that planning decisions should reflect the character of an area and safeguard the environment. Therefore, the proposed development is contrary to the development plan as a whole and I give significant weight to the conflict with these policies.
17. The parties agree that the Council cannot demonstrate a five-year supply of deliverable housing sites, and I have no reason to disagree. As a result, paragraph 11d) ii. of the Framework is engaged.
18. As stated above, the appeal proposal would provide a number of benefits that I attribute limited and moderate favourable weight. In contrast, the adverse impacts of granting permission would significantly and demonstrably outweigh those benefits when assessed against the policies in the Framework taken as a whole, having particular regard to policies in the Framework for directing development to sustainable locations, making effective use of land, securing well-design places and providing affordable housing, individually or in combination. This is because paragraphs 129, 135 and 139 of the Framework require that developments are sympathetic to local character and are well designed and as I have found above that the proposal would not achieve this resulting in significant harm in this regard.
19. The proposal does not therefore benefit from the presumption in favour of sustainable development given by paragraph 11 of the Framework.

Conclusion

20. Overall, for the reasons given above, the proposal conflicts with the development plan taken as a whole. There are no other considerations, including the Framework, that indicate that a decision should be made other than in accordance with the development plan. The appeal is dismissed.

C Rose

INSPECTOR