



Appeal Decision

Site visit made on 20 May 2025

by V Goldberg BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2025

Appeal Ref: APP/Q1445/W/24/3356149

47 Ainsworth Avenue, Brighton BN2 7BG

- 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 A. Kyrychenko against the decision of Brighton and Hove City Council.
 - The application Ref is BH2024/01464.
 - The development proposed is the proposed demolition of existing bungalow plus ancillary buildings (Class C3) and erection of 3no. three-bedroom dwellings (Class C3) (net increase of 2no. dwellings), plus parking provision, refuse storage, soft landscaping and ecological enhancements.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address on the application form refers to Brighton and Hove in addition to Brighton. Therefore, the site address in the banner heading above has been amended to correlate with the decision notice, as this best reflects the address of the appeal site.
3. Amended plans have been submitted with the appeal. These show a change to the colour of the proposed dwellings, the addition of a privacy screen and full height louvres to the northernmost dwelling. These changes would affect the appearance of the proposal and the provision of louvres, and a privacy screen would be a fundamental change to the application. This is because the privacy screen and louvres have been incorporated to address the effect of the proposal on the privacy of neighbouring occupiers, which is a significant aspect of the Council's case. The amendments are therefore material matters affecting the determination of this appeal. Interested parties have not been given the opportunity to make representations on these plans thereby giving rise to procedural unfairness. For that reason, I will not accept them. In considering this point I have paid regard to the Holborn Studios¹ judgement which follows on from Wheatcroft².
4. On 12 December 2024, the Government published a revised National Planning Policy Framework (the Framework). Having reviewed the changes, I am satisfied that they do not affect the substantive matters of the appeal and that proceeding without further consultation with the main parties would not be prejudicial to their respective cases.

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

² Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

Main Issues

5. The main issues are the effect of the proposed development on:
- the character and appearance of the area;
 - the living conditions of the occupiers of 43 Ainsworth Avenue, with reference to privacy; and;
 - the living conditions of the occupiers of 45 and 49 Ainsworth Avenue, with reference to outlook.

Reasons

Character and Appearance

6. The appeal site is located on Ainsworth Avenue, a residential road characterised by large, detached properties in spacious plots. Notwithstanding the varying designs of properties in the road, the dwellings have a well-designed cohesive appearance due to the size and position of dwellings within their plots. Plots tend to be wide with dwellings positioned towards the front of them behind good sized front gardens. The layout of dwellings along the road positively contributes to the character and appearance of the area.
7. Despite the proposed dwellings easily fitting within the plot and preserving the building line of no's 49, 51 and 53 to the east and 43, 41 and 39 to the west, they would appear cramped within the appeal site. This is because their narrow form coupled with their staggered side by side layout would fail to maintain the characteristic plot widths and spacious nature of plots in the road.
8. The design of the proposed dwellings as three properties with a similar appearance in a row would also be at odds with the prevailing character of detached dwellings in the road having their own unique design. As a result, the appeal site would appear overdeveloped as an incongruous cluster of dwellings within the street scene. Whilst the excavation of the appeal site and comparable nature of ridge heights compared to adjacent properties would reduce the prominence of the proposal in the road, it would not overcome the harm arising from the proposed layout nor the overdeveloped nature of the site.
9. Policy CP14 of the Brighton and Hove City Plan Part One (BHCPPO)³ details that development will be permitted at higher densities than those typically found in the locality if compliance with criteria 1-6 within the policy can be demonstrated. In this case the proposal would fail to comply with criteria 1-3. This is because despite the proposal being a high standard of design, it would fail to maintain a coherent townscape, respect the character of the neighbourhood, nor would it contribute positively to its sense of place for the reasons set out above. In addition, it would fail to comply with criterion three of the policy as it does not include a mix of dwelling types, tenure or sizes. Whilst the scheme may comply with criteria 4-6, Policy CP14 requires compliance with each of the criterion.
10. Within Policy CP14 there is also a requirement for new residential development to achieve a minimum net density of 50 dwellings per hectare (dph). However, this requirement is dependent on demonstrating compliance with criteria 1-6. In this

³ Adopted in March 2016

case, the proposal would have a dph of 20 i.e. significantly below the 50 dph set out in the policy. Whilst this would be closer to the dph characteristic of this area, the plot serving each proposed dwelling would be significantly smaller than the local average plot size. Whilst there are four properties referred to by the appellant that have a plot size comparable to the proposed units, these make up 11.5% of the sample area referenced by the Council. As a result, they are not representative of prevailing plot sizes in the area as they are in the minority. Therefore, the proposal would neither maintain nor reinforce the character of the neighbourhood.

11. Reference is made to an application at 28-34 Longhill Road⁴ which approved six dwellings and has a site coverage 3.2% higher than the appeal scheme. However, this is a back land development and does not form part of the street scene on Longhill Road. As such, unlike the appeal site, the density of this development is not viewed in the context of the street scene. Accordingly, this example is not directly comparable to the appeal site.
12. The appellant also refers to an approved scheme for three dwellings at The White House, Roedean Road⁵, permission for a two storey dwelling at 39 Ainsworth Avenue⁶ and the remodelling of an existing dwelling at 22 Longhill Road⁷. These sites are provided as examples of development with comparable site coverage and support for modern and contemporary design. In terms of site coverage, except for 39 Ainsworth Avenue, the sites are located on a different road, thereby their context is not directly comparable to the appeal site. With reference to 39 Ainsworth Avenue, this detailed the demolition of a dwelling and its replacement, therefore unlike the proposal the application did not increase the dph on site. Finally with reference to these examples and others indicating support for modern contemporary design, the Council has clearly advised that it does not object to a contemporary design in principle.
13. For the reasons above, the proposal would have an unacceptable impact on the character and appearance of the area. It would therefore be contrary to policies CP12 and CP14 of the BHCPPO and Policy DM18 of the Brighton and Hove City Plan Part Two⁸ (BHCPPT). These policies seek residential development to be of a density that is appropriate to the identified positive character of the neighbourhood whilst also respecting the local context.

Privacy- 43 Ainsworth Avenue

14. No 43 Ainsworth Avenue has an L shaped garden that wraps around the front and side of the property. The side of this garden runs parallel to the front section of the appeal site, with the access road serving No 45 being located between the two.
15. Proposed dwelling number one would be close to the western boundary and at an angle directed towards the side of the garden serving No 43. As a result, the first floor balcony on the front elevation of this dwelling would provide unobstructed views into the side section of the garden serving No 43. Given that this area is part of the private garden serving this dwelling, the terrace would have an unacceptable effect on the privacy of the private amenity space serving No 43.

⁴ BH2022/03894

⁵ BH2020/01756

⁶ BH2016/06340

⁷ BH2020/03493

⁸ Adopted in October 2022

16. For the reasons above, the proposed development would have an unacceptable impact on the living conditions of the occupiers of 43 Ainsworth Avenue, with reference to privacy. It would therefore be contrary to Policy DM20 of the BHCPPT which seeks to protect amenity for residents.

Outlook - 45 and 49 Ainsworth Avenue

17. The appeal site is located between 45 and 49 Ainsworth Avenue with No 45 being set further back than other properties in the road. Alike the extant building on the appeal site, both Nos 45 and 49 are modest bungalows.
18. More than half of the depth of the flank elevation of proposed dwelling one would extend in front of no 45 and be highly visible above the boundary between these properties. Whilst the proposed ridge height of the dwellings would be directly comparable to No 45, the length of the dwellings unacceptably increases the bulk and mass of them compared to neighbouring properties. Accordingly, the proposal would dominate and negatively affect the outlook from the front terrace and windows in the front elevation serving No 45. The separation distance would not be sufficient to prevent the harm identified.
19. Proposed dwelling three would lie closest to the boundary with No 49. On site I noted a window serving a habitable room, located in the flank elevation of No 49 and facing the boundary between the appeal site and this dwelling. Given that the proposed dwelling would have a similar front building line to No 49 but would have a greater depth and run parallel to the boundary, it would appear imposing when viewed from the side window and rear garden of No 49. Whilst the separation distance between the proposal and No 49, would be greater compared to the relationship with No 45, it would not be sufficient to prevent the harm identified.
20. The staggered layout, dual pitched roofs, use of high quality materials and the site widening to the rear would not be sufficient to address the harm arising from the position and alignment of the proposed dwellings combined with their bulk and mass.
21. For the reasons above, the proposed development would have an unacceptable impact on the living conditions of the occupiers of 45 and 49 Ainsworth Avenue, with reference to outlook. It would therefore be contrary to Policy DM20 of the BHCPPT which seeks to protect amenity for residents.

Other Matters

22. Reference is made to the planning officer not attending the site during the determination of the application. Whilst it is evident that there have been changes to the area since the pre application advice, it has not been demonstrated that this has not been taken into account in the determination of the application. Instead, it is clear that the Council has considered the newly developed sites in the area as they are referred to in their statement of case. Given that the Council attended the site during the pre-application process, and I am satisfied that the Council has considered all relevant facts, this matter has not negatively affected the determination of the application.
23. Whilst amendments have been made to the scheme following the receipt of the pre application advice, they do not address the harm identified above.

Planning Balance and Conclusion

24. The proposal would cause material harm to the character and appearance of the area, the living conditions of the occupiers of No 43 Ainsworth Avenue in respect of privacy and the living conditions of the occupiers of no's 45 and 49 Ainsworth Avenue in respect of outlook. Substantial weight is afforded to these conflicts with the development plan.
25. A number of sustainability and biodiversity benefits have been incorporated within the application. Given that most of these improvements would be required to meet the mandatory 10% Biodiversity Net Gain, the improvements attract limited weight. In addition, whilst the proposal would replace a bungalow in poor condition and make an efficient and effective use of the site, it has not been demonstrated that the same benefit could not be achieved in a less harmful way. These benefits therefore attract limited weight, and the harm identified above brings the scheme into conflict with the development plan taken as a whole.
26. The proposal would deliver a net increase of two additional dwellings in the Borough. This would make a modest but useful contribution as indicated by paragraph 73 of the Framework, particularly given that the Council concedes it is unable to demonstrate a five-year supply of deliverable housing sites. Given that the Council can only demonstrate a 1.7 year housing supply and small and medium sites can make an important contribution to meeting the housing requirements of an area, the net increase of two additional houses is given modest weight.
27. Paragraph 11(d) of the Framework is a relevant consideration as a result of the Council's housing supply and delivery issues. It indicates that in the circumstances of this case 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.
28. Taking all of the above into account, I consider that the harm identified in relation to the character and appearance of the area and the living conditions of the occupiers of No 43 in respect of privacy and no's 45 and 49 in respect of outlook significantly and demonstrably outweighs the benefits when assessed against the policies in the Framework taken as a whole. Consequently, the Framework does not indicate in favour of the proposal. The proposal conflicts with the development plan and material considerations do not indicate that the appeal should be decided other than in accordance with it.
29. For the reasons given above the appeal is dismissed.

V Goldberg

INSPECTOR