



# Appeal Decision

Site visit made on 17 March 2009

by **Phil Grainger** BA(Hons) MRTPI

an Inspector appointed by the Secretary of State  
for Communities and Local Government

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:**  
**22 April 2009**

## Appeal Ref: APP/Q1445/A/08/2086855

### land to rear of nos. 8-16 St Leonards Road, Hove BN3 4QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr J Kelly against the decision of Brighton & Hove City Council.
- The application ref: BH2008/01689, dated 18 May 2008, was refused by notice dated 12 August 2008.
- The development proposed was described as the demolition of garages and the erection of three 1½ storey houses.

### Decision

1. I dismiss the appeal.

### Main Issues

2. The main issues are:
  - the effect on the living conditions of neighbouring residents;
  - the effect on local transport infrastructure, including the implications for the safety and convenience of users of the local highway network; and
  - taking the above into account together with local policy and national advice on new housing, whether the site is a suitable location for the scale of development proposed.

### Inspector's Reasoning

#### *Background*

3. The appeal site is currently occupied by 17 lock-up garages. It is in a backland location in a block bounded by Kingsway (the A259 Brighton to Worthing road) to the south, Boundary Road to the west, Seaford Road to the north and St Leonards Road to the east. The area is primarily residential. However, the adjoining properties on Boundary Road appear to be wholly or mostly in commercial use at ground level though many of them seem to have residential accommodation above. Moreover, immediately to both the north and south of the site are modest industrial or commercial premises.
4. To the south, and separating the site from the rear of the dwellings on Kingsway, is what appears to be a commercial vehicle repair garage. This incorporates a 2-storey building immediately at the end of the garden of no. 4 St Leonards Road and separated from that of no. 6 only by a narrow alley.
5. To the north is a single storey building used by a coin machine company. Unlike the repair garage to the south this building shares the access to the appeal site. Next to this vehicular access is another narrow pedestrian access running along the backs of the properties on Seaford Road. This access appears to be used very little if at all.

*Living conditions*

6. As part of the appeal proposal it is proposed to remove the existing wall between the vehicular and pedestrian accesses behind the Seaford Road dwellings. At least some of the residents are concerned that this would expose the rear of their properties leading to a loss of privacy and potential trespass, vandalism and burglary. However, I found that most (though I accept not all) of the rear gardens are bounded by substantial walls, fences and vegetation that would prevent overlooking. In any event, the existing wall between the path and the vehicular access is not high enough to prevent all views. Moreover, the pedestrian access is not secured from the road. As a result it could already be used access by anyone seeking to gain unauthorised access and this would arguably be less noticeable than if 3 houses were erected on the site providing a degree of natural surveillance.
7. I have also taken into account the potential for noise and disturbance from the use of the access to serve 3 houses. However, it already serves 17 garages as well as the coin machine premises which from my own observations (which seem consistent with the Council's) generates frequent movements. It also appears that loading of machines takes place in the open close to the end of the gardens of nos. 13 and 15 Seaford Road. Taking the existing and potential use of the access into account I consider that replacing the garages by 3 houses would be unlikely to result in a significant increase in activity sufficient to cause serious problems of noise and disturbance. I conclude that the proposed access arrangements would not be likely to have a serious effect on the living conditions of neighbouring residents.
8. As for the impact of the proposed houses themselves, the residential elements of the properties to the west appear to be primarily at first floor level or above. Taking this into account together with the relatively low height of the proposed houses (which would have their first floor rooms partly in the roofspace) I consider that there would be no material effect on light or outlook. Moreover, no windows are proposed in the end elevation at first floor level and this could be conditioned. Accordingly I consider there would be no serious harm to the living conditions of any residents living on this boundary of the site.
9. Turning to St Leonards Road, the end elevation of one of the proposed houses would be directly in line with the rear of no. 12. It would also be partly behind nos. 10 and 14, but the overlap with the latter is very limited. There are windows at both ground floor and first floor level in the rear of these properties most of which I would expect from my experience of similar houses to be in habitable rooms. The separation between the buildings would be about 11.5m, which is close to the point where I have found that two storey walls can begin to appear overbearing and give rise to an undesirable sense of enclosure.
10. After the accompanied part of the site visit I walked round the area, as requested by the appellant, in an attempt to look at a number of potentially similar relationships. However, not all of them proved to be readily visible and not all of those that were seemed to me to be in strictly comparable situations.
11. That said the relationship proposed would have similarities with that existing further south on St Leonards Road where nos. 4 and 6 back onto the two-storey element of the commercial garage. That is a flat roofed structure, but it is considerably wider than the end of the proposed houses. The existence of such a relationship is not necessarily a good reason for repeating it in new

- developments. However, in this case it does not appear to have resulted in nos. 4 and 6 being unattractive or unable to make a proper contribution to the housing stock of the area. Taking all this into account, together with the low eaves and ridge height of the proposed houses and the intervening outbuildings and vegetation, I consider that on balance they would not appear unacceptably overbearing or make the existing houses feel unreasonably enclosed. Moreover there would again be no first floor windows to cause overlooking.
12. In addition, given the separation and the modest height of the houses I consider that, taking into account the advice in the BRE Report entitled '*Site Layout Planning for daylight and sunlight*', there would be no material loss of sunlight or daylight to any of the surrounding houses. Given the location of the proposed houses to the west of the St Leonards Road properties and close to their boundaries, there is likely to be some loss of light to parts of the gardens at some times of the day and year. However, the gardens would continue to receive some sunlight from the south and I consider the effect would not be so great as to require the withholding of planning permission. In addition, whilst the Seaford Road properties are to the north, the separation would in my judgement be sufficient to avoid not only any serious effect on the light received by their gardens but also any significant overlooking problems.
13. I accept that those living around the site would be well aware of the proposed development if it took place. However, despite the concerns of the Council and at least some of those residents, I consider that the effect on their living conditions would not be so great as to be an overriding objection to the proposal. Accordingly there would be no material conflict with those development plan policies that deal with such matters, in particular Policy QD27 of the Brighton and Hove Local Plan.

*Highways and transportation matters*

14. The Council as Highway Authority have not objected to the proposal. I have taken that into account. However, in walking round the area I found the on-street parking conditions to be amongst the worst I have ever experienced. Not only were vehicles parked on lengths of nearby streets where white lines indicate that they should not, but I saw several examples of double parking on St Leonards Road. Furthermore, this was not always for short periods, as sometimes happens to allow unloading. Indeed some vehicles remained double parked for the whole of the time that I was in the area – nearly an hour.
15. I have no evidence that this causes accidents but it inconveniences other road users. Moreover, it is difficult to see how the appeal development can do other than make the situation worse. On the basis of the appellant's survey only one or two of the garages appear to be used for parking by local residents (and that would be consistent with the lack of evidence of frequent vehicular access to many of them). However, the existing conditions are so poor that even one or two extra vehicles parked on-street could have a significant effect.
16. In addition, whilst provision of one parking space per dwelling complies with the Council's standards I have seen no clear evidence that, especially when visitors are taken into account, it would be sufficient to avoid some increased demand for on-street parking. In the circumstances I observed even a modest increase could have a significant effect on the convenience of road users and lead to increased 'parking stress' for local residents. I have had regard to the advice in Planning Policy Guidance Note 13. However, without firm evidence

that the probable level of car ownership/usage of occupiers would make a demand for on-street parking unlikely to occur on a frequent basis, I consider that this is one of the exceptional cases where it may be appropriate to require more parking than the developer wishes to provide.

17. My concerns in respect of these matters are increased by what appears to be the frequent blocking of the access by vehicles making deliveries to the coin machine premises. When I arrived in the area there were two such vans parked in the access way, which was completely blocked. The vans had been moved before the appointed time of the site visit but two vehicles were there again before I finished making my observations in the wider area. Moreover, this appears to be consistent with the Council's own observations. In my view this is significant as, whatever the legal rights of the matter, this conflict seems likely to result in additional vehicles, be they coin machine vans or the cars of occupiers of the proposed houses, waiting or parking on St Leonards Road from time to time. Again this would exacerbate the existing situation.
18. I am aware that these matters were not a reason for refusal. However, some of them were touched on by the Council and others were raised by local residents. Moreover they are very apparent when walking round the area. On the information currently available I do not share the appellant's view that the proposal would have little if any impact on parking in the locality.
19. In addition, there seems to be no dispute that, in the absence of off-site highway works and/or improvements to sustainable modes of travel, the proposal would add to the pressure on transportation infrastructure in the wider area. Moreover, without a contribution towards such improvements the proposal would conflict with Local Plan policy, in particular Policy TR1. Highway officers noted that a planning obligation would be needed to deal with this but no such obligation has been produced.
20. The Council have proposed that the matter be dealt with by a condition, but it is well established that planning conditions cannot require monetary contributions. Moreover, whilst the suggested condition refers only to a scheme being produced in this case it is as clear as it is possible to be that the only 'scheme' that would achieve the desired end is a financial contribution. Indeed a note attached to the Council's decision notice indicates the precise sum sought. The appellant's agreement to such a condition is not itself sufficient to make it reasonable and, ultimately, lawful and enforceable.
21. In my view, this matter cannot properly be dealt with in this way and thus it has not demonstrated that the proposal makes adequate provision for the transportation needs to which it would give rise. Taken together with my concerns regarding on-street parking I conclude that at the present time at least the proposal conflicts with Local Plan Policies TR1 and SU15 and, arguably, the aims of Policy TR7.
22. I have also noted the views of some residents of Seaford Road that the removal of the wall alongside the access would give rise to safety concerns. However, even if pedestrians and vehicles shared this access the likely numbers involved suggests that this would not be a serious problem given that in my experience shared surfaces are often acceptable as an access to more than 3 dwellings. In any event, my observations suggest that at present very little use is made of the rear pedestrian access, which is almost impassable. This matter has not therefore contributed materially to my conclusions.

*Other matters and overall conclusions on the suitability of the site for the proposed development*

23. I have concluded that 3 dwellings could be accommodated on the site in the form shown without causing serious harm to the living conditions of neighbouring residents and would not conflict with the aims of Local Plan Policy QD27. In addition, these are modest two-bedroomed houses with a low eaves and ridge line and a small scale appearance. I do not share the Council's view that they require a larger garden area to avoid looking cramped. Neither do I consider the detailed design of the houses to be unsatisfactory and, especially given their inconspicuous location, I consider that they would have no adverse effect on the character or appearance of the area. In short I consider there is no conflict with those development plan policies that deal with such matters and seek to ensure a high quality appearance that is suited to its location, including Local Plan Policies QD1, QD2 and QD3, especially when regard is had to Policy HO4.
24. I have taken into account that, on the submissions I have seen, the Council does not have a 5 year supply of housing land, together with the advice in Planning Policy Statement 3 (PPS3) which suggests that in such circumstances proposals should be considered favourably. However, that does not, in my view, extend to proposals that would cause serious harm to other important matters. Moreover, in this case it has not been demonstrated that the development can be accommodated on the site without adding to on-street parking problems in the area. Although the increased demand may be small the existing situation is in my judgement so poor that even a few extra parked vehicles could have a serious effect. Furthermore, no contribution has, to date, been satisfactorily secured towards transport infrastructure requirements.
25. In addition, although the garages are beginning to show signs of deterioration the site does not currently appear to cause any serious harm to local residents. In particular, the poor quality of the surfacing is not readily visible from outside the site except perhaps from a few high windows. In my view, despite the advice in PPS3, the circumstances taken as a whole do not indicate that permission should be granted for the scheme in its current form and on the basis of the information currently available to me.
26. I have considered all the other matters raised. However, none of them is in my judgement sufficient either individually or in combination to have a material effect on the balance of considerations. For the reasons set out above and having taken into account all other material considerations raised I therefore conclude that the appeal should not succeed.

**P Grainger**

INSPECTOR

