



Appeal Decision

Site visit made on 9 May 2018

by **G J Fort BA PGDip LLM MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 June 2018

Appeal Ref: **APP/Q1445/W/18/3195570** **148 The Ridgway, Brighton BN2 6PA**

- 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 Peter Dabner (JVIP Group) against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/03237, dated 25 September 2017, was refused by notice dated 4 December 2017.
 - The development proposed is the demolition of the garage and the erection of 2 No three bedroom single-dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the garage and the erection of 2 No three bedroom single-dwellings at 148 The Ridgway, Brighton BN2 6PA in accordance with the terms of the application, Ref BH2017/03237, dated 25 September 2017, subject to the conditions in the schedule to this decision below.

Procedural matters

2. Differing addresses are given on the appeal and application forms. In the banner heading above, I have used the address as it appears on the application form. The extent of the site is clear from the submitted drawings.
3. The appellant submitted an additional site plan¹ with their appeal documents, which did not form part of the planning application that led to this appeal. However, as this clearly intends to illustrate the inter-visibility of the appeal site and adjacent properties, and does not seek to secure any amendment to the scheme as applied for, I consider that it has resulted in no material changes to the proposal. I will consider the contents of the additional site plan on this basis, and as the document was submitted in accordance with the timetable, I consider that no interests would be prejudiced as a result of me taking it into account in my decision.

Main Issue

4. The main issue in this case is the effect of the proposed development on the living conditions of the occupants of adjacent properties in terms of outlook, privacy, noise and disturbance.

¹ Drawing No 1607-101A

Reasons

Site, Surroundings and Proposed Development

5. The appeal site is a part of the large plot of 146 the Ridgway situated a considerable distance behind that dwelling and its neighbour (No 148). Intermittently bounded by hedges and fences the appeal site would be accessed via the existing driveway to the side of No 146. The immediate surroundings of the appeal property are residential in character with the gardens of other dwellings bounding it. The level of the appeal site is elevated to a considerable degree from the adjacent Millyard Crescent.
6. The proposed development would demolish No 146's existing garage to facilitate deeper access to the plot. Two detached dwellings would be introduced of two storeys and an L-shaped footprint, set in from their plot boundaries with their fronts facing towards the rear garden of 2 Millyard Crescent. A replacement garage would be constructed for No 146 deeper into the plot than the one currently at the site.
7. The plot benefits from extant planning permission² for one dwelling. At my site visit I saw that the acoustic fencing required by a condition attached to this extant permission was being installed- along with other signs of development. The extant permission would provide a use similar in nature, though admittedly not in amount, to the appeal proposal. Taken together, these considerations lead me to the view that there is a realistic prospect of the development consented by the extant permission coming forward, and consequently, it is a strong fallback position that attracts significant weight in the overall planning balance.

Living Conditions

8. There would be a considerable gap between the dwellings proposed and the one existing at No 2. Moreover, the front elevations of the proposed dwellings would have an oblique relationship with No 2. Furthermore, the proposed houses would not be substantially closer to the boundary with No 2 than the dwelling mooted in the scheme subject to the extant permission. These considerations, taken together, lead me to the view, despite the larger site coverage of the proposed development when compared to the scheme subject to the extant permission, that it would not cause a material depletion of outlook for the occupants of No 2, either from its garden or from its habitable room windows.
9. Moreover, I saw on site that the level of No 2 is considerably lower than that of the appeal site- and that as a consequence views from the upper windows of the proposed dwellings would be drawn over and across No 2's garden and roof. Furthermore, the marked change in levels would restrict direct inter-visibility between habitable room windows. Moreover, tall mature vegetation, within the control of No 2, exists along the boundary, and could be strengthened by further landscaping as part of the proposed development. These matters taken together with the oblique relationship between the properties that would exist would serve to limit overlooking of the windows and garden of No 2 to a degree that would not result in any harmful privacy effects to the occupiers of that property.

² Council reference: BH/2017/00936

10. I am mindful of comments from a neighbouring resident regarding the effects of the proposed development on the outlook available from the existing timber outbuilding which would be to the rear of the proposed development. That timber building is located close to the boundary, and I saw that it had a considerable amount of fenestration on the elevation that would face the proposed dwellings. Nevertheless in this respect I am once again mindful of the extant permission which would locate a dwelling in more or less the same relationship with that existing timber building as the proposed development would. Consequently, I consider that the proposed development would result in no more materially harmful effects in this regard than the extant permission's proposed dwelling, and as a result its effect on the outlook available from this neighbouring structure is not a matter that weighs against the proposed development in the overall planning balance.
11. The proposed development would introduce 2 additional parking spaces in association with the uses within the plot over and above the provision mooted in the extant permission. The presence of another dwelling on the plot would undoubtedly exacerbate vehicular comings and goings over and above the level that would occur as a result of the extant and permitted development at the site. However, I consider that it would not result in so significance an increase sufficient to cause materially more noise and disturbance in association with the use of the plot. In arriving at this view, I am mindful that conditions could be attached to secure the deployment of acoustic fencing and additional boundary planting both to muffle any noise, and to reduce headlight penetration into neighbouring plots and buildings. In arriving at this view, I am mindful of the response from the Local Highway Authority which anticipates no significant increase in trip generation would occur as a result of the proposed development.
12. Accordingly, these matters taken together, lead me to the conclusion that the proposed development would avoid material harm to the living conditions of the occupants of 2 Millyard Crescent and other adjacent dwellings. For these reasons, it would not conflict with Policies QD27 or SU10 of Brighton and Hove's Local Plan (adopted July 2005); or Policy CP12 and CP14 of Brighton and Hove's City Plan- Part One (adopted March 2016) (the City Plan). Taken together, and amongst other matters, these policies seek to ensure that development minimises the impact of noise on the occupiers of neighbouring properties; and avoids material nuisance and loss of amenity to the occupiers of adjacent uses.

Other Matters

13. I note comments regarding the potential for increased on-street parking as a result of the proposed development. However, I note that the local highway authority considered that the appeal scheme would not result in a significant increase in trip generation. Any additional on-street parking that could occur as a result of the proposed development would be therefore unlikely to cause a harmful effect to either the residential amenity or highway safety of its surroundings.
14. The access to the appeal site is on to the Ridgway, which I understand to be a bus route with frequent services. However, the building operations involved with the proposed development are of a reasonably modest scale, and as a result I consider that construction vehicles accessing the site would not cause

any undue highway safety or transport impacts. In arriving at this view I note that the local highway authority made no objections relating to this aspect of the proposed development.

15. I note references to wildlife being observed on the appeal site- however, I have been supplied with no substantive evidence that would support these comments. A landscaping condition could be attached to secure adequate measures in these regards, which could be attractive to wildlife. Moreover, statutory schemes outside of the Planning Acts, including the Wildlife and Countryside Act 1981 govern the protection of wildlife interests. Consequently, this consideration does not weigh against the scheme in the overall planning balance.
16. I note comments regarding the access to the site for fire appliances - particularly concerning the restrictions on their turning ability that could be caused by the proposed garage. However, I consider that the necessity for fire appliances to visit the site would be rare, if at all, and this matter has not weighed materially against the appeal development in this instance.
17. The proposed development does not include any affordable housing- however, I have not been supplied with any planning policies to suggest that this would be a requirement for a scheme of this modest scale. This matter does not therefore weigh against the scheme in the overall planning balance.
18. I have no substantive evidence before me to suggest that the proposed development would be unable to make acceptable arrangements for foul and surface water drainage. These matters do not therefore weigh against the appeal scheme in the overall balance.
19. I note comments regarding the extant planning permission- however, this appeal has focused on the planning merits of the proposed development as presented. A consideration of the planning merits of the extant scheme is therefore outside the scope of this appeal.
20. Interested parties made reference to the disputed ownership of the site. However, this is essentially a private matter that is not determinative in my assessment of the planning merits of the appeal.
21. Accordingly, none of these other matters alter my conclusions in respect of the main issue given above. Neither are they of a sufficient weight, either taken individually or together, to tip the balance against the appeal scheme's approval.

Conditions

22. According to paragraph 206 of the National Planning Policy Framework, conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have assessed the suggested conditions supplied by the Council on this basis and have made modifications to the wording where they are attached in the interests of clarity.
23. In the interests of certainty I have attached a condition which specifies the approved plans. In the interests of the character and appearance of the finished development and its surroundings, the amenity of both its future occupants and the occupiers of adjacent properties, and the biodiversity of the

appeal site I have attached conditions relating to approval of details of its landscaping and materials. I have amalgamated the Council's condition relating to hard surfacing with the landscaping conditions in the interests of clarity, and to ensure that the development makes appropriate arrangements to manage surface water run-off. I have modified the wording of the landscaping condition to refer to planting across the site, as the implementation of boundary planting would help to address the perception of overlooking, and headlight penetration that may occur as a result of the proposed development.

24. I have attached a condition to ensure that the proposed development makes acceptable arrangements for cycle parking, to meet the requirements of local and national policy in terms of balancing the transport system in favour of sustainable transport modes. However, as it is unclear from the submitted plans where the bicycle parking is proposed, I have found it necessary to modify the wording and requirements of the Council's suggested condition.
25. In the interests of the amenities of the occupants of adjacent dwellings I have attached a condition to ensure that a scheme of acoustic fencing is installed in line with details that have been approved by the Council. I note that this element of the extant permission was being installed at the time of my site visit- nevertheless, I consider it both reasonable and necessary to secure implementation of this element in connection with the appeal scheme. Given that this aspect of the scheme is integral to its approach to safeguarding the residential amenity of the surroundings, I consider that a requirement to ensure pre-commencement compliance with this condition is fully justified.
26. In the interests of energy and water efficiency, and to meet the requirements of Policy CP8 of the City Plan, I have attached conditions setting out requirements in relation to these matters.
27. In the interests of the amenity of the future occupants of the proposed development and of its environmental quality and that of its surroundings, I have attached a condition relating to the provision of refuse and recycling storage.
28. The Government's Planning Practice Guidance establishes that conditions which seek to restrict the implementation of permitted development rights arising from the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) will rarely pass the test of necessity and should only be used in exceptional circumstances. I consider that there are no exceptional circumstances in this case to justify the extensive restrictions in the Council's suggested condition, and consequently find that it is unnecessary to attach it.
29. The junction of Crescent Drive South and the Ridgway is at some distance from the appeal site. Consequently, the relevance to the development to be permitted of the suggested condition requiring the installation of drop kerbs there has not been established, and consequently, I have not attached it.

Conclusion

30. The proposed development would not conflict with the development plan insofar as the policies that have been drawn to my attention are concerned. Accordingly, for the reasons set out above, and taking into account all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Topographical Survey and Site Photos Drawing No. 1607-01A; Site Plan and Site Section Drawing No. 1607-101; Plans, Elevations and Site Location Plan Drawing No. 1607-102; Existing & Proposed Garage Drawing No 1607-103.
- 3) No development above ground floor slab level of any part of the dwellings or garage hereby permitted is to take place until samples of all materials to be used in the construction of the external surfaces of the buildings have been submitted to and approved in writing by the local planning authority, including:
 - i) samples of all brick and tiling (including details of the colour of render/paintwork to be used);
 - ii) samples of all cladding to be used, including details of their treatment to protect against weathering;
 - iii) details of the proposed windows and doors.Development shall be carried out in accordance with the approved details.
- 4) Prior to first occupation of the development hereby approved, a scheme for landscaping shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following:
 - i) Details of all soft surfacing;
 - ii) Details of all hard surfacing, which is to be made of porous materials or installed in such a way as to direct runoff water from the hard surface to a permeable or porous area or surface within the site;
 - iii) Details of all boundary treatments;
 - iv) Details of all proposed planting, including numbers and species of plant, and details of size and planting method of any trees.
- 5) All hard landscaping and means of enclosure shall be completed in accordance with the approved scheme prior to first occupation of the development. All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the building or the completion of the development, whichever is the sooner; and 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, unless the local planning authority gives written consent to any variation.
- 6) Notwithstanding condition no. (2) the development hereby permitted shall not be occupied until details of the bicycle parking have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details, and completed prior to the first occupation of the dwellings hereby approved.

- 7) Notwithstanding condition no. (2) no development shall take place until details of acoustic fencing to be installed have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and completed prior to the first occupation of the dwellings hereby approved.
- 8) The dwellings hereby permitted are not to be occupied until they have been constructed to achieve a water efficiency standard using not more than 110 litres per person per day maximum indoor water consumption. The development is to be maintained as such in perpetuity thereafter.
- 9) The dwellings hereby approved are not to be occupied until they have achieved an energy efficiency standard of a minimum of 19% CO₂ improvement over requirements set out in Part L of the Building Regulations (2010) (as amended) (TER Baseline).
- 10) No dwelling shall be occupied until the refuse and recycling storage facilities shown on Site Plan and Site Section drawing no. 1607-101 shall have been installed and those storage facilities shall thereafter be retained for those purposes at all times.