



Appeal Decision

Site visit made on 11 June 2018

by C. Jack, BSc(Hons) MA MA(TP) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd July 2018

Appeal Ref: APP/Q1445/D/18/3198273

12 Rushlake Road, Brighton, BN1 9AD

- 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 John Blackburn-Panteli of Brighton Student Developments Ltd against the decision of Brighton & Hove City Council.
- The application Ref: BH2017/01810 dated 25 May 2017 was refused by notice dated 16 March 2018.
- The development is alterations to the existing outbuilding in rear garden including replacement of existing garage door, alterations to fenestration and installation of hand railing.

Decision

1. The appeal is allowed and planning permission is granted for alterations to the existing outbuilding in rear garden including replacement of existing garage door, alterations to fenestration and installation of hand railing at 12 Rushlake Road, Brighton, BN1 9AD in accordance with the terms of the application Ref: BH2017/01810 dated 25 May 2017 and the Site Location Plan, Block Plan, and drawing 2017/54 submitted with it, and subject to the following condition:
 - 1) The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 12 Rushlake Road, Brighton, BN1 9AD.

Preliminary Matters

2. The development was described on the application form as a "retrospective application to regularise the building permitted under Council Ref: BH2011/02592 including alterations to the garage door, an additional window, an additional roof light and an additional handrail". This was amended during the course of the application to that given above, as specified on the Council's decision notice. The Council considered the development as 'retrospective' and I saw during my site visit that works including a garage door, roof light, hand rail and an additional window have been carried out at the outbuilding which is the subject of this appeal.
3. I made an internal inspection of the appeal building and saw that changes to the internal layout of the outbuilding have also been undertaken, largely in accordance with the submitted plans, albeit there is an internal wall in the bedroom in place of the garage door opening indicated on the submitted floor plan 2017/54. The accommodation provided now essentially comprises of a bedroom, living room with kitchen area, a shower room and a dedicated entrance door, essentially amounting to the primary living accommodation

necessary for use as a single dwelling. Case law¹ has established that even where accommodation provides facilities for independent living, it does not necessarily become a separate planning unit from the main dwelling. This is a matter of fact and degree.

4. The Council's reasons for refusal refer to the creation of a self-contained unit of accommodation and it is clear from the officer report that it considered the application on the basis that the appeal building would be capable of use as a self-contained dwelling. The appellant maintains that the application is for a householder development relating to planning permission BH2011/02592 for the erection of a detached single storey building incorporating workshop, bedroom and shower room in the rear garden at 12 Rushlake Road (No 12). The appellant clearly stated that the formation of self-contained accommodation was not proposed in the application, and it is not referenced in the description of the development. Condition 4 of that planning permission limits the occupation of the building solely to purposes incidental to the occupation and enjoyment of No 12, and not as a separate planning unit. The appellant's appeal documents are similarly clear that a separate dwelling is not proposed, and that a condition could be imposed to continue to restrict the occupation of the appeal building to ancillary purposes.
5. The Council's report indicates that No 12 is a 6-bed House in Multiple Occupation (HMO). This has not been confirmed by the appellant, who has sought permission on the basis of a householder application and, therefore, that No 12 is a dwelling/house. If No 12 is in multiple occupation it may not be a dwelling/house, which would call into considerable doubt whether an ancillary residential use would be, or could be, delivered. However, this cannot be satisfactorily established from the evidence before me.
6. The Council's reasons for refusal also refer to subdivision of the site, and I saw that various close-boarded fences and gates have been erected, both near the appeal building and the rear elevation of No 12. These appear to mark out separate, enclosed, outside areas at the appeal building and at No 12, with a hard standing area in between. The effect of this on the ground appears to be to subdivide the site. However, no form of subdivision, including the fences and gates I saw in situ, is included in the application. Therefore, this matter is outside the scope of the appeal before me.
7. The appeal building did not appear to be occupied at the time of my visit, although the various items of furniture inside, including a bed, dining table and sofa, indicate that it has been at some point, consistent with the Council's view. Furthermore, the information provided does not show who the proposed occupiers of the appeal building would be, or how the appeal building would be occupied and used by people forming a single household with the occupiers of No 12.
8. I have considered the context above. It is clear that the appellant has made a householder application for external works to the appeal building, on the express basis that it is proposed to remain ancillary to No 12. I have determined the appeal on the basis of the application that was made to the Council, and accordingly I have assessed the main issues below in the context of an ancillary building. My assessment and conclusions in respect of the main issues may have been different in the circumstances of an application for use of

¹ *Uttlesford DC v SSE & White [1992]*

the appeal building as a self-contained dwelling unit, including because the effects, evidence, and policy context of such a scheme may differ significantly.

9. Any matters of concern to the Council not forming part of the application, including in relation to the occupancy and use of No 12 and the appeal building, subdivision of the site, creation of a separate dwelling unit, and compliance with conditions, are the responsibility of the Council to address through other mechanisms. Any future applications in this regard would be a matter for the Council in the first instance. Therefore, I have not considered them in this appeal.

Application for costs

10. An application for costs was made by Mr John Blackburn-Panteli of Brighton Student Developments Ltd. against Brighton & Hove City Council. This application is the subject of a separate Decision.

Main Issues

11. The main issues are the effect of the proposed development on:
- i) The character and appearance of the area;
 - ii) The living conditions of neighbouring occupiers, with particular regard to noise and disturbance and the provision of outdoor space; and
 - iii) The living conditions of future occupiers, with particular regard to light, internal space, and outlook.

Reasons

Character and appearance

12. The front elevation of the appeal building is partially visible from Rushlake Road, down the drive. In this view, the garage door in the gable end is the main visible feature, and the appearance of the building is commensurate with a typical garage. I saw that detached garages set back behind the houses are a common feature in the local area. As a result, the external appearance of the appeal building is not out of keeping here. The additional window, roof light and handrail are very modest in scale and nature, are effectively screened from public view, and have no discernible adverse effect on the local street scene.
13. I therefore conclude that the development does not harm the character and appearance of the area, consistent with the expectations of Policy CP12 of the adopted Brighton and Hove City Plan Part One 2016, which sets out criteria in relation to urban design, including that development should respect the diverse character and urban grain of the city's identified neighbourhoods.

Living conditions – neighbouring occupiers

14. The detached appeal building is situated to the rear of No 12, offset from the rear elevation of the main property. The handrail and additional window are located to the side of the appeal building and are very modest in scale and character. The additional window, to the bedroom, does not face No 12. The roof light is positioned in the slope facing away from No 12, from where it is not readily visible. The garage door is of altered design, materials and hanging from that shown on the previously permitted plans, but this has no

significant effect on the living conditions of occupiers of No 12, including in relation to the provision of outdoor space.

15. I saw that a close-boarded fence encloses a very modest yard-type area adjacent to the rear elevation of No 12. As noted above, this fence, and any resulting subdivision of the site, does not form part of the application before me.
16. I note that the development has increased the overall provision of living accommodation in the appeal building, compared to the previous planning permission. However, it remains a one bedroom unit of modest internal proportions which, on the basis of occupation ancillary to No 12 as a main dwelling/house, would only give rise to very modest intensification of domestic activity at the site. Given that the overriding character of the locality is residential, and that ancillary occupation of the building would be as part of a main household at No 12, I am not persuaded that this would be significantly at odds with existing domestic garden land, or that harm to the living conditions of neighbouring occupiers would be likely to arise as a result.
17. I therefore conclude that the development does not harm the living conditions of neighbouring occupiers, with particular regard to noise and disturbance and the provision of outdoor space. It therefore accords with retained Policy QD27 of the Brighton and Hove Local Plan 2005, which among other things seeks to protect the amenity of adjacent residents from material nuisance arising from development. This policy pre-dates the National Planning Policy Framework (the Framework) but it generally consistent with paragraph 17 therein, which among other things seeks to ensure a good standard of amenity for all existing occupants of land and buildings. I have therefore given it significant weight in this appeal.

Living conditions – future occupiers

18. Sources of natural daylight to the living room are limited to the obscure glazed entrance door, a small window adjacent to that door, and a single roof light. My visit took place on a moderately bright afternoon, with sunny intervals. While these sources of daylight are modest in scale and number, I saw that the living area was not unduly dull or oppressive, with the roof light adding significant natural daylight into the room. The bedroom and bathroom are each adequately served by their single windows. There is no technical evidence before me, such as light-level data or a daylight and sunlight assessment. However, on the basis of my experience in the building, I am not persuaded that natural daylight is so restricted as to have a significant adverse effect on the living conditions that would be experienced there.
19. The outlook from the living room window and bedroom window is onto the paved area immediately outside. This outlook is of limited depth and is partially restricted by the nearby close-boarded fence, albeit the relative floor level of the appeal building allows for some outlook above the fence. The bathroom window and front door are obscure glazed and thus offer no meaningful outlook. The roof light offers only a limited upward outlook. I consider that while somewhat limited, the outlook from the main living areas in the building, being the bedroom and living room, is not so restrictive that it would have a significant adverse effect on the living conditions of future occupiers of the building. This is particularly the case given that the stated use of the building is as ancillary, rather than primary, accommodation.

20. I note that the overall floor space provided is modest at around 30m², taking the Council's figure, which is not specifically disputed by the appellant. I also note that this falls short of the 37m² expected by the government's Nationally Described Space Standard for a one bedroom unit with a shower room. However, the Written Ministerial Statement of 25 March 2015 makes it clear that such standards can only be applied where there is a relevant current development plan policy, and I have not been directed to such a policy. Consequently, this is not a matter which carries any significant weight against the proposal. Nonetheless, I consider that the internal layout and space provided are generally adequate for the scale and ancillary nature of the unit as applied for.
21. I conclude that the development would not harm the living conditions of future occupiers, with particular regard to light, internal space, and outlook. Consequently, it would accord with the requirements of retained Policy QD27 of the Brighton and Hove Local Plan 2005, which among other things seeks to protect the amenities of a development's future occupiers including in respect of light and outlook. This policy pre-dates the Framework but is generally consistent with paragraph 17 therein, which among other things seeks to ensure a good standard of amenity for future occupiers. I have therefore given it significant weight in this appeal.

Conditions

22. I have considered the conditions suggested by the Council and the appellant. As the development has been carried out, the standard time limit is not necessary and neither is a condition requiring development to be carried out in accordance with the approved plans. However, I have specified the relevant plans in the decision, in the interests of certainty. A condition requiring that occupation of the appeal building is solely for purposes ancillary to the indicated residential use of the main dwelling is necessary in the interests of the character and appearance of the area and the living conditions of nearby and future occupiers. I have amended the wording from that of previous condition 4 in the interests of clarity and preciseness, having regard to paragraph 206 of the Framework and relevant advice in the Planning Practice Guidance. This does not significantly alter the essence of the condition.

Conclusion

23. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

Catherine Jack

INSPECTOR

