



Appeal Decision

Site visit made on 22 January 2019

by Philip Willmer BSc Dip Arch RIBA

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

Decision date: 27th March 2019

Appeal Ref: APP/Q1445/W/18/3208498

9 The Upper Drive, Hove, East Sussex, BN3 6GR.

- 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 Copsemill Properties Ltd against the decision of Brighton and Hove City Council.
 - The application Ref BH2017/04139, dated 14 December 2017, was refused by notice dated 15 May 2018.
 - The development proposed is described as *extension and alterations to provide enlarged 2 bed flat at first floor level, and 2 no additional flats at second and third floor level, and associated parking.*
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Decision

1. The appeal is allowed and planning permission is granted for extension and alterations to provide enlarged 2 bed flat at first floor level, and 2 no additional flats at second and third floor level, and associated parking at 9 The Upper Drive, Hove, East Sussex, BN3 6GR in accordance with the terms of the application, Ref BH2017/04139, dated 14 December 2017, and the plans submitted with it, subject to the conditions set out at the end of this decision letter.

Procedural Matters

2. Following the submission of this appeal, planning permission was granted, Ref: BHW20189/03117, on the 17 January 2019 for the extension and alterations to the appeal property to provide an enlarged two bed flat at first floor level, and two number additional flats at second floor level, and associated parking.
3. The first floor of the approved scheme is identical to the appeal proposal. However, at second floor level, apartment 26 is larger than that approved, with the inclusion of a master bedroom and en-suite located at the north-eastern corner of the building. Apartment 27 is also larger, due to the inclusion of an additional bedroom and associated en-suite, again at the north-eastern corner.

Main Issues

4. I consider the main issues to be:
 - the effect of the proposed development on the character and appearance of the surrounding area; and,
 - the effect of the proposal on the living conditions of the occupiers at number 13 The Upper Drive having particular regard to visual impact and privacy.

Reasons

5. The appeal relates to Block D, a part two-storey, part three-storey block of four two-bedroom flats and one, one-bedroom flat on the northern side of The Upper Drive.
6. Block D is one of five similar blocks, comprising some 41 flats in total, that vary between three and four storeys in height. It is located at the eastern end of the development and was built to be lower in height than the neighbouring blocks to the west.
7. As I saw, the area has been much developed such that the prevailing character of the north side of the road comprises generally flatted development, with only a few remaining traditional dwelling houses.

Character and appearance

8. The appellant proposes the vertical extension of the block to provide an enlarged two-bedroom flat at first floor level (apartment 23), one, two-bedroom flat at second floor level (apartment 26), and one, three-bedroom flat and terrace at third floor level (apartment 27), with off-street car and cycle parking.
9. The proposed extension would result in Block D being almost identical in height to the neighbouring blocks to the west. Nevertheless, the design does allow for a step down in height adjacent to the boundary to 13 The Upper Drive, a large detached house. The proposed extension would follow the design approach of the original development and would represent only a limited increase in built form over the previously approved scheme. Accordingly, I consider that the increase in height would not, in this case, be out of character in its context.
10. The design proposes external materials to match the existing. In my judgement this would be the correct approach in this context complying with Saved Policy QD14 of the Brighton and Hove Local Plan 2005 (Adopted July 2005) (LP) which requires materials to be sympathetic to the present building. Additional tree planting and landscaping has been suggested by third parties. However, given that all of the additions proposed are at the upper floor levels, I am not persuaded that this would reduce the visual impact of what in any case would be a well mannered complementary design in terms of its massing and design detailing.
11. I therefore conclude, in respect of the first main issue, that the proposed development would not cause harm to the architectural integrity of Block D or the existing development as a whole and thus there would be no harm to the prevailing character and appearance of the area.
12. It would therefore accord with saved Policy QD14 of the Brighton and Hove Local Plan 2005 (Adopted July 2005) (LP) and Policy CP12 of the Brighton and Hove City Council's Development Plan - *Brighton and Hove City Plan Part One* (Adopted March 2016) (CP) which together and among other things seek to secure high quality development that respects the diverse character of the urban grain.

Living conditions

13. There would be a small encroachment of development, over what has been approved, towards the eastern flank of the building. However, in my judgement I consider, given the relationship of the neighbouring properties one to another and the existing screen planting, that this would not, necessarily, result in the

development appearing so overbearing as to cause harm to the neighbouring occupiers' amenity at number 13 The Upper Drive.

14. Furthermore, the eastern flank wall of the third floor addition would be set back away from the eastern flank wall of Block D. Accordingly, given the height of the block as developed and this set back, the increase in development at this level over what has previously been approved would result in an un-neighbourly and overbearing form of development.
15. The boundary between Block D and number 13 The Upper Drive is well screened. Nevertheless, the proposed additional windows at first and second floor level in the eastern elevation, and the roof terrace at third floor level of the proposed development could, in my judgement, result in a perception of overlooking leading to a perceived loss of privacy for those using the private garden and the conservatory to the rear of number 13.
16. However, none of these windows in the eastern flank wall of the development serve habitable rooms and therefore they could be obscure glazed and non-opening below 1.7 metres above the floor level of the room or space they serve. This is a matter that, if I were minded to allow the appeal, could be addressed by condition thereby overcoming this concern.
17. A third floor roof terrace is proposed in connection with apartment 27. The same arrangement was consented as part of the recently approved alterations to the building. Officers confirmed in that case that the provision of a 1.7 metre high etched glass screen around the main portion of the terrace, which is located towards the front of the building, would be sufficient to prevent overlooking and potential loss of privacy for the occupiers of No 13 The Upper Drive. A condition restricted access to the rear part of the flat roof area for maintenance purposes only.
18. The arrangement referred to is clearly annotated on the submitted plans. I have no reason to take a different view from the Council and am satisfied that the measures proposed, which could be secured by condition were the appeal to succeed, are sufficient to ensure that there would be no material harm in terms of privacy for the adjoining occupier in terms of actual, or any perception of overlooking. In coming to that view, I also have regard to the rights of adjacent occupiers under Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998, in relation to respect for private and family life.
19. Accordingly, I am of the view that the proposed development would not result in any material harm to the living conditions of the occupiers of number 13 in terms of overlooking or loss of privacy.
20. I therefore conclude in respect of the second main issue that, subject to the imposition of conditions, the proposal would not cause material harm to the living conditions of the residential occupiers of number 13 The Upper Drive. It would therefore accord with saved LP Policy QD 27 which seeks to protect residential living conditions.

Other matters

21. I appreciate and I am sympathetic to the concerns of neighbours about the possible disruption and disturbance during the course of the development. However, building works are a temporary operation and any noise and disturbance would be short lived. I have no reason to suppose, in this regard, that any developer would

not seek to complete the building works other than expeditiously, minimising any disruption or disturbance.

22. I am aware of local concerns about highway safety and parking. However, there is no substantiated evidence before me to demonstrate that the traffic movements and parking provision would be likely to result in material harm in this regard. In coming to that view, I am mindful that no objection is raised by the local planning authority on this matter.

Conditions

23. The conditions follow from those suggested by the Council. I have considered the proposed conditions provided by the Council according to paragraph 55 of the National Planning Policy Framework and have modified the wording in the interests of precision.

24. In the interest of visual amenity, a condition is necessary to ensure that materials match those on the existing building.

25. To ensure the private amenity of neighbouring occupiers, I shall require the proposed new windows in the eastern elevation to be obscure glazed and non-openable below 1.7 metres. In addition I will require access to the flat roof area to the rear of the third floor roof terrace to be restricted. Further, in order to protect the privacy of adjoining occupiers I shall condition the erection and retention of the privacy screen shown to apartment 27 at third floor level.

26. Refuse and recycling storage facilities are to be made available and retained to protect the amenity of the development and the neighbouring area.

27. The vehicular parking spaces shown on the approved plans need to be provided and retained in the interests of highway safety. The cycle parking shown also needs to be provided and retained in order to encourage the use of sustainable travel modes.

28. To ensure the efficient use of water I will require each of the new units to be built to achieve a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption as required by CP Policy CP8. Further, to ensure that the development is sustainable and makes efficient use of energy, I shall require each residential unit to achieve an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulation standards.

29. The Council has suggested a condition to secure improvements to the pedestrian crossing at the junction of Caisters Close with The Upper Drive. I understand this was proposed in the interests of ensuring that the development is accessible to all, having regard to the potential for increase in pedestrian movements, some of who may be visually impaired, as a consequence of the development. However, in my judgement, given the limited scale of the development and lack of any substantive evidence to justify the need for this work, I do not consider it a necessary, relevant and reasonable condition in this case and therefore I have not attached it.

30. Finally, in the interests of certainty, I shall impose a condition requiring the development to be undertaken in accordance with the approved plans.

Conclusions

31. For the reasons given above and having regard to all other matters raised, I conclude that the proposal is in accordance with the development plan, when read as a whole, and that the appeal should be allowed.

Philip Willmer

INSPECTOR

Schedule of Conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans, drawings: 9151-01 to 09 inclusive and 11 to 23 inclusive along with another drawing numbered 09 but labelled *Site Plan as Existing* and dated Nov 2017.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
- 4) The extension hereby permitted shall not be occupied until the new windows in its eastern elevation of the development have been fitted with obscured glazing, and no part of those window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before any window is installed and once installed the obscured glazing shall be retained thereafter.
- 5) Access to that part of the flat roof area to the rear of the gated third floor roof terrace hereby permitted shall be for maintenance purposes only, as shown on plan No 9151-15, and shall not be used as a roof garden, terrace, patio or similar amenity area at any time.
- 6) The development hereby permitted shall not be occupied until the car and motorcycles parking spaces shown on the approved plans have been provided and made available for use. These facilities shall thereafter be retained for the use by the occupants of and visitors to the development at all times.
- 7) The development hereby permitted shall not be occupied until the cycle parking facilities shown on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for the use by the occupants of and visitors to the development at all times.
- 8) The development hereby permitted shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been made available for use. These facilities shall thereafter be retained for use at all times.
- 9) The development hereby permitted shall not be occupied until each residential unit built has achieved a water efficiency standard using not more than 110 litres per day per day maximum indoor water consumption.
- 10) The development hereby permitted shall not be occupied until each residential unit built has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).
- 11) Apartment No 27 as shown on the approved plans shall not be occupied unless and until the 1.7 metre high etched glass screening, shown on drawing number 9151-15, has been erected in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. Once

installed, the glass screening shall be retained thereafter in accordance with the approved details.