



Appeal Decision

Site visit made on 12 November 2009

by **Keith Manning BSc (Hons) BTP MRTPI**

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

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Decision date:
17 December 2009

Appeal Ref: APP/Q1445/A/09/2106668

39 Roedean Road, Brighton, East Sussex BN2 5RA

- 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 Nicholas Chesney against the decision of Brighton & Hove City Council.
- The application Ref BH2008/03193, dated 21 September 2008, was refused by notice dated 11 December 2008.
- The development proposed is demolition of existing house on 4 levels; erection of 7 flats on 4 levels, 5 X 2 bedroom, 2 X 1 bedroom.

Decision

1. I dismiss the appeal.

Main issues

2. I consider the main issues to be as follows:
 - The effect of the proposed development on the character and appearance of the area with regard to the street scene;
 - The effect of the proposed development on the living conditions of neighbouring occupiers with regard to privacy and outlook;
 - The adequacy of the proposed amenity space for certain of the proposed flats;
 - The effect of the proposed development on travel demand; and
 - The adequacy of the proposed arrangements for minimising construction waste in furtherance of sustainable development objectives.

Reasons

3. The appeal site is a large detached house designed and constructed in the 1960s as a highly individualistic property that stands out from its neighbours on Roedean Road and The Cliff, which are generally detached but close spaced properties of more traditional design and appearance with pitched roofs. Properties to the north, which include the club house for the nearby golf course, are in larger grounds and the individual detached houses are set well back from the road, albeit elevated by the topography. The character of the north side of Roedean Road is therefore markedly different. Ocean Heights, diagonally opposite the appeal site, is at an advanced stage of redevelopment for flats of strikingly modern appearance.

4. Amidst its close neighbours, No 39 appears so incongruous in terms of design, massing and, to some extent, materials that it is visually jarring, a characteristic heightened by its relative proximity to the road. It shouts for attention amidst a group of houses which, although individual and by no means unassuming, generally conform to a type which lends cohesiveness to the street scene that it harmfully disrupts. I do not consider that the passage of time has caused it to become an accepted or acceptable part of the street scene and, in principle, its redevelopment would be an opportunity to significantly improve upon the legacy of an era in which sensitivity to context was not always evident, and in any event was not displayed in this instance.
5. The proposed redevelopment, although marginally lower, would present a frontage to the street and massing of profile in oblique view that is not fundamentally dissimilar to that which currently exists. Saved policies QD1, QD2, QD3 and HO4 of the Brighton & Hove Local Plan are variously concerned with design and density of development, albeit that elements of QD1 might be taken as encouraging individual and contrasting designs in certain situations, whereas QD2 specifically requires, inter alia, that local characteristics should be taken into account and QD3 promotes efficient and effective use of sites. These policies, when grouped in the way that the Council has deployed them in its decision notice, arguably pull in different directions. However, the Council's statement is more specific in relating the relevant aspects of these policies to the desirability of achieving design that is appropriate to its context in the manner that is in any event promoted by PPS1 *Delivering Sustainable Development*. This emphasises, amongst other things, that design which is inappropriate in context, or which fails to take the opportunities available for improving the character and quality of an area, should not be accepted.
6. In view of my assessment of the comparative merits of the existing and proposed development on the appeal site in the context of the street scene, it follows that the latter is both inappropriate in context and fails to capitalise on the available opportunity to make a positive contribution to the character and quality of the area. It would therefore conflict harmfully with the relevant intentions of the development plan in this regard and those of PPS1.
7. I acknowledge that the force of such an argument may have been diluted to some extent by the approval being implemented on the adjacent site to the east¹ as this will introduce a further element that differs significantly in style and appearance from neighbouring dwellings. However, I note that in profile, the altered house, which is generally a little further back from the street, will be markedly stepped back as its height increases, thereby avoiding the rather brutal over-dominance of neighbouring property in Roedean Road that both the existing and proposed buildings on the appeal site display, some intentional softening by design detailing in the case of the latter notwithstanding. I also acknowledge that the redevelopment of Ocean Heights introduces a conspicuously contemporary style. However, the differing context on the north side of the road, and the more spacious setting, serve to differentiate the scheme sufficiently from the appeal scheme for it not to be an influential factor in my overall conclusion that, on balance, the proposed development at issue would not be acceptable in terms of its effect on the character and appearance of the area with regard to the street scene of Roedean Road.

¹ Ref BH2009/00679

8. Turning to the second issue, I note that the area is typified by balconies and windows designed to take advantage of the commanding sea views to the south, with a consequent potential reduction of privacy in many of the rear gardens with a southerly aspect. Balconies on the existing property are no exception to this characteristic and in this instance I consider that, by virtue of the way in which the balconies are proposed to be configured and located towards the centre of the rear elevation of the proposed development, there would be a tangible improvement in this respect notwithstanding the more intensive occupation of the site implicit in flatted development. Moreover, given the propensity of views from the rear of the property to be seaward and the observance of the so-called "45° rule" frequently cited in this regard, I do not consider that the outlook of neighbouring occupiers would be unacceptably dominated by the proposed development, a matter that would be assisted by the lesser mass of its rearward projection relative to the main bulk of the building.
9. For these reasons, I do not consider that the living conditions of neighbouring occupiers would be significantly harmed by reason of loss of privacy or outlook. Therefore there would be no unacceptable conflict with the intentions of saved local plan policy QD27, which is concerned with amenity.
10. Although QD27 is concerned in a general sense with amenity, saved policy HO5 is specifically concerned with the provision of private useable amenity space "appropriate to the scale and character of the development." However, the Council makes no reference to adopted standards or guidelines. In this case, the development at issue is comprised of one and two bedroom flats, a form of dwelling routinely provided with no dedicated outside amenity space or with a communal garden, such as that proposed. Many flat dwellers choose not to have the responsibility of maintaining private outdoor space and I have no evidence of significantly harmful conflict with the intentions of either policy in this respect. Bearing in mind the proposed communal outdoor space, I do not therefore consider the provision of amenity space for any of the proposed flats to be so inadequate as to necessitate refusal on the basis of the third issue I have identified.
11. As far as the fourth issue is concerned, it is acknowledged by the Council that the proposed car parking would be within the maximum provision allowable and that the provision for cycle parking would exceed the minimum requirement. Nevertheless, the Council says it expects a financial contribution towards improving sustainable transport and offering alternatives to the private car. That may well be so and it may well be established practice. However, saved policy TR1 makes no reference to the circumstances in which a financial contribution would be due or indeed any clear and direct reference at all to planning obligations, save for a cross-reference in the explanatory text to policy QD28, and conflict with that policy is not cited as a reason for refusal. Policy QD28 does refer to the need for planning obligations to be amongst other things, necessary, proportionate and reasonable but the Council in this instance provides no specific justification of the sum of money sought, either in terms of the principle or the amount by reference to the anticipated impact of the development, or by reference to published supplementary guidance,

formulae or standard charges, notwithstanding an exposition as to what is reasonable and the basis for calculation set out in an internal memorandum².

12. Circular 05/2005 *Planning Obligations* emphasises the necessity for transparency and predictability concerning such matters in the context of a plan-led system. Effectively requiring a contribution through the imposition of a planning condition, as suggested³, is not an acceptable practice. Moreover, bearing in mind the acknowledged compliance with relevant standards for parking and cycling, and the appellant's most recent evidence in respect of bus routes⁴, I have no firm evidence in any event to suggest that there is a specific conflict with TR1 in respect of travel demand such that refusal of permission would be justified solely on the basis that such a contribution had not been proffered.
13. The final main issue concerns the need for a waste minimisation statement, a requirement that is firmly based in adopted development plan policy including saved policy SU13 of the Council's local plan as amplified by the Supplementary Planning Document *Construction and Demolition Waste* jointly prepared with the County Council. Bearing in mind the need for a degree of specificity not necessarily achievable in the absence of the certainty of a planning consent, I see no reason why, in principle, or in this instance, the intentions of relevant policy in this respect could not be achieved by the imposition of a condition such as that proposed by the appellant in his grounds of appeal and, latterly, by the Council itself⁵. On that basis, I am satisfied that the issue of waste minimisation and potential conflict with policy intentions in that regard could be adequately addressed and need not be a reason for refusal of the proposed development.
14. A number of other matters have been raised in respect of the proposed development, all of which I have taken into account. Although a number of third parties question the principle of flatted development, and some refer to an appeal decision at Linwood House in 2005⁶, this is not an objection raised by the Council in this instance. In any event, my determination of this appeal is on the basis of the specific main issues I have identified. Not all are determinative or, in my view, a sufficient basis upon which to reject the scheme. Nevertheless, for the reasons given above in respect of the effect of the proposed development on the character and appearance of the area, I conclude that the appeal should be dismissed.

Keith Manning

Inspector

² Internal memorandum from Transport Planning to case officer dated 14 November 2008.

³ Council's suggested condition No 7.

⁴ Letter from Beecham Moore Partnership to PINS dated 17 July 2009, copied to and commented upon by Council.

⁵ Email dated 21 July 2009 09.40 from Council to PINS copied to Beecham Moore Partnership.

⁶ Ref APP/Q1446/A/04/1153690
