



# Appeal Decision

Site visit made on 16 August 2010

by **Katie Peerless Dip Arch RIBA**

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:**  
**7 September 2010**

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## Appeal Ref: APP/Q1445/A/10/2124369

### Land to rear of 14 Bankside, Brighton BN1 5GN

- 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 Michael Letton against the decision of Brighton & Hove City Council.
- The application Ref BH2009/03004, dated 8 December 2009, was refused by notice dated 11 February 2010.
- The development proposed is erection of new 3no storey two bedroom dwelling incorporating solar panels.

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### Decision

1. I allow the appeal, and grant planning permission for the erection of a new 3 storey, 2 bedroom dwelling incorporating solar panels on land to the rear of 14 Bankside, Brighton BN1 5GN in accordance with the terms of the application, Ref BH2009/03004, dated 8 December 2009, subject to the conditions attached as Annex 1 to this Decision.

### Main issues

2. I consider that the main issues in this case are the effect of the proposed development on the living conditions of occupiers of neighbouring properties and on the character and appearance of the surrounding area.

### Site and surroundings

3. The appeal site consists of about half the rear garden area of the property at 14 Bankside, which is a semi-detached house in a street of similar properties. The garden slopes steeply up away from the house and the rear boundary fence is adjacent to the edge of the highway in Highbank, the residential road to the north.
4. Houses in the area are generally of a traditional design, typical of the second half of the last century, of brick under pitched tiled roofs. Many are on three levels which allows occupants to take advantage of the views across the roofs of the houses in the next street, into the valley below and residential development in Bankside and Highbank is generally on one side of the road only.
5. However, there is some development on the southern side of Highbank, close to the appeal site. There is a new house to the rear of No.8 Bankside, two parking spaces at street level on the adjacent plot to the rear of No.10 and an extant planning permission for another house to the rear of No.12.

## Reasons

6. The proposed house would be of a contemporary design and would have a high standard of sustainability. It would be on three levels with the majority of the accommodation set below the street level of Highbank. The extent of the building that would be visible from this road would be limited to the single storey office/workshop/utility area that would have a pitched tiled roof, which would also extend over an open car port. One further car parking space would be available on the flat roof of the two lower floors and would be accessed across an existing dropped curve in the road of Highbank.
7. The intermediate floor would contain two bedrooms and a bathroom and the lower floor would contain the kitchen and living area. Windows from the rooms would face the bedroom windows in the rear of the properties in Bankside. The Council is concerned that there would be actual and perceived problems of overlooking into these windows and the rear gardens of the Bankside properties. However, the appellant maintains that the situation would be no worse than that already permitted on the adjacent site.
8. There is some confusion over the positioning of the proposed house on the site; the Council notes that the scaling from the plans gives a separation distance of 18.5m which is considered too close to maintain acceptable levels of privacy. The appellant states that the plans have been drawn with reference to those approved for the rear of No.12 (at No.19 Highbank) and must therefore have the same 21m separation as that scheme, as the rear walls of the houses would be on the same line. Notwithstanding the fact that the drawings are not dimensioned, I consider that it would be possible to ensure that this distance is achieved, through the imposition of a condition on any planning permission.
9. There are three levels of windows on the approved properties at Nos.17 and 19 Highbank and the floor levels of these houses are higher than those proposed at the appeal site. There would consequently be less opportunity for overlooking than on the permitted schemes, even taking into account the possibility of obtaining limited views from the car park area.
10. The appeal proposal is less bulky than the houses at Nos.19 and 17 and the visual impact would, in my view, be less than that of its immediate neighbours on this side of the road. This would more than compensate for the marginally smaller site area and result in a better plot ratio, preventing any perception of overdevelopment or the creation an over-imposing or un-neighbourly building.
11. in respect of the outlook from the properties in Highbank, I noted at the site visit that the main living area of these houses are at first floor level and occupiers would therefore still have views over the top of the car port/office area. I therefore conclude that the proposal would not result in unacceptable living conditions for occupiers of neighbouring properties in respect of loss of privacy or overbearing impact and would not conflict with the aims of saved policy QD27 of the Briton and Hove Local Plan 2005 which seeks to prevent such situations.
12. Turning to the effect on the character and appearance of the surrounding residential area, the Council has concerns that the design of the house would be inappropriate. This is because the palette of materials would be different from the majority of the dwellings in surrounding roads.

13. The new house would have a pitched tiled roof to the part of the property that projects above the Highbank street level but the flat roof of the car parking area would be obvious in views from the south. The elevations would be rendered rather than the brickwork found elsewhere in the area and would be very simply detailed.
14. The Council refers to the lack of design features on the front elevation, but from Highbank the only visible part of the house would appear similar to a small domestic garage and would not be particularly prominent. The main, solid wall of this part of the building would be set back from the highway at a distance similar to that of the adjacent properties and a degree of openness would be maintained, even though part of the roof would extend forward over the car port.
15. The south elevation would, I agree, be different from its neighbours but this would not necessarily be harmful to the character of the area. The existing houses are of an unremarkable design and the restrained detailing of the appeal proposal would not, in my opinion, compete unfavourably with its surroundings. This view of the property would be seen only in glimpses from limited public viewpoints in Bankside and beyond and would be softened by the vegetation in the intervening garden areas.
16. I therefore conclude that the appeal proposal would not cause harm to the character and appearance of the surrounding residential area and would meet the criteria of policies QD1, QD2 and QD3 of the LP.

#### **Other matters**

17. Local residents in Highbank have raised objections to the proposal on the grounds of highway safety, although this is not a matter addressed by the Council. The property would have two off street parking spaces and, although there is no pavement on this side of Highbank, it was concluded in a previous appeal decision that this would not constitute a safety risk for pedestrians.
18. I find no reason to disagree with this conclusion; the southern side of Highbank has double yellow lines, therefore on-street parking here is prohibited. Properties on the opposite side of the road have garages and driveways and, although I am told that there is pressure on parking spaces on the north side of Highbank, I am not persuaded that the addition of another two bedroom house with two dedicated parking spaces would necessarily add to the problem. I note the concern that the workshop/office could be used as another bedroom but this does not alter my findings on this matter.
19. I have also taken into account all the other representations made by local residents but they do not outweigh my conclusion that the appeal proposal is acceptable. I have also noted the recent Government guidance that garden land is no longer to be considered as previously developed land. This means that there is now no policy encouragement to make the best use of such land or increase its density. However, in this case, the scheme would not be 'backland' development as the site already fronts a residential street and the proposal accords with other policy criteria.

## **Conditions**

20. I have considered the conditions suggested by the Council, in the event of the appeal succeeding, in accordance with the guidance given in Circular 11/95. I have amended the suggested wording where necessary to follow this guidance. In addition to the standard commencement condition and the need, noted above, to ensure that there is a separation of 21m between the new house and the rear of 14 Bankside, I shall impose conditions restricting permitted development rights, to prevent overdevelopment of the site and to protect the privacy of neighbouring occupiers.
21. A condition requiring the development to be constructed in accordance with the approved plans will be attached because, otherwise than as set out in this decision and conditions, it is necessary for the avoidance of doubt and in the interests of proper planning. I shall also require the submission of details of refuse storage and recycling provisions and cycle storage to be provided and implemented, to ensure that such facilities are satisfactory and made available.
22. To ensure the external appearance of the building is satisfactory, I shall require details of the materials and colour finish to be submitted to the local planning authority for approval. To ensure a satisfactory appearance of the site, I shall also impose landscaping conditions.
23. As one of the justifications for the scheme is its sustainable credentials, I shall impose conditions to ensure that a high standard of sustainability is achieved in the construction method. New homes should also be suitable for people with disabilities and I shall impose a condition to ensure that the proposal meets the Lifetime Homes standards in this regard.
24. The addition of a new dwelling will create additional journeys by road and the LP contains policies setting out how such pressures can be mitigated. I shall impose a condition calling for the submission of details of how this will be achieved.

## **Conclusions**

25. For the reasons given above I conclude that the appeal should be allowed.

*Katie Peerless*

**Inspector**

## **Annex 1**

### **Conditions to be attached to planning permission ref: BH2009/03004.**

- 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: FW027-101Slp, FW027-101Blk, FW027-101FPE, FW027-101CE and FW027-101SS.
- 3) Notwithstanding the requirements of condition 2 above, no development shall take place until a dimensioned plan showing a distance of at least 21m between the south elevation of the development hereby permitted and the north (rear) elevation of the dwelling at 14 Bankside has been submitted to and approved in writing by the local planning authority. Development is to be carried out only in accordance with the approved plan.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no extension, enlargement or other alteration of the dwellinghouse hereby permitted shall be carried out without the prior grant of planning permission from the local planning authority.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows, rooflights or doors other than those expressly authorised by this permission, shall be constructed without the prior grant of planning permission from the local planning authority.
- 6) No development shall take place until a scheme showing the details of the storage of refuse and materials for recycling has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out fully in accordance with the approved details prior to the first occupation of the dwelling hereby approved and retained thereafter for use at all times.
- 7) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted (including the colour of the render, paintwork and colourwash) have been submitted to and approved in writing by the local planning authority. Development shall be carried out only in accordance with the approved details.
- 8) Unless otherwise agreed in writing with the local planning authority, the dwelling hereby permitted shall be constructed to Lifetime Homes standards prior to its first occupation and shall be retained as such thereafter.
- 9) Unless otherwise agreed in writing with the local planning authority, no residential development shall commence until:

- (a) evidence that the development is registered with an accreditation body under the Code for Sustainable Homes and a Design Stage/Interim Report showing that the development will achieve Code level 3 have been submitted to the local planning authority; and
  - (b) a Design Stage/Interim Code for Sustainable Homes Certificate demonstrating that the development will achieve Code level 3 has been submitted to, and approved in writing by, the local planning authority. A completed pre-assessment estimator will not be acceptable.
- 10) Unless otherwise agreed in writing by the local planning authority, the dwelling shall not be occupied until a Final/Post Construction Code Certificate, issued by an accreditation body confirming that the unit has achieved a Code for Sustainable Homes rating of Code level 3 has been submitted to, and approved in writing by, the local planning authority.
- 11) No development shall take place until details of a scheme to provide sustainable transport infrastructure to support the demand for travel generated by the development has been submitted to, and approved in writing by, the local planning authority, This scheme shall include a timetable for the provision to be made and shall be carried out in accordance with the approved details.
- 12) The development hereby permitted shall not be commenced until details of secure cycle parking facilities for the occupants of, and visitors to, the development hereby permitted have been submitted to and approved in writing by the local planning authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the dwelling hereby permitted and shall thereafter be retained for use at all times.
- 13) No development shall take place until there has been submitted to, and approved in writing by, the local planning authority a scheme of landscaping, which shall include hard surfacing, means of enclosure, planting of the development, indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.
- 14) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; 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 approval to any variation. All hard landscaping and means of enclosure shall be completed before the development is first occupied.