



Appeal Decision

Site visit made on 28 September 2010

by **John Millard DipArch RIBA FCI Arb**

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

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Decision date:
21 October 2010

Appeal Ref: APP/Q1445/A/10/2127831 2 Freehold Terrace, Brighton BN2 4AB

- 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 Roche Barratt Estates against the decision of Brighton a& Hove City Council.
- The application (Ref: BH2009/02912) dated 3 November 2009 was refused by notice dated 26 February 2010.
- The development proposed is demolition of the existing dwellinghouse and erection of a block of 8 flats.

Decision

1. I dismiss the appeal.

Main Issues

2. The main issues in this appeal are the effect of the proposal on, firstly, the character and appearance of the area, secondly, the living conditions of the occupiers of neighbouring properties, with particular reference to privacy, and, thirdly, the local sustainable transport infrastructure.

Preliminary Matter

3. I have before me a copy of planning permission Ref: BH2008/01061 dated 5 March 2009 for redevelopment of the appeal site. The description of development given is '*Demolition of existing house and erection of eight new flats (amended design)*' but the plans listed in the decision notice, copies of which I also have, show just seven – 1 two-bedroom maisonette, 3 one bedroom flats, 2 two bedroom flats and 1 three-bedroom duplex flat on second and third floors. The officer's delegated report in respect of the appeal proposal confirms at paragraph 7 that permission Ref: BH2008/ 01061 is for the erection of a block of seven flats.

Reasons

4. I saw at the site visit that construction of the approved scheme had begun. The proposal before me, however, is for an amended scheme involving, primarily, the provision of 2 two-bedroom flats, one on the second floor and one on the third, in place of the approved three-bedroom duplex unit. This would increase the number of flats to 8 and involve the enlargement of the building at third floor level by enclosing what, in the approved scheme, is shown as a roof terrace and extending the stair enclosure through an additional

- storey. At the same time, three areas previously defined as sedum flat roofs, with only maintenance access, would be turned into accessible roof gardens.
5. The site occupies a prominent location on land that rises steeply from south to north. It is situated at the junction of Freehold Terrace and Popes Folly, in an urban area of compact development but with the open spaces of Saunders Park to the east and a covered reservoir to the north. There is traditional Victorian terraced housing immediately to the west and, beyond that, the modern three and four storey flatted developments of Popes Court and 28 Freehold Terrace. On the south side of the road are mostly two storey traditional buildings in a mixture of commercial and residential uses.
 6. The principle of a high density flatted development on the site is established by the extant planning permission. The new building would be visible from a number of vantage points, most particularly from the southern end of Popes Folly, where it joins Hollingdean Road, from which location it would be seen in the context of the adjacent Victorian terraces. Whilst the contemporary design proposed would not be unacceptable in this situation, the bulk and mass of the building at third floor level would make the development unduly dominant within the street scene, to the detriment of the integrity and visual balance of the townscape.
 7. I do not agree with the Council that the additional unit would unacceptably increase the density of the development or result in 'town cramming' but this does not diminish the harm that would be caused by the bulk of the building at third floor level, extending it some 8 metres further forward towards Freehold Terrace. Neither do I agree with the appellant that the increase in bulk compared with the approved scheme would be minimal as it would, in practice, represent a doubling in volume of the third floor accommodation.
 8. Policies QD1 and QD2 of the adopted Brighton & Hove Local Plan 2005 (LP) seek to ensure that new development contributes positively to the visual quality of the environment and relates appropriately to its surroundings. In view of the harm I have identified, I conclude, on the first main issue, that the proposal would not accord with these Policies, to the detriment of the character and appearance of the area.
 9. The Council is also concerned that balconies and roof terraces at first, second and third floor levels on the west side of the development would unacceptably impact upon the living conditions of the occupiers of Nos 4 and 6 Freehold Terrace as a result of actual or perceived overlooking of their private amenity spaces. I note from the submitted plans that anyone using the balconies to flats 4 and 6, the second floor communal roof garden and the private roof garden to flat 8 would have direct views over the south facing garden areas in the neighbouring properties, materially reducing the degree of privacy their occupiers presently enjoy.
 10. The appellant suggests that this situation could be overcome by the addition of privacy screens (to be secured by condition) but, in the absence of a specific proposal, I am not persuaded that a practical and visually acceptable screening arrangement is a realistic possibility in all cases. Accordingly, I am led to the conclusion on this issue that the proposal would cause material harm to the living conditions of the occupiers of Nos 4 and 6 Freehold Terrace, with

particular reference to privacy, in conflict with LP Policy QD27 which seeks to protect the amenities of neighbouring occupiers. Whilst I note that the balconies to flats 4 and 6 are no different from those in the approved scheme, this does not alter my conclusion in respect of the current proposal.

11. Considering the third main issue, LP Policy TR1 requires that development proposals should provide for the travel demand they create whilst Policy QD28 notes, in this context, that contributions towards the cost of infrastructure enhancements will be sought by means of planning obligations when planning permission is granted. The appellant contends that this is a matter which can be dealt with by means of a planning condition, as it was in the case of the approved scheme.
12. Circular 11/95 – *The Use of Conditions in Planning Permissions* advises that, where a deficiency can be overcome by the imposition of a condition, this course should be adopted in preference to refusing planning permission. An appropriately worded condition could be imposed in this case to ensure compliance with LP Policies TR1 and QD28 and I therefore conclude, on this issue, that the absence of provisions for accommodating the additional travel demands that would be created by the development is not sufficient to justify withholding planning permission.

Conclusion

13. For the reasons outlined above, and notwithstanding my conclusion on the third main issue, I find this amended proposal unacceptable. Accordingly, and having considered all other matters raised, it is my overall conclusion that the appeal should be dismissed.

John G Millard

INSPECTOR

