



---

# Appeal Decision

Site visit made on 8 November 2010

**by Joanna C Reid BA(Hons) BArch(Hons) RIBA**

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

**Decision date: 26 November 2010**

---

**Appeal Ref: APP/Q1445/A/10/2130271**

**14-16 York Place, Brighton, East Sussex BN1 4GU**

- 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 Harwood Properties Ltd against the decision of Brighton & Hove City Council.
  - The application Ref BH2009/01589, dated 3 July 2009, was refused by notice dated 3 February 2010.
  - The development proposed is subdivision of the existing residential unit at Number 14 to create a maisonette and a new self-contained cottage, construction of a loft style apartment at Number 15 on the first and second floors to infill the gap between Numbers 14 and 16, subdivision of the existing residential unit at Number 16 to create a maisonette and a new self-contained cottage, and refurbishment of the shop unit at Number 16 by the installation of a traditional shop front.
- 

## Decision

1. I dismiss the appeal.

## Main issues

2. The main issues are the effect that the proposal would have on:
  - Firstly, the street scene in York Place, and thus on the character or appearance of the Valley Gardens Conservation Area;
  - Secondly, the living conditions of the existing occupiers at 13 and 17 York Place with regard to outlook, and the living conditions of the future occupiers with regard to outlook, daylight and sunlight, overlooking and privacy, and amenity space;
  - Thirdly, the vitality and viability of the London Road Town Centre;
  - Fourthly, highway safety and the free flow of traffic in the nearby streets; and
  - Fifthly, whether the proposal would provide sufficient cycle parking.

## Reasons

### *Character and appearance*

3. The appeal site is within the Valley Gardens Conservation Area which is characterised by a range of different historic terraces, groups of buildings and larger buildings. They are linked by the extensive mostly public gardens which run the length of the Conservation Area and form a green valley from Park Crescent to the sea. Close by, the terraces in York Place include mainly

- commercial uses at ground floor level, and commercial and residential uses on the upper floors.
4. The appeal site presently includes 2 taller terraced buildings at 14 and 16 York Place which have a lower crenellated brick and stone archway between them at 15 York Place. The distinctive archway contributes positively to the street scene in York Place, and to the special historic character and appearance of the Valley Gardens Conservation Area. It also provides a valuable break in the tight frontage development in York Place. The archway allows important views through and, more importantly, above it, towards the significant taller Brighton & Hove City College building at the back, which contributes to the setting of the Valley Gardens Conservation Area in the wider townscape.
  5. The buildings at 14 and 16 York Place have a similar 3-storey appearance, but 16 York Place also includes accommodation in its roof space. The building at 14 York Place includes a barbers' shop at the front of the site, which is in use. It also includes a maisonette at the back and on the upper 2 floors which is not currently occupied, but some of its ground floor accommodation is being used in connection with the shop. The building at 16 York Place includes a ground floor shop with residential accommodation on the upper floors, but it is vacant and in a dilapidated state, with the shop front boarded up.
  6. The proposed development would include the conversion and extension of the existing buildings. It would include 2 shops facing York Place, 2 maisonettes on the upper floors of 14 and 16 York Place, 2 attached flat-roofed 2-storey dwellings at the back of 14 and 16 York Place, and a 2-storey pitched-roofed maisonette within and above the archway at 15 York Place.
  7. The open ironwork gates to the archway would be restored, so the openness through the archway would largely be retained. However, the proposed maisonette at 15 York Place would almost fill the gap above the archway, and its roof would be taller and more dominant than the roof at 14 York Place. The upper floor would be set back from the front of the archway to provide a balcony, but the resulting form of the extension would be poorly-related to the terraced buildings on each side. Its taller east-facing glazing would contrast with the scale and lower head heights of the ordered fenestration in the adjoining buildings, and it would harmfully disrupt the rhythm of the fenestration in the terrace.
  8. Because of its unacceptable scale, bulk, height, and siting, the maisonette would intrude into the important openness over the archway, and it would block out much of the significant view of the Brighton & Hove City College building beyond. Due to its scale, its height, its design and its use of materials, it would also dominate the archway, and it would unacceptably erode its integrity and its significance as a historic feature in the street scene in York Place. In consequence, it would fail to preserve or enhance the character or the appearance of the Valley Gardens Conservation Area.
  9. The appellant says that there was a terraced building at 15 York Place, which was demolished in about the 1890s to give access to the buildings behind the site, and that the proposal would reinstate a similar building mass at first and second floor level whilst retaining the archway. However, that building has long been gone. It is the archway, and the spaciousness through and above it, that now contributes positively to the street scene in York Place and to the character and the appearance of the Valley Gardens Conservation Area.

10. The 2 dwellings proposed at the back of 14 and 16 York Place would be 2-storeys tall, and they would include almost all of the remaining undeveloped land on their respective plots. The fenestration and detailing of the dwellings would potentially be sympathetic to the traditional qualities of the existing buildings at the site, but its squat flat-roofed form and contemporary sedum roofs would be at odds with them. Because their design and detailing would be neither contemporary nor traditional the dwellings would have an inconsistent character and appearance. Thus, they would not make a positive contribution to the visual quality of the existing buildings or the environment, and they would fail to preserve or enhance the character or appearance of the Valley Gardens Conservation Area. The benefits of the sustainable elements in the scheme, including the permeable paving and sedum roofs, would not outweigh this harm.
11. I consider that the proposal would harm the street scene in York Place, and that it would harm the character and the appearance of the Valley Gardens Conservation Area. It would be contrary to saved Policies QD1, QD2, QD4, QD14 and HE6 of the *Brighton & Hove Local Plan 2005* (LP), and national policy in Planning Policy Statement 5: *Planning for the Historic Environment*, as well as the advice in the Council's *Supplementary Planning Guidance Note 1 Roof Alterations & Extensions*.

*Living conditions of existing and future occupiers*

12. Because of their height, their width, and their depth, the dwellings behind 14 and 16 York Place would have an overbearing and oppressive impact on the outlook from the rear-facing first floor windows in the neighbouring buildings at 13 and 17 York Place which would harm the occupiers' living conditions. There would seem to be a taller extension beyond 17 York Place, and another at 12 York Place which I saw at my visit. I have little information about them, but their existence is not a sufficient reason to allow this harm.
13. Turning to the future occupiers, one of the 2 ground floor living room windows in each of the dwellings behind 14 and 16 York Place would face one ground floor living room window in the other. The windows in the un-named first floor rooms would do the same. Because the windows would be about 5.3m apart, the mutual overlooking that could occur would cause an unacceptable loss of privacy to the occupiers. This could be overcome by the use of blinds, but it would create oppressive living conditions in those rooms which would also harm the occupiers' living conditions.
14. The gardens around St Peter's Church, on the opposite side of York Place, would provide a fairly open outlook for the occupiers of the apartments in the existing buildings at 14 and 16 York Place and the maisonette at 15 York Place. However, due to their closeness to one another, the outlook from the dwellings at the back of 14 and 16 York Place would be enclosed and oppressive, which would harm the occupiers' living conditions.
15. Because of their 2-storey height and their distance apart the 2 dwellings at the back of 14 and 16 York place would be likely to receive adequate daylight. However, due its orientation, and the scale and siting of the nearby buildings, the dwelling at the back of 14 York Place would receive little sunlight for much of the year. There would also be no useable private amenity area where the occupiers could sit outside and enjoy the sunshine, so it would provide poor living conditions for the occupiers.

16. The occupiers of the south-facing dwelling at the back of 16 York Place would be able to enjoy reasonable levels of sunlight in their home, but they too would have no useable private amenity space. The landings leading to the maisonettes in the existing buildings at 14 and 16 York Place would be too narrow, too enclosed and too inconvenient to provide useable private amenity areas for the occupiers. The narrow balcony over the archway in the maisonette at 15 York Place would have some privacy because of its height, but it would be exposed to the noise of the fairly busy traffic in York Place.
17. The communal courtyard would also offer little privacy because the archway would remain largely open to the street. Thus, it could be overlooked by passers by in York Place, as well as the comings and goings of other occupiers of the development associated with the cycle, recycling and refuse storage, and their visitors. Moreover, in the absence of details to show otherwise, the cycles in their stands, and the refuse and recycling storage for the development would be unlikely to fit into the restricted spaces under the external stairs in the archway. This would further erode the limited useable space in the courtyard. The emergency pedestrian access and egress route between the Brighton & Hove City College buildings and York Place would also be through the courtyard, and its usability would be compromised by the planters, and, possibly, the cycles and storage under the archway. In consequence, the courtyard would provide little useable amenity space for the occupiers of the 5 dwellings proposed.
18. The availability of ample public open space in the local area, including at The Level, would not overcome the lack of private outdoor space at the site. The occupiers of the dwellings could reasonably expect lower standards of private amenity space in this town centre location compared with those living in suburban streets. It is also not disputed that there is a shortage of housing sites within the city, and that national and local policy seek the efficient and effective use of land in urban areas. However, the harm to the living conditions of the existing and future occupiers that I have found, together with the lack of private amenity space leads to the conclusion that the proposal would be an overdevelopment of the site.
19. I consider that the proposal would harm the living conditions of the existing occupiers with regard to outlook, and that it would harm the living conditions of the future occupiers, with regard to outlook, overlooking and loss of privacy, sunlight, and private amenity space. It would be contrary to saved LP Policies QD3, QD14, QD27 and HO5.

#### *Vitality and viability*

20. The appeal site is within the designated London Road Town Centre, but it is outside the prime retail frontage. The proposal would include a modest increase in the floor area of the shop unit at 14 York Place by providing a store in place of a staircase, but it would retain the awkwardly-shaped interior which detracts from the usability and attractiveness of the retail space. The shop unit at 16 York Place would be reduced by a similar modest amount.
21. The 2 shops may have operated successfully historically, especially if the shopkeeper lived above the shop and could use the facilities in the dwelling during the day. However, the shop units proposed would be too small to meet modern day needs. By contrast with the shop at 14 York Place, where the accommodation at the back of the building has provided a kitchen and rest room which has been used by the business, the shop at 16 York Place has a

small rear extension which could not sufficiently meet these needs, and the shop has been unoccupied for about 5 years. The ground floor accommodation at the back of 14 York Place, including the dining room, kitchen, bathroom and yard, is stated by the appellant to be part of the maisonette above the shop. However, it would seem to have enabled the present shop to survive where the shop at 16 York Place has failed.

22. Whilst there would be no net loss of retail floor space in the proposed development, the units proposed would not be viable because there would be insufficient ancillary accommodation in addition to meet contemporary retail needs. In consequence, the shops would not be attractive to future occupiers, and it is likely that they would not be occupied. If the shop units were to be unoccupied, they would not attract pedestrian activity in York Place, and this would damage the vitality and viability of the London Road Town Centre.
23. The proposed shop front at 16 York Place would clearly enhance the present character and appearance of the shop, but it would not overcome the harm due to the insufficient size of the proposed retail units. I consider that the proposal would harm the vitality and viability of the London Road Town Centre. It would be contrary to saved LP Policy SR5.

#### *Highway safety and the free flow of traffic*

24. The site is within a sustainable location with good access to public transport, shops and local services, where the proposed car free development would be acceptable. Since the Council's decision notice was issued, the Council has issued a policy note, *Planning – Temporary Measures to assist the Development Industry*, which states that transport contributions will only be sought for schemes of 5 residential units and above. As there would be a net increase of 3 dwellings at the site, a planning obligation for a financial contribution towards local sustainable transport infrastructure would not be necessary to make the development acceptable.
25. The Council also seeks a planning obligation for an amendment to the existing Traffic Regulation Order (TRO) to prevent the future occupiers of the development being eligible for on-street parking permits. However, the site is within Parking Zone Y, where there was about a 9 month waiting list for a permit at the time that the appellant's statement was written. As there would be no on-site car parking and future occupiers would be unable to obtain a parking permit to park in the nearby streets, the scheme would be car free without the need for an amendment to the TRO. As the Council can control the issue of parking permits, an amendment to the TRO would not be necessary to make the proposal genuinely car free in the longer term.
26. I therefore consider that the proposal would not be likely to add to parking stress and congestion in the nearby streets which would impede the free flow of traffic and endanger highway safety. It would satisfy the thrust of saved LP Policies TR1, TR19, SU15, QD28 and HO7 as well as the relevant guidance in the Council's *Supplementary Planning Guidance Note 4 Parking Standards*.

#### *Cycle parking*

27. Cycle spaces under the stairs by the south wall of 16 York Place are noted on drawing number AC/14-16YorkPI/02, but the positions of the cycles and their stands are not shown. The cycle parking is particularly relevant as the proposal would be car free. Because of the physical constraints imposed by the

buildings it is not clear how many spaces could be accommodated or how useable the cycle spaces would be. It is likely that the cycles in the 9 spaces required by local policy would project into the open space under the archway. This could have an unacceptable cluttered appearance which would harm the character and appearance of the archway, and the street scene in York Place, and thus, it would harm the character and the appearance of the Valley Gardens Conservation Area. For these reasons, the proposed cycle parking could not reasonably be dealt with by condition.

28. In the absence of an acceptable scheme for cycle parking, I am unable to conclude that the proposal would provide sufficient cycle parking. This would be contrary to saved LP Policy TR14 and the relevant guidance in the Council's *Supplementary Planning Guidance Note 4 Parking Standards*.

### **Conclusions**

29. I have found that the proposal would not be likely to endanger highway safety or to impede the free flow of traffic in the nearby streets, and that it would satisfy the relevant saved LP Policies and Supplementary Planning Guidance in this regard. However, this would be substantially outweighed by the harm that the proposal would cause to the street scene in York Place, and thus to the character and the appearance of the Valley Gardens Conservation Area; the harm to the living conditions of the existing occupiers with regard to outlook, and the harm to the living conditions of the future occupiers, with regard to overlooking and privacy, outlook, sunlight, and private amenity space; and the harm to the vitality and viability of the London Road Town Centre. The absence of details to show that the cycle parking could be acceptably accommodated at the site adds to my concerns. In these regards it would be contrary to the relevant saved LP Policies, national policy, and Supplementary Planning Guidance. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should fail.

*Joanna C Reid*

INSPECTOR