



Appeal Decisions

Site visit made on 15 April 2011

by David Prentis BA BPI MRTPI

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

Decision date: 5 May 2011

Appeal A: APP/Q1445/A/10/2138898

4 Tongdean Road, Hove, East Sussex BN3 6QB

- 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 Christopher Liu against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/00908, dated 29 March 2010, was refused by notice dated 3 September 2010.
 - The development proposed is partial demolition and alterations to existing dwelling and erection of new detached dwelling with separate garaging, new access road and associated landscaping.
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Appeal B: APP/Q1445/E/10/2138900

4 Tongdean Road, Hove, East Sussex BN3 6QB

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
 - The appeal is made by Mr Christopher Liu against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/00909, dated 29 March 2010, was refused by notice dated 3 September 2010.
 - The proposal is partial demolition and alterations to existing dwelling.
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Decision – Appeal A

1. I allow the appeal, and grant planning permission for partial demolition and alterations to existing dwelling and erection of new detached dwelling with separate garaging, new access road and associated landscaping at 4 Tongdean Road, Hove, East Sussex BN3 6QB in accordance with the terms of the application, Ref BH2010/00908, dated 29 March 2010, subject to the conditions set out in the attached Schedule.

Decision – Appeal B

2. I allow the appeal, and grant conservation area consent for partial demolition and alterations to existing dwelling at 4 Tongdean Road, Hove, East Sussex BN3 6QB in accordance with the terms of the application Ref BH2010/00909, dated 29 March 2010, and the plans submitted with it subject to the following condition:

The works hereby authorised shall begin not later than 3 years from the date of this consent.

Main issues

3. The first main issue for Appeal A, and the sole main issue for Appeal B, is the effect of the proposal on the character and appearance of the Tongdean Conservation Area. The other main issues for Appeal A are the effect of the proposal on the living conditions of neighbouring residents and whether the proposal would make a satisfactory contribution to the objectives of sustainable development.

Reasons

Appeal A

Effect on the character and appearance of the conservation area

4. The Council has produced the *Tongdean Conservation Area Character Statement*. Although this does not have the status of a Supplementary Planning Document it is helpful in providing a description of the special interest of the area. It notes that the special interest derives from the grouping of individually designed large houses, dating mainly from the early 20th century, on generous plots. It also comments that pressure for change may arise from proposals to build separate dwellings within rear gardens.
5. The appeal proposal would involve the subdivision of an existing plot and the use of garden land for the proposed dwelling. The local Member of Parliament and local residents have drawn attention to changes to Planning Policy Statement 3 *Housing* (PPS3) relating to back garden development¹. The exclusion of gardens from the definition of previously developed land removes the previous planning advantage of garden sites and their prioritisation for re-use. However, in this case the Council does not object to the principle of the development and has indicated that a single storey dwelling would be acceptable.
6. The development plan includes the saved policies of the Brighton and Hove Local Plan 2005 (LP). Policy QD3 deals with the need to make efficient use of sites. The policy allows for "backland" development although it states that such proposals should be rigorously examined to avoid town cramming. Policy HO4 allows for increases in density, subject to design and access considerations.
7. The appeal scheme would not be prominent in views from Tongdean Road and the existing house at No 4 would retain a good sized garden. The proposed house would be seen as part of a group of buildings comprising No 6b Tongdean Road and houses at Tongdean Place. It would not therefore be unrelated to existing built form, nor would it appear out of keeping. Consequently, I agree with the Council's conclusion that there is no objection to the principle of a house on the appeal site.
8. The proposed house would be part single storey and part two storey with a shallow roof pitch. It has been specifically designed for this garden location and would be a worthy addition to the eclectic mix of individually designed detached houses in the Tongdean Conservation Area. Although the footprint would be similar to that of No 4, the bulk of the new house would be much less and it would appear subservient to the frontage property. The proposed house

¹ The changes to PPS3 were made in June 2010 and had the effect of excluding private residential gardens from the definition of previously developed land and removing the national indicative minimum density.

would have a reasonable rear garden and there would be sufficient space to retain those trees which contribute to the character and appearance of the area and for additional planting to be introduced. It would be important to control details of new planting by a condition to ensure that the scheme would be well integrated with its surroundings. For the same reason it would be appropriate to require details of an Arboricultural Method Statement relating to the protection of existing trees during the construction process.

9. In conclusion, the appeal scheme would not result in harm to the significance of the conservation area and its character and appearance would be preserved. The proposal would accord with LP Policies QD3 and HO4. It would also accord with LP Policies QD1 and QD2, which seek a high quality of design that takes account of local characteristics, and with Policy HE6 which seeks to protect conservation areas.

Effect on living conditions of neighbouring residents

10. The Council is concerned about the effect on Nos 2 and 6b Tongdean Road and I agree that these are the two properties that would be most affected. No 2 Tongdean Place is also relatively close but there is a garage with a pitched roof adjacent to the rear boundary of the appeal site which limits views from this direction.
11. The two storey section of the proposed house would be seen in oblique views from No 2 Tongdean Road although there would be a reasonable degree of separation and it would be partially screened by a garden building. The flank wall of the proposed house would be very apparent from the rear section of the garden to No 2. However, the first floor would be set in from the boundary and would not result in an unduly overbearing or enclosing effect.
12. No 6b is set at a lower level and has several windows facing towards the appeal site. Nevertheless, the Council does not dispute the appellant's evidence that the two storey element of the proposed house would be around 30m away. This would not result in an overbearing effect and nor would there be harmful overlooking from a proposed small roof terrace. The single storey element of the proposed house would be set in from the common boundary. Furthermore, its shallow roof would rise only slightly above the ridge level of the swimming pool building at No 6b. It would not be unduly overbearing.
13. I note that the Inspector who considered a previous appeal at the same site² concluded that there would be harmful impacts in relation to Nos 2 and 6b. However, the design of the current proposal is very different to the previous scheme. In particular, the proposed scale of the two storey elevation facing No 2 is much reduced and there would be a single storey section facing the boundary with No 6b. These changes have resolved the concerns identified by the previous Inspector.
14. On the second issue, I conclude that the proposal would not result in material harm to living conditions. It would accord with LP Policy QD27 which seeks to protect the amenities of adjacent residents.

Sustainable development

15. LP Policy SU2 states that planning permission will be granted for proposals which demonstrate a high standard of efficiency in the use of energy, water

² Ref APP/Q1445/A/08/2087068

and materials. It does not set specific performance standards. Supplementary Planning Document No 8: *Sustainable building design* (SPD08) sets out various recommended standards for sustainable building design including a recommendation that housing developments on greenfield sites should achieve a minimum Code for Sustainable Homes (CSH) rating of Level 5. The Design and Access Statement states that the proposed house would incorporate features such as high levels of insulation, under-floor heating and solar hot water panels. It has been designed to achieve CSH Level 4.

16. The Supplement to Planning Policy Statement 1: *Planning and Climate Change* states that any local requirements for sustainable buildings must be set out in a development plan document, not a supplementary planning document. Whilst I take account of SPD08, which has been adopted by the Council, it is not a development plan document. In these circumstances it would not be reasonable to refuse planning permission on the grounds that the scheme would not achieve Level 5. It would however be reasonable to impose a condition requiring the scheme to meet Level 4 because it has been designed to achieve that level and because such a condition would satisfy LP Policy SU2. Subject to this condition, the proposal would make a satisfactory contribution to the objectives of sustainable development.

Conditions

17. The Council has suggested conditions which I have considered in the light of Circular 11/95 *The use of conditions in planning permissions*. I have referred above to the need for conditions relating to landscaping, tree protection and the CSH. Details of facing materials are needed in the interests of the character and appearance of the conservation area. The facilities for storage of refuse and recycling materials shown on the plans should be provided and retained in the interests of sustainable development and in order to protect the appearance of the area. A condition relating to Lifetime Homes is needed to meet the changing needs of households in accordance with the LP. Development should be carried out in accordance with the submitted waste minimisation strategy, in the interests of sustainable development. A condition requiring development to be in accordance with the approved plans should be imposed to reflect the advice in *Greater Flexibility for Planning Permissions*.
18. The Council suggests that permitted development rights should be removed. However, no exceptional circumstances have been shown and I consider that the normal limitations applying within conservation areas would be sufficient to prevent harm to the character and appearance of the area or to the living conditions of neighbouring residents. There is no need for further pre-commencement approvals in relation to the CSH. There is no need for a further waste minimisation strategy because the submitted strategy is satisfactory.

Appeal B

19. The scheme would involve the demolition of a garage. This is a somewhat utilitarian structure which does not make a positive contribution to the character and appearance of the conservation area. Consequently, demolition would be consistent with LP Policy HE8 which seeks to retain buildings that do make a positive contribution. Demolition of the garage would not harm the significance of the conservation area. The character and appearance of the conservation area would be preserved.

20. The Council suggests a condition requiring that demolition should not take place until a contract has been made for the redevelopment of the site. However, as this is not a situation where demolition would result in an unsightly gap there is no need for such a condition.

Conclusion

21. I have considered all other matters raised but find nothing to alter my conclusions on the main issues. For the reasons given above, the appeals should be allowed.

David Prentis

Inspector

Schedule – Conditions for Appeal A

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The refuse and recycling storage facilities shown on the approved plans shall be provided prior to the occupation of the dwelling hereby permitted and shall thereafter be kept permanently available for the storage of refuse and recycling materials.
- 3) The dwelling hereby permitted shall be constructed to Lifetime Homes standards prior to first occupation and shall thereafter be permanently retained as such.
- 4) The dwelling hereby permitted shall achieve Level 4 of the Code for Sustainable Homes. It shall not be occupied until a final Code Certificate has been issued for it certifying that Code Level 4 has been achieved.
- 5) The development hereby submitted shall be carried out in accordance with the Waste Minimisation Strategy submitted with the application.
- 6) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include hard surfacing materials, means of enclosure and planting.
- 7) All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwelling 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 consent to any variation. All hard landscaping and means of enclosure shall be carried out before the occupation of the dwelling hereby approved.
- 8) 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 colour of any render or paintwork have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No development shall take place until an Arboricultural Method Statement has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved Statement and the protection measures shall be retained until construction works have been completed. The Statement shall show how the trees to remain will be surveyed and protected in accordance with BS5837: 2005 *Trees in relation to construction - Recommendations*.
- 10) The development hereby permitted shall be carried out in accordance with the following approved plans: 2009/11 – 100 to 113.