



Appeal Decision

Hearing held on 1 November 2011

Site visit made on 1 November 2011

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

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

Decision date: 8 November 2011

Appeal Ref: APP/Q1445/A/11/2155653

8 West Way, Hove, East Sussex BN3 8LD

- 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 Arif Essaji against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/03486, dated 8 November 2010, was refused by notice dated 6 May 2011.
 - The development proposed is "addition of first floor storey to form 2 x 2no bedroom units and 2 x 1no bedroom units, including ground floor extension and alterations to existing building".
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Decision

1. The appeal is allowed and planning permission is granted for "addition of first floor storey to form 2 x 2no bedroom units and 2 x 1no bedroom units, including ground floor extension and alterations to existing building" at 8 West Way, Hove, East Sussex, BN3 8LD, in accordance with the terms of the application, Ref BH2010/03486, dated 8 November 2010, subject to the conditions set out in Schedule A at the end of this decision.

Application for costs

2. At the Hearing an application for costs was made by Mr Arif Essaji against Brighton & Hove City Council. This application is the subject of a separate Decision.

Preliminary matters

3. The appeal proposal is the same as the scheme considered by my colleague in his appeal decision ref APP/Q1445/A/09/2102145, but the site plan has been corrected. My colleague dismissed the appeal for 2 reasons. Firstly, it had not been shown that the living conditions of the neighbouring occupiers at 6 and 10 West Way would not be harmed, with regard to sunlight and daylight. Technical evidence was submitted with the application which addresses this matter and no harm has been found. Secondly, the payment of a financial contribution for sustainable transport had not been properly secured. The Council currently has in place *Planning – Temporary measures to assist the development industry*, which has raised the bar on transport contributions from all schemes for new dwellings to schemes of 5 residential units and above. The proposal is for 4 flats so no financial contribution is sought.

4. Whilst my colleague's decision is a material consideration in this appeal, I shall deal with this appeal afresh.

Main issues

5. The main issues in this appeal are the effect that the proposed development would have on: the character and appearance of the surrounding area; the living conditions of the occupiers of 6 and 14 West Way and 76 Dale View with regard to overlooking and privacy; highway safety and the free flow of traffic in the nearby streets; and community facilities in the local area.

Reasons

Character and appearance

6. The appeal site is within a fairly low density mainly residential area close to local shops and services. The sloping topography in the locality allows views to the downs and to the sea. The site is within the Hangleton neighbourhood in the *Brighton & Hove urban characterisation study*, which is classified as a downland fringe with a twentieth-century residential suburb, including development that has evolved over time, and planned public housing. The existing single-storey flat-roofed appeal building includes a dental surgery and a children's nursery. The proposal is for 4 flats at first floor level and a ground floor single-storey extension.
7. Due to its limited storey height and its partly set back flat-roofed design, and thus its minimal mass, the first floor extension, including the projection at the back, would respect the scale and massing of the existing building and its surroundings. The use of timber cladding and rendered panels would give the whole building a unified contemporary appearance. The completed building would provide a harmonious transition in the street scene in West Way, between the 2-storey pitched-roofed dwelling at 6 West Way on higher ground to the east and the pitched-roofed bungalow at 10 West Way on lower ground to the west. Its scale would complement the 3-storey flats on the opposite side of West Way and the 1½-storey medical centre at the back of the site.
8. The local area includes buildings in a variety of styles. Whilst the proposed timber cladding is not typical of the local area, it has been successfully incorporated in contemporary schemes elsewhere in the City, and it would enhance the appearance of the building as a whole. I therefore agree with my colleague's view that the design, scale, height and use of materials would be appropriate, and that the proposal would not harm the character and appearance of the surrounding area. It would satisfy Policy QD2 of the *Brighton & Hove Local Plan 2005 (LP)* which seeks good design that emphasises and enhances the positive qualities of the local neighbourhood, and LP Policy QD14 which seeks well designed extensions and alterations that respect the locality.

Living conditions

9. Because of the siting and scale of the proposed privacy screening; the window positions in, and the internal and external arrangement of, the proposed flats; and their distance from the nearby dwellings and their gardens; harmful overlooking, including the perception of being overlooked, would not be likely to occur. The high level windows in the south-eastern elevation of the extension would be seen in some views from the back garden at 6 West Way.

However, due to their siting and the higher level of that garden, they would not be likely to contribute to an unacceptable perception of overlooking, because some degree of overlooking could reasonably be expected in an urban area.

10. I consider that the proposed development would not harm the living conditions of the occupiers at 6 and 14 West Way and 76 Dale View, with regard to overlooking and privacy. It would satisfy LP Policy QD27, which seeks to protect the living conditions of existing, adjacent and future occupiers.

Highway safety and the free flow of traffic

11. The site is close to the shops and local services at the Grenadier local centre, and it is well served by public transport including a major bus route with relatively frequent services. The site is not within a controlled parking zone so car free development could not reasonably be controlled by condition. Six secure cycle parking spaces and no on-site car parking spaces are proposed.
12. The Council's maximum car parking standards reflect the City's aim to reduce excessive parking provision that encourages the non essential use of the car, in line with Planning Policy Guidance Note 13: *Transport*. There are parking restrictions in the nearby parts of West Way and Hangleton Road. Thus, if the occupiers of the flats were to need to park cars, they would be likely to use the unrestricted parts of Dale View and other nearby streets. Concerns have been raised that such additional parking would cause parking stress in the nearby streets, endangering highway safety and impeding the free flow of traffic, but little technical evidence was put to me to support this view. The highway authority has raised no concerns about highway capacity and public safety. I see no reason to disagree.
13. The Local Transport Plan seeks financial contributions to enhance public transport infrastructure and pedestrian and cycle routes for all new residential units, in accordance with LP Policies TR1 and QD28. However, in accordance with the Council's current *Planning – Temporary measures to assist the development industry*, no financial contribution is sought, and there is nothing in the measures to imply that car parking should be provided at the site instead. Whilst the Council is considering reducing bus services, little evidence of the likelihood of a significant reduction was put to me. Due to the relatively sustainable location of the site, the access to public transport and the proposed provision of cycle storage, the absence of on-site parking for the proposed flats would be acceptable.
14. I consider that the proposal would not be likely to endanger highway safety and the free flow of traffic in the nearby streets. It would satisfy LP Policy TR1, which aims for proposals to provide for the demand for travel that they create, and to maximise the use of public transport, walking and cycling; Policy TR7, which aims to not increase danger to users of adjacent highways; and TR19 which permits development where parking levels meet the adopted standards.

Community facilities

15. The proposal would improve the facilities for the nursery by remodelling the soft play area, improving the entrance to the building and providing a buggy store. Whilst arrangements for the current occupiers of the existing nursery and dentists' practice would need to be made during the construction phase, this is a private matter between the landlord and his tenants. From the evidence put to me it would seem that the present nursery use would be

protected during the construction phase. As no change of use is proposed, the proposal would satisfy LP Policy HO20, which aims to avoid the loss of community facilities.

Conditions

16. I have considered the conditions suggested by the Council in the light of the advice in Circular 11/95 *The Use of Conditions in Planning Permissions*. A condition identifying the application drawings is reasonable for the avoidance of doubt and in the interests of proper planning. Conditions to control materials, including the green roof, and refuse and recycling facilities, are necessary to protect the character and appearance of the area. The condition for terrace screens is necessary to protect the living conditions of nearby occupiers. The condition for cycle storage is necessary to encourage means of transport other than the private motor vehicle, in the interests of sustainable development. The condition for contaminated materials is reasonable having regard to the historic use of the site. A condition for a final certificate to show that EcoHomes Very Good rating has been achieved is necessary in the interests of sustainable development. I shall impose these conditions.
17. The condition for obscure-glazing to the first floor windows in the south-eastern elevation is not necessary as the sills are above 1.7 m above finished floor level, and the development is some distance from the site boundary, so harmful overlooking of the neighbouring dwelling and its garden would be unlikely to occur. Sound insulation is dealt with under building regulations so the condition is not necessary. The development has been designed to achieve an EcoHomes Very Good rating, which is broadly comparable with Code level 3 of the Code for Sustainable Homes. The Council accepts that this accreditation is appropriate to the extension of the existing building, so the condition for a design stage assessment is not necessary. The development has also been designed to satisfy Lifetime Homes standards, insofar as it is reasonably practicable, and the condition for compliance with the plans would be imposed, so the condition for Lifetime Homes standards is not necessary. I shall not impose these conditions.

Other matters and conclusion

18. The living conditions of the occupiers of 74 Dale View and 10 West Way were not concerns of the Council in their reasons for refusal. I see no reason to disagree. Noise from the future occupiers of the flats would not be likely to cause harm in a residential area. I have taken into account all of the other points raised, but they do not outweigh those planning considerations which have led to my decision.
19. For the reasons given above and having regard to all other matters raised, the appeal succeeds.

Joanna Reid

INSPECTOR

Schedule A

- 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: unnumbered and untitled site location plan (H M Land Registry title number ESX191711), 2975.EXG.01 B, 2975.EXG.02 B, 2975.PL.01 B (excluding the site plan), and 2975.PL.03 B.
- 3) If during development any visibly contaminated or odorous material is found, no further development shall take place until a method statement to identify, risk assess, and deal with the contaminant(s) has been submitted to and approved in writing by the local planning authority. No further development shall take place except in accordance with the approved method statement.
- 4) 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, and details of the green roof, have been submitted to and approved in writing by the local planning authority. Development shall be carried out, and the green roof shall be implemented, in accordance with the approved samples and details.
- 5) The dwellings shall achieve an EcoHomes Very Good rating. No dwelling shall be occupied until a final certificate has been issued for it certifying that EcoHomes Very Good has been achieved.
- 6) No dwelling shall be occupied until the refuse and recycling facilities shown on the approved plans have been implemented and are available for use. The refuse and recycling facilities shall be retained thereafter for those purposes.
- 7) No dwelling shall be occupied until details of the first floor terrace screens have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the screens shall be retained thereafter in accordance with the approved details.
- 8) No dwelling shall be occupied until the cycle parking facilities shown on the approved plans have been implemented and are available for use. The cycle parking facilities shall be retained thereafter for use by the occupiers of and visitors to the development at all times.

APPEARANCES

FOR THE APPELLANT:

Mr Arif Essaji	Appellant.
Mrs Essaji	Appellant's wife.
Ms Carol Wheeler	Appellant's agent, PlanRight UK Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

Mr Guy Everest	Planning officer, Brighton & Hove City Council.
Cllr Mrs Denise Cobb	City Councillor, Brighton & Hove City Council.

DOCUMENTS PUT IN AT THE HEARING

- 1 The Council's notification of the hearing and the list of persons notified.
- 2 *Bus Times and Pocket Bus Times and Route Map*, put in by the appellant.
- 3 *Planning – temporary measures to assist the development industry*, put in by the Council.