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# Appeal Decision

Site visit made on 25 October 2011

**by Jessica Graham BA(Hons) PgDipL**

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

**Decision date: 1 November 2011**

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**Appeal Ref: APP/Q1445/A/11/2155953**  
**51 Buckingham Place, Brighton BN1 3PQ**

- 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 Ms J Bunday against the decision of Brighton & Hove City Council.
  - The application Ref BH2011/00730, dated 9 March 2011, was refused by notice dated 13 May 2011.
  - The development proposed is the demolition of the garage at the rear of the site, fronting Howard Place, and the construction of a detached two-storey house.
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## Decision

1. The appeal is allowed and planning permission is granted for the demolition of the garage at the rear of the site, fronting Howard Place, and the construction of a detached two-storey house, at 51 Buckingham Place, Brighton BN1 3PQ in accordance with the terms of the application, Ref BH2011/00730, dated 9 March 2011, subject to the ten conditions set out in the schedule attached to this decision letter.

## Main issues

2. I consider the main issues to be
  - (a) the effect that the proposed development would have upon living conditions of other existing dwellings at Buckingham Place, with particular regard to visual impact;
  - (b) the effect that the proposal would have upon the character and appearance of the area; and
  - (c) whether the development would make adequate provision for outdoor amenity space to serve each of the units of accommodation on the site.

## Reasons

3. No. 51 is a terraced property composed of four storeys, including a basement and an attic, and has been converted to form flats. The rear elevation of the self-contained basement flat incorporates French doors opening on to a sunken patio, but aside from this private courtyard space, I am told that none of the existing flats have access to the area to the rear of the building. This currently contains a large single-storey garage set some distance back from the kerb behind a tarmac slope, with a pedestrian access route alongside the garage, and a small space behind it, laid to concrete. The property lies within the West Hill Conservation Area.

### *Living conditions at neighbouring properties*

4. Views from the rear-facing windows of the lower storeys at No. 51 are already somewhat restricted. The kitchen window of the basement flat and the french doors serving the bedroom face a retaining wall on the opposite side of the sunken patio, such that to the extent that it is visible above this wall, the existing garage barely features in the outlook from those windows. That situation would be very little altered by the proposed replacement of the garage with the new dwelling.
5. While the appeal site would be levelled off so that the new house would be set slightly lower than the current garage, the height of the dwelling would be considerably greater than this existing single-storey structure. However, its roof would be hipped to the rear, to reduce the impact of the increased height upon the properties at Buckingham Place. I note that the two rear-facing windows of the ground floor flat both serve bedrooms, and the main living space is on the opposite side of the building. The proposed house would clearly be more noticeable than the existing garage in views from these bedroom windows, but in my judgment it would not be so obtrusive as to significantly reduce the outlook from the ground floor flat. Similarly, while it would have a greater presence than the garage in views from the windows of the flats above, that presence would not be so overbearing as to adversely affect the living conditions of their occupiers. Further, the disposition of the openings in the proposed house would be sufficient to prevent any overlooking between the new and existing dwellings.
6. The existing garage is set some distance in from the boundary wall of the rear garden serving No. 53, whereas the proposed dwelling would be constructed right against this wall, to an eaves height of some 4.8m. This would clearly make it far more obvious than the existing garage in views from the rear-facing windows of No. 53, particularly those at ground-floor level. I have not been provided with any information concerning the layout of the living accommodation at No. 53, but from what I saw at my site visit, the ground floor windows do not appear to serve main living areas. In any event, views from them toward the proposed development would be oblique, and I am satisfied that the modest proportions and roof profile of the new dwelling would ensure that it would not appear unduly dominant or overbearing.
7. I therefore conclude that the proposed development would comply with Policy QD27 of the Brighton & Hove Local Plan 1995, which provides that planning permission will not be granted where it would cause loss of amenity to existing residents.

### *Character and appearance*

8. The existing garage fronts on to Howard Place, which lies at the top of a railway cutting and so is visible in views across Brighton's central valley. The West Hill Conservation Area Character Statement records that *The backs of the gardens to the properties in Buckingham Place, the mixture of modern and older buildings, and the many "left-over" spaces, results in a lack of visual cohesiveness to the streetscape in this part of Howard Place, accentuated by its rather run-down and neglected appearance*". I consider that a fair assessment; the poor condition of the tarmac in front of the garage, and of the brick arch alongside it, contribute to the rather dilapidated appearance of the area.

9. The proposed development would replace the garage with a modern interpretation of a coach house. Unlike the existing garage its street elevation would align with the garden walls to the east, reinstating the historic frontage. The simple, gabled form of this main elevation, incorporating timber boarding at ground floor level, is an appropriate design response that harmonises with the scale and character of the other existing buildings, and in my judgment would improve the current appearance of this part of the conservation area. While the angled frontage and hipped form of the rear part of the roof are slightly awkward features, they arise from the constraints of the context and do not undermine the visual benefit that would derive from replacing the existing garage with the proposed house.
10. The new dwelling would have a limited amount of outside amenity space, but that is not unusual in the context of a modest dwelling located within a built-up area, and there would be sufficient outdoor space for future occupiers to sit outside, grow some plants, and hang out their washing. In the context of the existing density of development in the area, I consider the scale and plot coverage of this proposal an appropriate form of development that would not appear cramped or excessive.
11. I find that the proposed development would accord with the objectives of Policies QD1, QD2 and QD3 of the Local Plan, which seek to ensure that any new building makes a positive contribution to the visual quality of the environment, enhancing positive characteristics of the local neighbourhood and making efficient and effective use of its site.

#### *Outdoor amenity space*

12. There is some disagreement between the Council and the appellant as to the existing use of the area to the rear of No. 51. The Council contends that the planning permission granted for the subdivision of No. 51 into flats (ref. BH2007/00080) included access to this area, as a shared outdoor amenity space, for the occupiers of the flats then created. The Council accepts that the current proposal would make adequate provision of outdoor amenity space, refuse/recycling facilities and cycle parking for the future occupiers of the new dwelling, but is concerned that no provision is made for access to outdoor amenity space, or refuse and recycling storage facilities, for the occupiers of the existing flats at No. 51.
13. The appellant, on the other hand, contends that it was not the intention of the earlier permitted conversion to provide outdoor amenity space for the occupiers of the flats at No. 51; the ground floor plan made provision for an internal cycle store, and access to a refuse store behind that, but this refuse store was subsequently found not to be necessary. The appellant's evidence is that the area around the garage has not been used as outdoor amenity space by the occupiers of the flats, and that there is no realistic prospect of it ever being used as such; all of the flats are rented and have proved very popular due to their central location and proximity to the railway station, with the typical tenants being young single people or couples who have no requirement for a garden.
14. I saw at my site visit that the extent of the outdoor amenity space to the rear of No. 51 is limited to a concrete path alongside the garage, and a very small area of hard-standing between the garage and the sunken patio that serves the basement flat. I find it difficult to believe that, even if access to this space

were made available to the occupiers of the flats at No. 51 in the manner that the Council contends was envisaged by the plans approved under ref. BH2007/00080, any meaningful or satisfactory use could have been made of it as a shared outdoor facility. On that basis, the loss of the possibility of its use for that purpose would have little if any adverse impact upon the living conditions of the flats at No. 51; it is far from unusual for small flats in a central urban location not to have access to private outdoor amenity space of any kind, and in this case, the evidence strongly suggests that shared use of a small area of neglected hard-standing is not a benefit that the current occupiers would miss.

15. As to the provision of refuse and recycling storage facilities, the appellant contends that following the Council's introduction of communal on-street refuse bins, the residents of the flats at No. 51 abandoned the inconveniently sited ground-floor storage area, accessed through the cycle parking area, because it was easier for them to place their recycling in boxes stored in the communal hallway (which I am told is wide enough for that purpose) or on the front steps. I have no reason to doubt (or indeed fault) this alternative arrangement, and on that basis, I consider that the use of this former refuse storage area to provide cycle parking for the future occupiers of the new dwelling would have no adverse impact on the living conditions or amenities of the occupiers of the existing flats. Nor would it conflict with the aims of Local Plan Policy SU2, which seeks to ensure a high standard of efficiency with regard to such matters as the provision of space for refuse and recycling.
16. Taking all of this into account, I am satisfied that the proposed development would make adequate provision for both the proposed and existing units of accommodation at No. 51, in terms of refuse, recycling and cycle parking facilities, in accordance with Policies SU2 and TR14 of the Local Plan. The proposal would incorporate sufficient outdoor amenity space to serve the new dwelling, and the lack of any such provision for the existing flats would not be inappropriate, given their size, location and context. I therefore consider that the proposal would also accord with Policy HO5 of the Local Plan, which seeks to ensure the provision of private useable amenity space, where appropriate to the scale and character of the development.

#### *Conditions*

17. The Council suggested a number of conditions that it believes would be necessary if the appeal were to be allowed. Given the proposed dwelling's fairly prominent location within the conservation area, I agree with the Council that conditions are needed to secure the prior approval of specific design details and materials, require the use of appropriate render and rooflights, and prevent the addition of any discordant external features. I also share the Council's view that conditions are needed to ensure the recycling and refuse facilities, and cycle parking, are put in place before the dwelling is first occupied and, given the size constraints of the plot, to remove permitted development rights for any extension or enlargement of the dwelling without first obtaining planning permission.
18. In accordance with the Council's adopted policy and the appellant's stated intention, I have attached a condition requiring the development to achieve Lifetime Homes standards. However, I have a number of concerns about the Council's suggested conditions concerning achievement of Level 5 of the Code for Sustainable Homes. Such a requirement is not contained in any adopted

policy of the Development Plan, as advised by government guidance set out in *Planning and Climate Change* (a supplement to Planning Policy Statement 1), but stems instead from the Council's Supplementary Planning Document (SPD) 08: *Sustainable Building Design*.

19. The SPD advises that new dwellings on "greenfield" sites (on its terms, sites which do not constitute "previously developed land" as defined by PPS 3) should achieve Code Level 5. I am not convinced that this a reasonable description of the appeal site. Most of it is currently occupied by the garage and the hard-standing that provides vehicular access to it, and notwithstanding the recent amendment that specifically excluded private residential gardens, the PPS 3 definition of "previously developed land" remains *that which is or was occupied by a permanent structure including... any associated fixed surface infrastructure*. In my judgment, the appeal site constitutes previously developed land, and as such the advice of the SPD would be that the proposed dwelling should achieve Code Level 3.
20. The appellant has confirmed that the proposed house will achieve Code Level 3, and this intention has informed many of the design features. I therefore consider that while a condition requiring the development to achieve Code Level 5 would be unduly onerous, and is not currently supported by any adopted Development Plan policy, a condition requiring the achievement of Level 3 would be reasonable.

#### *Conclusion*

21. I have found that the proposed development would enhance the appearance of the West Hill Conservation Area and would not cause any significant harm to the living conditions of existing residents, and that the amount of outdoor amenity space provided for the new and existing dwellings on the site would be appropriate to their scale and character. I do not consider there to be any other material considerations sufficient to outweigh its consequent compliance with the relevant Development Plan policies.
22. I therefore conclude that the appeal should be allowed.

*Jessica Graham*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Subject to the provisions of condition 3 below, the development hereby permitted shall be carried out in accordance with the approved plans numbered 270/P20 – 270/P34 inclusive.
- 3) Notwithstanding the provisions of condition 2 above, no development shall take place until the following details have been submitted to, and approved in writing by, the local planning authority:
  - (i) the treatment of the recessed entrance, its paving and door threshold;
  - (ii) the rooflights, which shall be of traditional design and made of steel or cast iron;
  - (iii) the solar panels, which shall be integrated and flush with the roof slates;
  - (iv) drawings showing elevations and sections of the features of the dwelling hereby permitted, including windows, doors, timber screen, glass balustrades, eaves, parapets and copings, at a scale of 1:20;
  - (v) drawings showing sections of the external joinery, at a scale of 1:1; and
  - (vi) samples of the materials and colours to be used in the construction of the external surfaces, including the rainwater goods, of the development hereby permitted.

The development shall be carried out in accordance with the approved details, and thereafter retained as such.
- 4) The walls shall be smooth rendered in a cement/lime/sand render mix down to ground level and shall be lined out with ashlar joint lines to match the original building and shall not have bell mouth drips above the damp proof course or above the window, door and archway openings and the render work shall not use metal or plastic expansion joints, corner or edge render beads and shall be painted in a smooth masonry paint in a colour to be approved by the local planning authority in accordance with condition 3 above.
- 5) No cables, wires, aerials, pipework, meter boxes or flues shall be fixed to the frontage elevation (facing Howard Place) of the dwelling hereby permitted.
- 6) All roof ventilation and extract outlets shall use flush, concealed slate/tile vents, to match the roof covering, and concealed ridge and eaves ventilators.
- 7) The dwelling hereby permitted shall not be occupied until the refuse and recycling storage facilities, and cycle parking facilities, have been provided in accordance with the details shown on the approved plans and made available for use. These facilities shall thereafter be retained for their intended purpose at all times.
- 8) The development shall achieve Level 3 of the Code for Sustainable Homes, and the dwelling shall not be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

- 9) The dwelling shall be constructed to Lifetime Homes standards prior to its first occupation, and retained as such thereafter.
- 10) 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 dwelling hereby permitted shall be carried out without first obtaining planning permission from the local planning authority.

