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## Appeal Decision

Site visit made on 28 November 2011

**by P W Clark MA MRTPI MCMi**

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

**Decision date: 7 December 2011**

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**Appeal Ref: APP/Q1445/A/11/2160370**

**Land to the rear of 33 Sackville Road, Hove, East Sussex BN3 3WA**

- 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 & Mrs Colasurdo against the decision of Brighton & Hove City Council.
  - The application Ref BH2011/00897, dated 24 March 2011, was refused by notice dated 16 June 2011.
  - The development proposed is demolition of existing garages and erection of 1N<sup>o</sup> 2 bedroom dwelling adjoining 62 Stirling Place.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of existing garages and erection of 1N<sup>o</sup> 2 bedroom dwelling adjoining 62 Stirling Place on land to the rear of 33 Sackville Road, Hove, East Sussex BN3 3WA in accordance with the terms of the application, Ref BH2011/00897, dated 24 March 2011, subject to the following conditions:
  - 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: EX01A, PL01F.
  - 3) No development shall take place until details of a scheme of investigation of potential land contamination and, if needed, its remediation, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. The dwelling shall not be occupied until a competent person has verified that any necessary scheme of remediation has been completed.
  - 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 have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 5) No cables, wires, aerials, pipework, meter boxes or flues shall be fixed to the elevation facing the highway.
  - 6) The dwelling shall achieve Level 3 of the Code for Sustainable Homes. The dwelling shall not be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

- 7) The dwelling shall not be occupied until facilities have been provided within the site in accordance with drawing No PL01F for bicycles to be parked and for refuse and recycling material to be stored. The facilities so provided shall thereafter be retained for their intended purpose.
- 8) The dwelling shall not be occupied until planting of a silver birch tree has been carried out in accordance with the approved plans. If within a period of two years from the date of its planting that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, another tree of the same species and size as that originally planted shall be planted at the same place.
- 9) 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 outbuilding (other than those expressly authorised by this permission), extension, enlargement or other alteration to the dwelling shall be constructed.

### **Main Issues**

2. There are three. One is the effect of the proposal on the character and appearance of the neighbourhood which is part of the Old Hove Conservation Area. The second is its effect on the living conditions of numbers 31 and 33 Sackville Road. The third is whether it would be adaptable to suit the needs of people with disabilities.

### **Reasons**

#### *Character and appearance*

3. The Old Hove Conservation Area does not have a consistent character. Rather, as the Council's Character Statement points out, the area conveniently divides into four, each with its own character. That which contains the site is described as very mixed. The character assessment focuses on the architecture of the buildings and the views along streets. There is no mention of the spaces to their rear.
4. The council's appeal statement suggests that this part of the Conservation Area is characterised by substantial dwellings fronting Sackville Road with a substantial gap separating them from the terraced housing to their rear. Such a gap certainly exists to the rear of 33 Sackville Road; less to the rear of numbers 29 and 31 because they project further back but there is no such gap at the rear of 63 Sackville Road on the next corner to the north, or at the rear of 27 Sackville Road, the next corner to the south, or, south again, at the junction with Church Road. In Stirling Place, opposite the site, the gap to the rear of 35 Sackville Road has long been reduced by the existence of numbers 19-23 Stirling Place, a nineteenth century former parade of shops now converted to housing.
5. The width of the proposed dwelling would be less than that of the existing garages on site so at ground floor level it would increase the length of the gap behind number 33 by about 0.5m but that would be imperceptible as views at ground level are obstructed by boundary walls. At first floor it would reduce the space from about 15m to about 9.5m. That would be comparable with the existing dimensions of the space at the rear of 29/31 Sackville Road. So the

proposal would not eliminate the gap to the rear of number 33 but would reduce it to a size similar to that of its neighbours.

6. Other aspects of character and appearance are not at issue. They can be secured by conditions including requirements for samples to be submitted of the materials to be used; compliance with the approved plans (which show details of windows and door openings and the replacement of a tree) and the location of cables and pipework.
7. I conclude that the proposal would not so reduce the space to the rear of number 33 Sackville Road as to be inconsistent with the character and appearance of the Old Hove Conservation Area, which it would thereby preserve. It would be consistent with Brighton and Hove Local Plan policies QD1, QD2, QD3, HO4 and HE6. Amongst other things, these require consideration of the scale, height, visual interest, bulk, design and layout of development, an efficient and effective use of a site with an intensity appropriate to the locality, retaining and protecting trees and spaces between buildings in Conservation Areas.

#### *Living conditions*

8. The existing rear garden of number 33 is allocated to the ground floor flat alone. As noted in appeal decision APP/Q1445/A/09/2099838 which allowed the conversion of that property to flats, the ground floor unit is a two bedroomed flat which would be more likely to accommodate a family. The proposal would divide that garden area into two, shared between that flat and the current appeal proposal, which is also a two bedroomed unit, capable of accommodating a family. Each portion would be about 4m by about 8.5m. Local Plan policy HO5 requires suitable external amenity space. The Council's officer report advises that each fragment would be an acceptable size for a family dwelling. There is no information to cause that advice to be rejected.
9. The outlook from the garden flat at number 33 would be on to the new garden wall at a distance of about 3.5-4.5m and beyond that to the two storey flank of the new building at a distance of about 7.5-8.5 m. There are no standards for outlook. These dimensions are a little less than is common in many authorities but it is often the case that if a development provides sufficient daylight to an existing property, then it is likely also to provide an adequate outlook. The appellant's sunlight and daylight report, commissioned from Schroeders Begg LLP demonstrates that the impact on daylight to the ground floor flat at number 33 would be acceptable, indeed, hardly noticeable. However, that might not be the case were permitted development rights to be taken up and so a condition is necessary to require a specific consent for any alteration or extension.
10. Upper floors at number 33 are set slightly back, so their outlook would be better than that of the ground floor flat. The existing outlook from number 31 is to the flank of number 62 Stirling Place at a distance of about 10m. For the last 5.5m of that distance the proposal would add a sidelong enclosure of similar height. It would be to the north of number 31 and so would cause little or no loss of light. To have an outlook partly enclosed on two sides in this fashion is not uncommon and so would be acceptable.

11. I conclude that the effect of the proposal on the living conditions of neighbouring properties would be acceptable. It would not be contrary to Local Plan policy QD27 which seeks to protect residents' amenities.

*People with disabilities*

12. Local Plan policy HO13 requires new dwellings to be built to a lifetime homes standard whereby they can be adapted to meet the needs of people with disabilities without major structural alterations. As submitted, the layout shown on application drawing PL01F would not be suitable for a wheelchair user without adaptation. The appellant has produced drawing PL01J, not in substitution for the application drawing but as an additional drawing to show how adaptation would be possible without major structural alterations. There is also evidence to show that the adaptation illustrated would meet technical specifications for wheelchair users in a dwelling of this size.
13. It might be preferable to construct the dwelling so as to be usable in a wheelchair from the start. The Council has suggested that this be required by condition but there is no evidence to demonstrate that this would be necessary for the development to be acceptable or to comply with policy. I conclude that the appeal proposal would be adaptable without major structural alterations. The proposal would therefore comply with Local Plan policy HO13.

*Conditions*

14. The Council has suggested a number of conditions in the event that the appeal is allowed. I have considered these by reference to the advice contained in Government Circular 11/95, *the Use of Conditions in Planning Permissions*, preferring the use of the model conditions contained therein where appropriate. Conditions requiring submission of details of window and door openings and of landscaping are not imposed as there is sufficient detail shown on the drawings. It would be sufficient to require that these be followed. Likewise conditions are necessary to require that the details of refuse and recycling storage and bicycle parking shown on the drawings are provided.
15. There is evidence of potentially contaminating uses in the vicinity. The garages to be demolished may themselves be a source of land contamination. The proposal is for a use sensitive to land contamination. Applying the precautionary approach recommended in the Government's Planning Policy Statement 23 *Planning and Pollution Control*, a scheme of investigation and, if required, remediation is called for. Achievement of level 3 of the Code for Sustainable Homes is a requirement of Local Plan policy SU2 and so a condition is necessary.

*P. W. Clark*

Inspector