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# Appeal Decision

Site visit made on 6 December 2011

**By Ray Wright BA(Hons) DipTP MRTPI**

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

**Decision date: 18 January 2012**

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## **Appeal Ref: APP/Q1445/A/11/2161435**

### **41 Wayland Avenue, Brighton BN1 5JL**

- 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 Mrs M Patten against the decision of Brighton and Hove City Council.
  - The application Ref BH2011/01738, dated 10 June 2010, was refused by notice dated 17 August 2011.
  - The development proposed is described as 'Demolition of existing bungalow, construction of 2 new 5 bedroom houses and detached garages - resubmission of refused application BH2010/03115.'
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### **Application for Costs**

1. An application for costs was made by Marguerite Patten against Brighton and Hove City Council. This application will be the subject of a separate decision.

### **Decision**

2. The appeal is dismissed.

### **Procedural Matters**

3. In order to ensure clarity and for the avoidance of doubt, it is confirmed that the drawings considered in respect of this appeal are the ones listed on the planning decision. The reference in the description of development to the proposal being a 'resubmission,' is superfluous and so should not be included in my formal decision.

### **Main Issues**

4. The main issues in this case are the effect on the character and appearance of the area and whether the proposal would provide satisfactory living conditions for prospective occupiers of the houses.

### **Reasons**

5. The site is currently occupied by a bungalow set behind dwellings fronting Wayland Avenue and accessed by a 35m raked driveway between numbers 39 and 43. It is proposed that this bungalow be demolished and replaced by two,
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five bedroom dwellings over three floors. Following an earlier refusal for two very similar houses, this scheme proposes that they be set below site level, in order to try and address previous concerns regarding their impact on the wider character of the area and overlooking from upper levels.

#### *Character and Appearance*

6. The existing bungalow due its siting, low roof profile and existing vegetation is largely unseen from outside the site and therefore does not appear as an obvious 'backland' development. The houses as proposed would take up a similar footprint to the existing building and would have steeply pitched roofs with ridge lines that would rise above that of the existing bungalow.
7. However, from the footpath along Wayland Avenue, with the floor levels and design of the houses as currently proposed, it is likely that only angled and glimpsed views of the tops of these roofs would be possible, due to the slope of the land and location and form of existing road frontage properties. With no pathway on the opposite side of the road and the fall of land in the nature reserve even longer range views would be extremely limited.
8. Therefore from Wayland Avenue the proposed houses would be visible largely only from the gap in the built development on the road frontage formed by the access. At this point the development would be more evident. However, even here the visual impact would be limited to a small section of the road and further reduced due to the proposed gap between the new houses at this point. Due to the land gradient and distance I consider it unlikely that the front elevations of the houses would be read as three storeys from public viewpoints.
9. Overall I am satisfied that the two houses as now proposed would not be seen as an unduly prominent or intrusive feature in the area and that the general character and appearance of the area would not be materially undermined as a consequence of this development. I therefore find no conflict with the density and design requirements of policies HO4, QD1, QD2, or QD3 of the Brighton and Hove Local Plan (LP).

#### *Living Conditions*

10. Mature hedges separate the site from adjoining plots, providing a valuable screen, which is proposed to be retained to reduce potential overlooking between the development and adjoining properties. Close to the southern boundary is the large detached dwelling at 1 Dyke Road Place. These features give a sense of enclosure to the site and restrict the overall amount of light it receives.
11. The existing bungalow is located appropriately within the rising ground of the site being set slightly into the site slope to its rear with a raised entrance to the front. To reduce their overall height, the proposed houses would each have a 'semi-sunken lower ground floor.' The dwellings as proposed would each have four of their overall five double bedrooms provided at this level, together with associated bathrooms and wet rooms. This arrangement has a consequential effect on the quality of the habitable accommodation proposed.
12. I have a particular concern regarding the natural lighting to the proposed bedrooms to the rear of these lower ground floors. These would have light wells

located and cutting into the ground floor patio garden areas located above. They would be set awkwardly below kitchen and patio door openings. Associated with these to the side of the bedrooms would be small 'sunken garden light wells.' The effectiveness of both of these elements would be significantly reduced due to the layout proposed, the enclosed nature of the site and in its centre by the proximity of the houses and their flank walls. The 'sunken garden' areas would also provide a poor outlook with restricted views principally of steps up to ground level and where anything placed in them is liable to further restrict the light received by adjoining rooms.

13. Overall I consider the amount of accommodation proposed at this lower ground floor level excessive and its arrangement unsatisfactory.

14. I conclude the proposal would not provide satisfactory living conditions for its intended occupants, contrary to Policy QD27 of the LP.

**Other Matters.**

15. Various other issues are raised by nearby residents. Matters such as landscaping and linkage to sewers would require further details to be provided and suitable conditions could be imposed were permission to be granted. Those related to restrictive covenants and subsidence are covered by separate legislation, and cannot be dealt with as part of this application. Issues related to loss of light and loss of privacy did not form part of the Council's objections to these proposals and I have no reason to disagree with this judgement. Concerns are raised regarding the ability of the access to cope with traffic from the proposed development due to its width and incline. In addition local traffic and parking conditions are highlighted. However, I note no objection was raised by the highway authority to the development proposed and I have no evidence which would make me disagree with this judgement.

16. A number of other sites within the City area have been brought to my attention where developments have taken place on sites with various gradients, where buildings have been cut into and utilised the sloping ground to create floorspace. However, I am unaware of the exact details and specific circumstances of each of these cases and therefore I have considered this proposal on its individual merits.

**Conclusion.**

17. While the houses as now proposed would be likely to have only a limited effect on the character of the area, the level and arrangement of habitable accommodation at lower ground floor is considered excessive and would provide an unsatisfactory arrangement. The harm that would be caused to the living conditions of future occupiers of the houses is overriding, it cannot be mitigated by the imposition of conditions and it is not outweighed by any other material considerations. For these reasons the appeal must be dismissed.

*Ray Wright*

INSPECTOR

