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# Appeal Decision

Site visit made on 13 February 2013

**by R Barrett Bsc Msc Dip UD Dip Hist Cons MRTPI IHBC**

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

**Decision date: 3 May 2013**

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**Appeal Ref: APP/Q1445/A/12/2172128**

**133 Portland Road, Hove, East Sussex, BN3 5QJ**

- 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 Abdul Noor against the decision of Brighton & Hove City Council.
  - The application Ref BH2011/00985, dated 18 February 2011, was refused by notice dated 6 September 2011.
  - The development proposed is a single residential unit to the rear of the property.
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. Since this application was determined the National Planning Policy Framework (the Framework) has come into force. I find that policies referred to in the Council's reasons for refusal are generally consistent with it.

## Main Issues

3. The main issues are the effect of the proposal on:
  - the character and appearance of the locality;
  - the living conditions of existing occupiers of the upper floors of 133 Portland Road, with regard to the provision of a garden;
  - the living conditions of future occupiers of the proposed residential unit, with regard to outlook, privacy, noise and disturbance, the adequacy and arrangement of the internal space and access and the provision for people with disabilities; and,
  - the use of energy resources.

## Reasons

4. The appeal site comprises a three storey terraced property and the land to its rear, fronting Portland Road near to its junction with Tamworth Road. The appeal site is used as a takeaway outlet on the ground floor with a residential unit on the upper floors.
5. The character and appearance of the locality is mixed with retail on the ground floor and residential above. The alleyway to the rear is unmade and narrow, enclosed by the boundaries of rear gardens.
6. The proposed single storey addition, together with the garden space to the rear and the access path to the side would result in greater site coverage and a

more cramped form of development than is characteristic in the locality. The locality is one of frontage development with some commercial extensions to the rear, but maintaining a balance of open yards and gardens serving the residential uses. This would be adversely affected by the introduction of a self-contained residential unit with high site coverage, reliant on access from the rear via an alley.

7. I noted, on my site visit, that some other properties in the locality had large single storey rear additions. However, few completely fill the rear garden as the appeal proposal would. The rear addition to 131 Portland Road is an end of terrace property, accessed from the main road and therefore does not replicate the circumstances of this appeal.
8. It is suggested that the rear garden, if left, may be used for dumping waste. However, this could be prevented by proper site management. If this were to occur, the Council could take the appropriate action to remedy the situation.
9. I conclude that the proposal would adversely affect the character and appearance of the locality and would fail to accord with Policies QD2, QD3 and QD14 of the Brighton and Hove Local Plan 2005, which together promote development designed to emphasise and enhance the positive qualities of the local neighbourhood and make efficient and effective use of sites, appropriate to the locality.

#### *Living Conditions- Existing Occupiers*

10. The proposed residential unit would take up the whole of the rear garden, which would leave no garden space for the occupiers of the residential unit at 133 Portland Road. This would restrict the occupiers' access to outdoor space and adversely affect their living conditions. I am aware that the rear garden is not used by the present occupiers of the residential unit at No 133. However, my concern is not only for the present occupiers, but for future occupiers of that unit also. Other rear extensions in the same terrace have resulted in rear gardens being reduced, but I am not aware of the circumstances that have led to these developments and in any event, they do not justify unacceptable development.
11. I conclude that the proposal would fail to provide acceptable living conditions for existing occupiers of the upper floors of 133 Portland Road, with regard to the provision of a garden. It would therefore fail to accord with LP Policy QD27, which protects the amenity of existing occupiers.

#### *Living Conditions- Future Occupiers*

12. The plans suggest two-person occupancy for the proposed residential unit which would provide a cramped and tight internal arrangement, with limited space for furniture, storage, circulation and living. This would result in unpleasant living conditions for future occupiers. I am aware that the internal space which would be provided would be well below the Council's minimum standard for a one-bedroom affordable unit. Whilst this standard is not directly relevant to this appeal, it does give an indication of acceptable space requirements. This increases my concern in this respect.
13. In addition, all the windows would look out onto the side and rear boundaries which, to provide some privacy, would need to be relatively high and would be very close. The boundaries would appear dominant in views from all the

- windows, which would provide an unpleasant and confined outlook for future occupiers.
14. The access to the side of the proposed residential unit would be shared by the users of the ground floor unit of No 133. As proposed windows to the bedroom, kitchen and the only door, would look onto this access at very close range, this arrangement would severely compromise the privacy that future occupiers could expect within the private spaces of the proposed residential unit. In addition, as the access is so close to the proposed bedroom and kitchen windows, its use would be likely to result in unacceptable noise and disturbance. As the ground floor unit at No 133 is currently used as a takeaway, which is likely to open in the evenings, this adds to my concern. All in all, I conclude that the shared use of the access to the side of the proposed unit would result in a lack of privacy for future occupiers, even though that access may not often be used by the ground floor unit at No 133.
  15. The access to the proposed unit would be via the rear alleyway, which is relatively narrow, an unlit and unmade path and not overlooked by properties at close range. This would not provide a safe, pleasant or convenient access to the proposed unit, particularly for those with disabilities, even though it is level. It is suggested that other development in the locality has rear access and my attention is brought to a development at Crown Gardens. However, I have insufficient information on these developments to come to any meaningful comparison with the appeal development.
  16. The side access to the proposed unit, within the appeal site, would be too narrow to conveniently accommodate a turning circle for a wheel chair in front of the proposed door. This would fail to meet Lifetime Homes Standards, in that it would not adequately provide for those with disabilities, without major structural alterations. I consider that this matter could not be overcome by the use of a suitably worded planning condition, as it would require a significant alteration to the proposed dwelling.
  17. It is suggested that the proposed residential unit may be used by workers in the takeaway business at the ground floor of No 133, but this matter does not outweigh the requirement for acceptable living conditions.
  18. I conclude that the proposal would fail to provide acceptable living conditions for future occupiers, with regard to outlook, privacy, noise and disturbance, the adequacy and arrangement of the internal space and access and provision for people with disabilities. It would therefore fail to accord with LP Policies HO13 and QD27, which together protect the amenity of future occupiers and promote new residential development that can be adapted to meet the needs of people with disabilities, without major structural alterations.

### *Energy Resources*

19. Annex 2 of the Framework does not include private residential gardens in the definition of previously developed land. Section 2.4 of the Brighton and Hove Supplementary Planning Document 08: *Sustainable Building Design* (2008) (SPD) sets out the requirement for new build residential development on green field sites to meet Code for Sustainable Homes Level 5 (CSH). Whether the appeal site falls within the definition of green field or not, this is an ambitious target and on the basis of the orientation of the proposed residential unit, I am not satisfied that it would be achievable.

20. However, as the proposed development would be very small scale, if it were not a green field site, Code Level 3 would be required by the SPD standard. With limited information to demonstrate that this is a green field site, on the basis of the very small scale of this development proposal and the apparent inherent problem with orientation, I consider that this higher standard would be onerous and that the lower standard would be appropriate in these circumstances. This requirement could be secured by a suitably worded planning condition. I conclude, therefore, that the proposal would generally achieve efficiency in the use of energy resources and would generally accord with LP Policy SU2 and SDP. These together promote sustainable building design.

*Other Matters*

21. The proposal would provide an additional unit of accommodation in a sustainable location, close to local amenities and public transport. However, in this case, this matter does not outweigh the harm that I have identified and the appeal proposal, irrespective of its small scale, would not meet the wide definition of sustainable development in the Framework.

**Conclusion**

22. For the above reasons, I conclude that the appeal should be dismissed.

*R Barrett*

INSPECTOR