



## Appeal Decision

Site visit made on 5 August 2013

**by David Harmston FRICS DipTP MRTPI**

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

**Decision date: 22 August 2013**

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**Appeal Ref: APP/Q1445/A/13/2194472**

**Land at the rear of 6 – 8 Kelly Road, Hove, East Sussex BN3 6LD**

- 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 Eman Barakat against the decision of Brighton & Hove City Council.
  - The application (Ref BH2012/02307), dated 24 July 2012, was refused by notice dated 14 September 2012.
  - The development proposed is the erection of a detached dwelling and a detached garage (revision to previous scheme Ref BH2008/03523).
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of a detached dwelling and a detached garage (revision to previous scheme Ref BH2008/03523) on land at the rear of 6 – 8 Kelly Road, Hove, East Sussex BN3 6LD in accordance with the terms of the application (Ref BH2012/02307), dated 24 July 2012, subject to the conditions set out in the attached Schedule.

### Preliminary Matters

2. There is a complex planning history to this site. Following an earlier refusal of permission (Ref BH2008/01581), planning permission for the erection of a detached dwelling on the land was granted in 2009 under reference BH2008/03523. Matters reserved for approval in accordance with the conditions imposed on that consent were subsequently approved in June 2012 (Ref BH2012/00955). This development is deemed to have commenced by virtue of works undertaken to construct its access and the permission remains extant. The planning application the subject of this appeal was made in July 2012 (Ref BH2012/02307) and was refused on 14 September 2012.
3. Planning application Ref BH2012/03216 was made on 5 October 2012 and conditional planning permission pursuant thereto was granted on 21 February 2013. That proposal was for the erection of two/three storey, four-bedroom, detached dwelling (excavated basement, ground and first floor levels) with demolition of the garage (part retrospective). In all key respects that proposal was identical to the development the subject of this appeal except that the double garage now proposed was not part of that scheme. The existence of that permission, described as being part retrospective because of the works to the access, is a material consideration of substantial weight in this appeal.

### Main Issues

4. The main issues in this appeal are firstly; the effects of the development on the character and appearance of the area and, secondly; its impact on the

living conditions of the occupants of the adjoining dwellings in terms of any overbearing impact or general loss of amenity.

## Reasons

5. The appeal site is a vacant and overgrown plot of land lying to the rear of Nos 6 – 8 Kelly Road, once forming part of the rear gardens to those properties. To the south-east are the curtilages of the dwellings facing Hove Park Road (Nos 13 – 19). These dwellings have rear garden lengths of approximately 30 metres or more and there is a dense screen of trees and shrubs on the boundary. The proposal is to erect a substantial, four-bedroom, detached dwelling on the site with a detached, double garage to its south. Accommodation would be provided on three floors with the lower ground floor being in the form of a semi-basement created by land excavation. Access would be from Kelly Road, to the north of No 8. There are a number of mature trees on and adjoining the site, principally alongside or close to its boundaries.
6. Just before this appeal was made, the Council granted full planning permission (subject to conditions) for the erection of a detached dwelling on the site in the same form and to the same design, siting, height and size as is proposed in this development (Ref BH2012/03216 – 21 February 2013). That permission could be implemented immediately. The only difference between the two schemes is that no garage was proposed in that approved.
7. Having inspected the site, and insofar as the house itself is concerned, I have no reason to disagree with the Council's conclusions on the acceptability of this form of dwelling being erected in the proposed position and to this design, scale and height. Such a form of development is appropriate to this location and, due to the orientation of the building, the plot size, the distances between dwellings and the mature natural screening around the site, it would not be the cause any undue harm to the amenities of the local residents.
8. As a form of sustainable development making an effective and efficient use of land, the proposals are in conformity with the policies and guidelines set out in the National Planning Policy Framework.<sup>1</sup> Through the imposition of appropriate conditions, adequate safeguards could be put in place concerning the trees and other relevant matters. In all key respects the development would comply with all the relevant policies of the Brighton & Hove Local Plan, particularly policies QD1, QD2, QD3, QD16, QD27, HO3, HO4, HO5 and HO13.
9. In respect of the proposed garage, it would be sited alongside the proposed house to its south, about 3 metres away from the boundary. Even with its pitched roof and its maximum height of about 3.8 metres to the ridge, it would be substantially lower than the proposed dwelling with roughly the same building depth. With the intervening vegetation and the distances involved, there would be no undue harm caused to the residents of the adjoining houses facing either Kelly Road or Hove Park Road. Whilst the garage would take up some of the previously provided garden area, adequate space would still remain around the dwelling in compliance with policy HO5 of the local plan.
10. I do not regard the development as being excessive in its site coverage to the detriment of the character and appearance of the area but more as an optimal and efficient use of available building land as policy QD3 of the local plan

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<sup>1</sup> For example, paragraphs 14, 17 and 49

advocates. The development would provide for a total of about 3 or 4 car parking spaces. Whilst the Council does not object to this level of provision although it slightly exceeds the maximum number of spaces laid down in its Supplementary Planning Guidance: *Parking Standards*, it has some concerns regarding the effect this would have on the developed area of the site. In fact, and taking into account the extent of the driveway and forecourt areas in both schemes, I do not consider that the footprint of the development including that of the house as well as the garage would be excessive.

11. Views of the garage structure would be screened and filtered by the trees and shrubs on the boundary and, with a rear garden length of something approaching 30 metres present at No 17 Hove Park Road, for instance, the amenities of the occupants of that and the adjoining dwellings would not experience any unacceptable loss of amenity. Whilst one neighbour has expressed concerns about the noise and disturbance that might emanate from the garage, the driveway and turning area in the approved scheme occupied this space. With the distances involved and the mitigating effects of the landscaping and hedging I do not consider that any undue detriment to residential amenity would be caused by the garage being constructed in the proposed position. The development therefore complies with the provisions of policy QD27 of the local plan in all these respects.
12. Regarding conditions, I have taken into account the guidance in Circular 11/95 (*The Use of Conditions in Planning Permissions*), those suggested by the Council and all the circumstances of the case. As well as the statutory time duration of the permission it is necessary to control the details of the external materials of the development, in the interests of visual amenity. I have specified the approved drawings in the interests of proper planning and for the avoidance of doubt. I have imposed conditions concerning land levels, the landscaping of the site, boundary works and tree retention in the interests of visual amenity. It is reasonable and necessary to impose a condition to ensure that the dwelling would be constructed to Code Level 3 of the Code for Sustainable Homes, in the interests of sustainability and energy efficiency. The hard surfacing proposed should be of a porous material to reduce the risk of flooding and to increase the development's sustainability.
13. Some permitted developments rights should be withdrawn in this instance to ensure that no unacceptable overlooking occurs from the installation of any additional windows in the western elevation; that, due to the constraints of the development in terms of its size and layout, and the physical relationship of the dwelling to those nearby, that no extensions or outbuildings are erected which would harm residential amenity or lead to an overdevelopment of the site in an unacceptable manner. A condition is necessary to ensure that the window in the western elevation of the dwelling serving the en-suite is permanently fitted with obscure glazing, to prevent overlooking.
14. I have afforded weight in the planning balance to all the points made in opposition to this proposal but nothing overrides my conclusions above and the reasons for them.

*David Harmston*

Inspector

## **SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing nos: RFA/KR/PA/00; RFA/KR/PA/01; RFA/KR/PA/02; RFA/KR/PA/11; RFA/KR/PA/12; RFA/KR/PA/13; RFA/KR/PA/14; RFA/KR/PA/21; RFA/KR/PA/22 and RFA/KR/PA/31.
3. No development shall be carried out until details and samples of the external materials to be used in the construction of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.
4. No development shall be carried out until full details of the proposed land levels relative to the surrounding properties have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.
5. Notwithstanding the provisions of Schedule 2, Part 1, Classes A, B and C of the Town and Country Planning (General Permitted Development) Order 1995, as amended (or any order revoking and re-enacting that Order with or without modification), no windows, dormer windows or rooflights other than those expressly authorised by this permission shall be constructed at first or second floor levels in the western elevation of the dwelling hereby permitted.
6. Notwithstanding the provisions of Schedule 2, Part 1, Classes A, B and E of the Town and Country Planning (General Permitted Development) Order 1995, as amended (or any order revoking and re-enacting that Order with or without modification), no extension or enlargement of the dwelling hereby permitted (including any additions to, or alterations to, the roof) shall be carried out, or outbuildings, swimming or other pools erected or installed.
7. The first floor en-suite window on the western elevation of the dwellinghouse hereby permitted, as shown on drawing nos RFA/KR/PA/13 & RFA/KR/PA/21, shall not be glazed otherwise than with obscured glass and shall thereafter permanently retained as such.
8. No development shall take place until full details of both hard and soft landscaping works and the means of enclosure of the site have been submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall make provision for the retention and protection of the existing planting along the eastern and southern boundaries of the site, the planting of six new trees to compensate for the loss of the existing trees and shall include details of planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes and proposed numbers and densities and an implementation programme. These works shall be carried out as approved.

9. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the dwelling or the completion of the development, whichever is the sooner. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless the Local Planning Authority gives written consent to any variation(s).
10. The hard surfaces hereby approved shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surfaces to a permeable or porous area or surface within the curtilage of the property, in accordance with details to be approved in writing by the Local Planning Authority.
11. Unless otherwise agreed in writing by the Local Planning Authority, the dwelling hereby permitted shall be constructed to Lifetime Homes Standard prior to its first occupation and shall be retained as such thereafter.
12. Unless otherwise agreed in writing by the Local Planning Authority, the dwelling hereby permitted shall not be occupied until a Final/Post Construction Code Certificate issued by an accreditation body confirming that the dwelling has achieved a Code for Sustainable Homes rating of Code Level 3 has been submitted to and approved in writing by the Local Planning Authority.
13. The development shall take place in accordance with the method statements and phasing schedule outlined in the R W Green Limited 'Supporting Arboricultural Information' report dated May 2012 and shall thereafter be retained as such.

END

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