



## Appeal Decision

Site visit made on 23 September 2013

**by David Harmston FRICS DipTP MRTPI**

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

**Decision date: 26 September 2013**

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**Appeal Ref: APP/Q1445/A/13/2192973**

**68A St Georges Road, Brighton, East Sussex BN2 1EF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the failure of the Local Planning Authority to give notice of its decision within the appropriate period on an application for planning permission.
  - The appeal is made by Sussex Property Investments Limited against Brighton & Hove City Council.
  - The application (Ref BH2012/03491) was dated 8 November 2012.
  - The development proposed was described as the demolition of the existing building and roof covering over site. Change of use and redevelopment to provide 3 x 3-bedroom houses with associated landscaping.
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### Decision

1. The appeal is dismissed and planning permission is refused.

### Preliminary Matters

2. The site lies within the East Cliff Conservation Area. In addition to the appeal application, Conservation Area Consent was sought for the demolition of the existing building and roof covering over the site (Ref BH2012/03492). The Council indicated that it would have refused consent for that proposal as it was not prepared to permit the demolition of the existing buildings in the absence of an acceptable replacement scheme for the site as this could result in the creation of an unsightly area of land contrary to policy HE8 of the Brighton & Hove Local Plan. As far as I am aware no appeal has been made in relation to that matter and it is not before me for consideration.
3. Had the Council determined the application it has indicated that it would have refused planning permission for the proposals for the following reasons:
  1. The proposal, by reason of its inappropriate roof form and architectural detailing, fails to demonstrate a high standard of design and make a positive contribution to the visual quality of the environment contrary to policies QD1, QD2 and QD3 of the Brighton & Hove Local Plan.
  2. The proposed windows at first floor level in the north facing elevation of the proposed dwellings, by virtue of their size, siting, design and form, would adversely affect the amenities of the occupiers of Nos 69 and 70 St Georges Road resulting in loss of privacy, interlooming and over dominance and visual intrusion, contrary to policy QD27 of the Brighton & Hove Local Plan.

3. The proposed development would provide an unsatisfactory residential environment for future occupiers of the proposed dwellings by virtue of poor light and outlook, contrary to policy QD27 of the Brighton & Hove Local Plan.
4. The site was previously used as a car repair workshop but has been vacant for some time. A previous application for the redevelopment of the site (Ref BH2011/02864) was refused for a number of reasons including the fact that the applicant had failed to demonstrate that the existing use was genuinely redundant, in conflict with policy EM3 of the local plan. This policy seeks to retain land in industrial use unless it can be shown that such a form of use has been assessed and found to be unsuitable for modern employment needs.
5. The Council is now satisfied that the evidence prepared and submitted by the appellant adequately demonstrates that the existing employment generating use of the site is no longer viable and the principle of the loss of employment floorspace is considered acceptable. No issue is therefore taken by the Council in this regard. I am aware that third party representations have been made in opposition to this proposal to the effect that there is a demand for an employment use on the site. Nevertheless, the evidence upon which the Council reached its conclusions on this matter appears to have been well informed and comprehensive and, having regard to the fact that it is no longer pursued as a potential reason to oppose the development, I shall consider the matter no further.
6. For the avoidance of doubt, and as the appellant has referred to the amended drawings submitted to the Council on 25 January 2013, I have determined the appeal on the basis of the plans listed by the Council and numbered D.01 – D.12 received on 1 November 2012 with revisions numbered as D.10A and D.11A (received on 25 January 2013) showing amendments to the elevations and sections of the development.
7. In respect of other material considerations relevant to the proposals, the following are pertinent to the acceptability of the development or otherwise:
  - a) As regards the effects of the development on the character and appearance of the East Cliff Conservation Area, the Council's Heritage Officer states that the proposals would have only a negligible impact on it or the heritage assets in the area and raises no objections. Having viewed the area, I agree with this conclusion;
  - b) The site is likely to have been contaminated in the past because of its previous usage but, if planning permission were to be granted for the development, an appropriate condition would be capable of safeguarding the situation in this respect;
  - c) The dwellings would be capable of complying with the requirements of Code Level 3 of the *Code for Sustainable Homes* and an appropriate condition could ensure this if permission were to be granted;
  - d) No off-street car parking spaces are proposed as part of the development. Nevertheless, no objection is raised by the Council in this respect and adequate, secure cycle storage facilities could be provided;

- e) The site is located in a highly sustainable location close to a range of local shops and services and good public transport links. There are no highways objections to the development subject to the reinstatement of the kerb at the existing site entrance.
- f) The Council accepts that a modern design for the redevelopment of the site is acceptable in principle.

### **Main Issues**

8. Having regard to the above, the outstanding main issues in this appeal are as follows:
- i) by reason of the design of the development, its effects on the character and appearance of the area and whether it would serve to preserve or enhance the character or appearance of the East Cliff Conservation Area;
  - ii) the impact of the development on the living conditions of the occupants of the adjoining dwellings (Nos 69 and 70 St Georges Road) in terms of any overbearing impact, overlooking, undue loss of light and outlook or general loss of amenity.
  - iii) whether the development would provide for satisfactory living conditions for the occupants of the proposed dwellings in terms of light and outlook.

### **Reasons**

9. The appeal site is situated on the south side of St Georges Road to the rear of Nos 69 – 71. It is completely enclosed by buildings and other structures with a vehicular access to the road passing under a flat above with access from a sloping driveway between Nos 68 and 69. A two-storey building exists within the site which was probably in residential use originally but has latterly been used in connection with the car repair business conducted from the site. The workshop area has a corrugated sloping roof over the majority of the site with a pitched and tiled roof over the remainder.
10. The site lies within a densely-developed neighbourhood of Brighton on rising ground above the seafront wherein residential uses predominate. A twitten – Eastern Street – passes along the site’s western boundary which is formed by a high wall. Along part of the eastern boundary is a two-storey building against the flank wall of No 7 Belgrave Close. Small shops and other businesses dominate the form of land usage on the ground floors of the premises within this section of St Georges Road. Residential accommodation exists at first floor level over most of these premises such as at Nos 69 – 71.
11. The site is highly constrained in terms of its potential for redevelopment because of its location, its size, its physical enclosure with no proper road frontage, the proximity of the adjoining buildings and their usage and the fact that site lies within an historic part of Brighton, within a Conservation Area.

#### *The First Main Issue – Character and Appearance*

12. The proposal is to construct three adjoining houses with accommodation on three floors. The design of the building would be contemporary and this style of construction already exists locally – for instance at 72 St Georges Road. As the Council acknowledges, because of its location behind the frontage

- properties facing St Georges Road, the visual impact of the development would be confined to oblique and restricted views of the building from Eastern Street or such glimpses of it as might just be possible at the site entrance in St Georges Road. In fact it is only the upper part of the structure, and particularly the roof of the building, which would be likely to be seen in any significant way from Eastern Street. This is a narrow pedestrian path linking the seafront to St Georges Road with substantial buildings abutting it. Consequently, and because of this 'tunnelling' effect, elevated views of the nearby buildings adjoining and behind it are restricted.
13. The Council considers that this feature of the development would not relate well to the adjoining building in terms of its height, scale, form and fenestration. This would be detrimental to the character and appearance of the adjoining property. Overall the standard of design is considered to be inadequate with particular concern regarding the appearance of the roof.
  14. The section of the roof which would be seen from the twitten would not be a prominent feature in the streetscape and would, in fact, be barely visible from many viewpoints. The harm that this would cause to the character and appearance of the area would be minimal and bearing in mind the diversity of styles to the buildings around the site and within the general neighbourhood I do not consider that this aspect of the development is unacceptable on design grounds. In my conclusion the effects of the development on the character or appearance of the Conservation Area in terms of its preservation or enhancement would be neutral.
  15. Paragraphs 59 - 60 of the National Planning Policy Framework (the 'Framework') advises that unnecessary prescription or detail in design matters should be avoided. Architectural styles or particular tastes should not be imposed and innovation, originality or initiative should not be stifled. Whilst local distinctiveness should be promoted and reinforced, I do not regard the neighbourhood to the appeal site as having any particular distinctiveness or style which it is necessary to replicate.
  16. Policies QD1, QD2 and QD3 of the local plan combine in their thrust in seeking to achieve a high standard of design in all new developments with attention being paid to matters such as the scale and height of buildings, architectural detailing and materials. The positive qualities of local neighbourhoods should be enhanced and regard taken of local characteristics such as the impact of development on the skyline and the bulk and design of new buildings.
  17. On this issue the development proposes a largely concealed and inconspicuous building on a land-locked site. Such upper parts of it that might be seen from public vantage points would be barely visible and have to be assessed, in design terms, in the context of the surrounding development. On this issue I do not consider that any significant or material harm would be created by the introduction of this structure onto this site in the manner and to the design proposed and the proposals are therefore compliant with both the Framework and the relevant local plan policies in this respect.

*The Second Main Issue – Impact on the Adjoining Properties*

18. I have carefully studied all that has been written and illustrated concerning the potential for the overlooking of the adjoining flats to the site facing St Georges

Road and the consequent loss of privacy that could result. The ground floor of the premises facing the northern elevation of the proposed building is used commercially and a high wall prevents any problems in this respect. It is the first floor habitable room windows at Nos 69 – 70 St Georges Road which would, potentially, be the most overlooked from the first floor of the new dwellings at a distance of about 10-metres.

19. The Council points out that the intervening wall separating the buildings is lower than the drawings suggest and whilst the main front windows in two of the proposed houses have been designed with curved bay windows with graduated obscured panels to avoid any mutual overlooking, no mention is made of the other windows proposed in the northern elevation of the building.
20. On this issue I attach significant weight to the Council's concerns. It is undeniable that some overlooking from the first floor windows in the northern elevation of the new building towards St Georges Road would be inevitable with Nos 69 and 70 being particularly badly affected. I acknowledge the efforts that have been made to reduce this impact but, even with the design of the fenestration as curved bays with obscured panels, if the windows were to be opened views of the rear of the adjoining properties at close quarters would be inevitable. Similarly, the windows at each end of the development in units 1 and 3 serving the bedrooms would provide some limited opportunities for overlooking, if only obliquely.
21. A further matter which concerns me on this issue is the simple presence of the windows and their relationship to the flats on the first floor of the adjacent properties in St Georges Road. Whether or not direct overlooking would occur, the proximity of the fenestration and the building itself would be visually intrusive and intimidating and the perception would exist that some degree of personal privacy was lost.
22. For all these reasons I find the development to be unacceptable on this issue. Policy QD27 of the local plan seeks to prevent losses of amenity to adjacent residents from new developments and I consider these proposals to be in breach of that requirement. Additionally, a Core Planning Principle of the Framework is for planning always to secure a high quality of design and a good standard of amenity for all existing and future occupants of land and buildings. I consider the proposals to be in breach of that Principle.

*The Third Main Issue – Living Conditions of Future Occupants*

23. The development would make an intensive use of land on a highly constrained site. Consequently very little space would remain outside the buildings for amenity purposes. Nevertheless, each unit would have some useable amenity space in the form of a roof terrace and a small, landscaped area to its front. Whilst restricted, the amenity areas thus provided would be adequate bearing in mind the location of the site, the intimate character of the surrounding area and the fact that the future occupants of the units would accept the situation and would opt for such a level of provision as a matter of personal choice. I therefore agree with the Council that on this issue the development would be compliant with the provisions of policy HO5 of the local plan.
24. The dwellings (apart from unit 3) would be single-aspect and north facing with other buildings adjacent to them at close quarters. I accept that if the site is

to be developed at all in a worthwhile and viable way then compromises are necessary. The various measures which would be taken to limit the amount of overlooking from the dwellings would have the side-effect of restricting the amount of light entering the habitable rooms. The Council criticises the scheme because of the restricted outlook which the residents would enjoy coupled with the limited amount of daylight that would penetrate the dwellings, particularly in relation to units 1 and 2.

25. On this issue I agree with the Council. In my conclusion, because of the shortcomings in the scheme in relation to outlook and natural lighting, a sense of claustrophobia and confinement would be experienced by the residents of the units. This would result in a poor standard of accommodation and general living conditions to the extent that the development would fail to comply with the provisions of policy QD27 of the local plan.
26. Furthermore, there would be conflict with a Core Planning Principle of the Framework because of the failure of the development to provide a good standard of amenity for the future occupants of the buildings. In addition, paragraph 58 of the Framework refers to the need to create attractive and comfortable places for people to live and visit. In the respects I have referred to, I consider the proposals fall short of the standard expected by these policies and the appeal therefore fails on this issue.
27. I have considered everything else that has been put forward in support of in opposition to these proposals. I have seen and afforded weight to the objections made to the development from local residents both in response to this appeal and to the application submitted to the Council. Nothing, including the presumption in favour of sustainable development set out in the Framework, is of sufficient substance to outweigh my conclusions above and the reasons for them.

*David Harmston*

Inspector