



Appeal Decision

Site visit made on 4 April 2014

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

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

Decision date: 28 April 2014

Appeal Ref: APP/Q1445/A/13/2207937

68a St George's Road, Brighton BN2 1EF

- 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 Sussex Property Investments Ltd against the decision of Brighton & Hove City Council.
 - The application, Ref. BH2013/01529, dated 8 May 2013, was refused by notice dated 19 July 2013.
 - The development proposed is the demolition of the existing building and roof covering over the site. Change of use and redevelopment to provide 3 x 3 bedroom houses with associated landscaping.
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Applications for Costs

1. Applications for costs were made by Brighton & Hove City Council against Sussex Property Investments Ltd and by Sussex Property Investments Ltd against Brighton & Hove City Council. These applications are the subject of separate decisions.

Decision

2. The appeal is dismissed.

Procedural Matters

3. In determining the appeal I have had regard to Government planning guidance published on 6 March 2014, but in the light of the facts in this case this does not alter my conclusions.
 4. The Council's Notice of Refusal included a reason regarding the proposal's standard of design. However this was withdrawn following the comments of an Inspector in a September 2013 appeal for a very similar proposal at the same site (Ref. APP/Q1445/A/13/2192973).
 5. This decision remains a significant material consideration in respect of the other matters before me in this appeal, as although further information has been submitted, the difference between the two proposals is confined to the fenestration of the proposed building.
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Main Issue

6. The main issue is the living conditions for residents, firstly in terms of the outlook and privacy for the occupiers of Nos. 69 and 70 St George's Road, and secondly as regards the outlook for future occupiers of the proposed dwellings.

Reasons

Outlook and Privacy for Occupiers of Adjoining Properties

7. Firstly, in respect of the outlook for both Nos. 69 and 70, the Council's Notice of Refusal uses the terms 'over-dominance' and 'visual intrusion' in the context of the 'size, siting, design and form' of the windows of the proposed dwellings and this objection is elaborated in the officer report. The use of terms such as 'dominance' and 'intrusion' are normally quite separate from the issue of overlooking and privacy and are associated with a development that obstructs the outlook from the rooms or garden of existing dwellings to an unacceptable extent.
8. However the Inspector in the appeal for the previous scheme has made a similar connection between the proposed windows and outlook by his comment in paragraph 21 of his Decision: '*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 George's Road. Whether or not direct overlooking would occur, the proximity of the fenestration and the building itself would be visually intrusive and intimidating.....*'.
9. The further survey information submitted as part of the current appeal application clarifies that this effect on the outlook from Nos. 69 and 70 would be confined to the view from just one habitable room (a bedroom) in each building. In addition the bedroom windows in both properties would for the most part be higher than the first floor windows in the development, and the bedroom window to No. 69 offset from any of the proposed windows. In this context I am also mindful that Nos. 69 and 70 have the advantage of having living rooms and bedrooms with an outlook over St George's Road.
10. However, after taking all this into account, there would still be at least some adverse effect on the outlook from Nos. 69 and 70, as there would be in respect of the second concern on this issue, relating to the actual and perceived loss of privacy arising from the direct overlooking and inter-looking between the sites. Despite this, with the information now provided, any problem would be less than was apparent in the previous scheme, even after having allowed for the increased glazing area of the proposed building's first floor windows.
11. As a consequence, the effect on existing outlook and privacy would not be in unacceptable conflict with Policy QD27 of the Brighton & Hove Local Plan 2005, which precludes development that would cause a material loss of amenity to adjacent occupiers. Accordingly, there would also be limited conflict with the relevant Core Planning Principle of the National Planning Policy Framework ('the Framework') which has a similar objective to Policy QD27.
12. In coming to this view, in the light of information that was not available to the previous Inspector, I have also had regard to some mitigation of any harm due to the fact that the existing outlook from the windows in the rear elevation of

Nos. 69 and 70 St George's Road is poor, namely 'a dilapidated corrugated asbestos roof'. Furthermore, the north elevation of the proposed dwellings would be set 3m further back than the wall of the existing building on the site.

Outlook for Future Occupiers of the Proposed Dwellings

13. On this issue the reason for refusal of the previous scheme included inadequate daylight, and although this has been addressed by alterations to the windows there are concerns remaining as to the outlook.
14. The distance between the development and the rear of Nos. 69 and 70 has not changed from the first proposal and the Inspector observed that '*because of the shortcomings of 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 QD7 of the local plan*'.
15. The proposed accommodation would be of a modest size and the ground and first floors of Units 1 and 2 have only a single aspect, towards the rear of Nos. 69 and 70. With these limitations it is all the more important for there to be a reasonable outlook in both quantitative and qualitative terms from the rooms and external space. However the opposite would be the case, with the boundary wall to Nos. 69 and No. 70 only between 5m and 6m away from the front elevations and even less from the bay windows.
16. The Design and Access Statement describes this wall as being 'very tall' and 'up to 5m high', which is approximately equivalent to the top of the first floor windows on the proposed elevation. Even if there are views above and beyond this wall from inside or outside the appeal scheme dwellings, these would be of the main rear elevation and roof of the St George's Road properties just a few metres further back, rather than open sky.
17. On this issue I therefore conclude that the combination of single aspect and poor outlook would constitute unsatisfactory living conditions contrary to Local Plan Policy QD7 and to paragraph 58 of the Framework which requires development to create attractive and comfortable places to live, work and visit.

Other Matters

18. The appeal site lies within the East Cliff Conservation Area. Both the Council and the previous Inspector consider that the proposal would not have any harmful impact on either it or the other nearby heritage assets and I concur with this view. I therefore find that the character and appearance of the conservation area would be preserved by the development.
19. For the appellant, my attention has been drawn to a permission granted in 2007 at St James's Street Mews, about 2km from the appeal site. I agree there are similarities to this case but I am not convinced that its characteristics and setting accurately closely replicate the appeal site. However even if they do, I consider that it is a precedent that should not be followed, bearing in mind that my conclusion in this appeal is that the outlook for future occupiers would be unacceptable and in conflict with both local and national planning policy.

20. I have also noted the housing shortfall in Brighton, and accept that opportunities need to be taken on sites such as St George's Road with the adoption of a flexible and positive approach as encouraged by the Framework. However, this should not compromise the provision of a reasonable minimum standard of living conditions for future occupiers.

Conclusion

21. Although I have found in the appellant's favour on the first issue, the effect on outlook and privacy for occupiers of adjoining properties, this is outweighed by my conclusion on the second, the outlook for future occupiers of the proposed dwellings. For these reasons, and having had regard to all other matters raised, the appeal is dismissed.

Martin Andrews

INSPECTOR