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# Appeal Decision

Site visit made on 27 May 2014

**by Kenneth Stone Bsc(Hons) DipTP MRTPI**

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

**Decision date: 18 June 2014**

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**Appeal Ref: APP/Q1445/A/14/2215162**

**Land at the rear of 285 Dyke Road, Hove, East Sussex BN3 6PD.**

- 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 Lakeside Investments Ltd (Mr E Herandi) against the decision of Brighton & Hove City Council.
  - The application Ref BH2013/02616, dated 29 July 2013, was refused by notice dated 22 November 2013.
  - The development proposed is the construction of a new 3 bedroom detached bungalow.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. I have had regard to the Government's recently published Planning Practice Guidance (PPG) but its provisions have not materially affected my considerations in this case.
3. I note the address on the appeal form refers to the site as 285 Dyke Road, Hove, however the original application form, the Council's decision notice and red line on the submitted drawings make it clear that the site relates to an area of land to the rear of the building. I have therefore used the original address in the banner heading above.

## Main Issues

4. The Council have acknowledged that they cannot demonstrate a five year housing land supply. As such policies which are relevant to the supply of housing cannot be considered up to date. As the application is for a new house it must therefore be considered in the context of the presumption in favour of sustainable development and in line with paragraphs 14 and 49 of the National Planning Policy Framework (the Framework) which I paraphrase in this context as advising to grant permission unless any adverse impacts would outweigh the benefits. The site is not identified in any special protection or policy area so I do not see specific policies in the Framework, in line with the examples sited, indicating development should be restricted.
5. On this basis, and in the context of the presumption in favour of sustainable development, the main issues are:
  - (a) the effect of the development on the character and appearance of the area; and

- (b) whether the proposed development would provide acceptable living conditions for future occupiers, with regard to privacy.

### **Reasons**

6. The appeal site is formed by the subdivision of the rear garden of 285 Dyke Road (No 285) a large detached property that has been subdivided into flats. A short access road leads from The Droveaway to the site and serves a number of other properties, including a bungalow to the rear of 283 Dyke Road which is addressed as 3a The Droveaway (No 3a).

#### *Character and Appearance*

7. The proposed bungalow would be located to the rear of the site and would be of a height scale and bulk that would appear similar to that of No 3a and many of the other surrounding properties. A new building was being erected towards the rear of the adjoining site, at 287 Dyke Road, and again the proposed building would not appear out of place when compared to the bulk, scale and mass of that building.
8. There are limited views of the appeal site from public locations and where these are available from The Droveaway it would be seen in the context of the other properties fronting the access way and it would not appear out of place.
9. The larger footprint and smaller garden that has led to the concern of the overdevelopment raised by the Council would not be readily apparent in surrounding views. The positioning or relationship of the building to those surrounding does not appear cramped or inappropriate and in that regard I judge that the proposed bungalow would not appear as overdevelopment as there would be no direct visible manifestation of this in the surrounding area.
10. For the reasons given above I conclude on this main issue that the proposed development would not have an adverse effect on the character and appearance of the area. Consequently it would not conflict with policies QD1, QD2, QD3 and HO4 of the Brighton and Hove Local Plan 2005 (LP). Collectively these seek amongst other things high quality development that is appropriate in scale, height and design. This is consistent with the Framework and in particular paragraphs 17, 56 and 60 which require high quality design that reflects local distinctiveness.

#### *Living Conditions*

11. The proposed bungalow would be laid out with the majority of its principal habitable rooms towards the rear of the property. Two bedrooms and the living room would be served by windows in the rear elevation facing No 285 which would have a number of windows directly overlooking this rear elevation. The short separation distance of only some 17m in conjunction with the difference in levels would mean these windows would be severely overlooked and the privacy of any future occupiers significantly compromised. Given that No 285 is subdivided into flats, that there is an open balcony at a higher level and there is limited effective screening this loss of privacy would be further compromised.
12. The main amenity space available for the use of the future occupiers of the development whilst adequate in terms of space would be similarly compromised with regard to privacy. There would be little opportunity to find

an area that was not readily overlooked from the flats in No 285, and this adds to my concerns.

13. Whilst the proposal does provide for fencing and the potential for some landscaping the small size of the garden and limited separation between the boundary and the rear elevation of the proposed bungalow would mean any significant landscaping introduced to address such concerns would dominate and overpower the bungalow. Whilst No 3a is a bungalow in a similar position the smaller footprint of that bungalow with its greater separation from its boundaries and No 283 provide a better balance to provide it with a reasonable degree of protection and amenity.
14. I do not see this as mutual overlooking normally found in residential areas as asserted by the appellant. As noted above there are differences with surrounding examples such as No 3a and no other examples have been drawn to my attention. Also the overlooking is not comparable to the existing situation where the flats overlook the existing garden space. Particularly as the area closest to the back of the existing property, which is the most private and sensitive area is not currently overlooked. Whereas that area directly to the rear of the proposed bungalow would be directly overlooked.
15. For the reasons given above I conclude on this main issue that the proposed development would not provide acceptable living conditions for future occupiers, with regard to privacy. Consequently it would conflict with policies QD27 and HO5 of the LP which require development to provide a good standard of amenity for future users. This is consistent with the Framework and in particular paragraph 17 bullet point 4 which notes the planning system should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

#### *Other Matters*

16. I note it has been stated that the garden is presently provided for the use of the ground floor flat and this is excessively large, expensive and difficult to maintain. On site I noted that the garden was well maintained and in very good order. Its present use does not reflect the concerns expressed and these are not an issue that weigh heavily in favour of allowing the new bungalow.

#### **Conclusions**

17. I have noted above that the Council cannot demonstrate a 5 year housing land supply and that the scheme before me provides for an additional unit of accommodation. I have concluded that there is material harm resultant from the poor living conditions that would be provided for future occupants and I am satisfied that this harm is such that it would not be outweighed by the limited benefit that would derive from one additional housing unit, even though there is no agreed 5 year housing land supply.
18. For the reasons given above I therefore conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR