



Appeal Decision

Site visit made on 4 August 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: 1 September 2014

Appeal Ref: APP/Q1445/A/14/2217826

7 Rigden Road, Hove, East Sussex BN3 6NP

- 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 Mrs Kelly Henry against the decision of Brighton & Hove City Council.
 - The application, Ref. BH2013/01969, dated 5 September 2013, was refused by notice dated 30 October 2013.
 - The development proposed is the erection of 1 (one) new dwelling on land to the rear of 7 Rigden Road, Hove BN3 6NP.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (i) the effect of the proposal on the character and appearance of the area, and (ii) the effect on the living conditions for occupiers of adjoining properties as regards outlook.

Reasons

Character and Appearance

3. The wording of the first reason for refusal refers to two different considerations: firstly the effect on the 'garden character' of the location in terms of the contrast that an additional building would create; secondly that the design of the proposed house would be overly dominant and incongruous in this location.
 4. The first of these points is tantamount to rejecting the principle of infill development in this locality and for the appellant several arguments have been made to refute this. These include the presumption in favour of sustainable development in the National Planning Policy Framework 2012 ('the Framework'); the absence of a Council planning policy to '*resist inappropriate development of residential gardens*' as advised in paragraph 53 of the Framework, and that residential garden land is acknowledged in the Council's 5 year housing land supply calculations to be an important source of new dwellings. In addition, saved Policies HO4 and QD3 of the Brighton & Hove Local Plan 2005 ('the Local Plan') encourage the full and effective use of
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available land and recognise that residential development will be permitted at higher densities than those typically found.

5. When these factors are taken together and regard is had to the dwelling at 15 Lloyd Close, which was permitted in the rear garden of 11 Shirley Road only two or three properties to the south, I consider that it is less the principle of development and more the adequacy of the appeal site to accommodate the development that applies in this case. This approach is acknowledged in the Officers' report on the present proposal to have been the Council's view with the preceding scheme for the site. The January 2012 refusal refers to '*an inappropriate development in excess of what might reasonably be expected to be achieved on this limited plot site the proposal represents an over-development of the site'*
6. In the current proposal, a plot of just under 19m depth would be severed from an existing rear garden about 30m. It seems to me that with maximum distances from the dividing boundary of about 11.9m and 8.6m to the facing elevations of the existing and proposed two storey dwellings respectively, the reason for the previous refusal continues to be relevant.
7. Even allowing for the fact that the density of 'infill' development is by definition always higher than the existing and that there is a policy based encouragement for the full and effective use of available land, the reduction of No.7's garden size by over 60% and the introduction of a two storey building occupying most of the length of its plot, albeit with a staggered footprint, would be in marked and harmful contrast with the adjoining garden land on both sides. I acknowledge that the building would be smaller than that refused in 2012 but much of the resulting advantage is negated by its greater overall length, with a minimum gap of only about a metre from the rear boundary.
8. Furthermore, whilst in itself the proposal would be dominant in its context and detrimental to the character of its surroundings, if permission is granted in this case it would be difficult for the Council to resist similar developments at Nos. 5, 9 and 11. These have a similar rear building line for the main parts of their dwellings and the same plot lengths, and if such development was to occur it would further erode the verdant and open character of the area.
9. Not unreasonably, the appellant has cited the contemporary property at the rear of 11 Shirley Road as setting a template for the appeal scheme and it must be acknowledged that in both cases development is in a rear garden with access to Lloyd Close. However I consider the Council is correct to argue that any further comparison is limited by the different orientation of 11 Shirley Road and its greater rear garden size (15m wide at the mid-point compared to 12m at No. 7 and about 35-37m long compared to approximately 30m). In a situation where the parameters for infill development are tightly constrained, I consider these differences to be critical.
10. On this issue the Council has also criticised the contemporary design of the new property, but bearing in mind the appearance of 15 Lloyd Close permitted under the same Local Plan policies, and indeed the encouragement of different designs in Policy QD1, I can give this factor only limited weight.
11. Overall on this issue, I conclude that the appeal proposal would have a harmful effect on the character and appearance of the area. This would be in conflict

with the key principles for neighbourhoods in Local Plan Policy QD2 and some aspects of the second and third paragraphs of Policy QD3. The proposal would additionally conflict with the general objective of the Framework for sustainable development to make a positive contribution to its surroundings.

Living Conditions: Outlook

12. On this issue, because the appeal scheme comprises a two storey building on a modest plot close to the gardens and rear elevations of the host property and No. 9 on the northern side, I consider that it would create an unacceptable degree of enclosure in the outlook from the rear rooms and gardens of those houses. I recognise that both the Council and the occupier of No. 5 consider that this also applies to No. 5. However, as I saw on my visit, No. 5 has a gap between it and No. 7 and also has a wider plot with extensive mature vegetation. In addition the flank of the proposed building would be set about 4m away from the side boundary.
13. Thus whilst there may be some adverse impact on the outlook from No. 5, it is the outlook from Nos. 7 and 9 which I consider would have the greatest effect on the living conditions of adjoining occupiers and be in harmful conflict with Local Plan Policy QD27 and one of the core planning principles of the Framework. I have noted the Council's point about the potential overlooking of the rear garden of No. 5 from the bedroom windows of the proposed dwelling. However with the possibility of partly obscure glazing and / or the screening effect of existing and proposed boundary planting I do not regard this in itself as necessarily being a determinative factor.

Conclusion

14. For the reasons stated above, and having taken all other matters raised into account, the appeal is dismissed.

Martin Andrews

INSPECTOR