

## Appeal Decision

Site visit made on 5 January 2016

**by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI**

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

**Decision date: 5 February 2016**

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**Appeal Ref: APP/Q1445/W/15/3133313**

**Land to rear of 75 Lyndhurst Road, Hove BN3 6FD**

- 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 Luisa Morelli against the decision of Brighton & Hove City Council.
  - The application Ref BH2015/01164, dated 12 March 2015, was refused by notice dated 8 July 2015.
  - The development proposed is described as the demolition of existing garage and erection of a dwelling house.
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### Decision

1. I allow the appeal and grant planning permission for the demolition of existing garage and erection of a dwelling house at land to rear of 75 Lyndhurst Road, Hove BN3 6FD, in accordance with the terms of the application, Ref BH2015/01164, dated 12 March 2015, and the plans submitted with it, subject to conditions 1) to 9) on the attached schedule.

### Application for costs

2. An application for costs was made by Ms Luisa Morelli against Brighton and Hove City Council. This application is the subject of a separate Decision.

### Main issues

3. The main issues are:
  - The effect of the proposed development on the character and appearance of the area; and
  - Whether the proposed development would provide acceptable living conditions for future occupiers in terms of the light received into, and the outlook from, the basement accommodation.

### Reasons

*The effect on the character and appearance of the area*

4. The Council considers that the relatively small plot size and small garden areas of the proposal would result in it being incongruous with the character of the surrounding area, and appearing as over development.
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5. This end of Silverdale Avenue has a spacious character because of the back gardens of the houses in Lyndhurst Avenue which face obliquely towards it, and which are enclosed by a stepped boundary wall with planting along its top. Standing opposite the railway embankment and the street trees on the other side of the road, makes for a distinctive section of street.
6. I agree that the proposed subdivision of the existing plot would shorten the back garden of No 75. I have had regard to the back gardens of the detached houses Nos 73 to 79 as well as the shorter gardens of the other houses in the street block. However, as the existing garden contains a garage, only a little smaller than the proposed plot, I do not consider the shortening to be so significant as to undermine the spatial character of No 75 or that of the surrounding plots or gardens.
7. The plot size of the proposal would be small compared to many of those in the wider area; however, the surrounding plots are a variety of sizes. The proposed plot size would be similar to the plot to the north. Similarly, as regards garden size, the depth of the front garden would be similar to the neighbouring plots on this section of Silverdale Avenue. And, while the light wells and garden of the proposal would be smaller than many of those in the surrounding area, the overall garden area would not be significantly different to the back gardens of 18 Silverdale Avenue to the north, and 79 Lyndhurst Avenue to the south.
8. I note that the house immediately to the north of the proposal appears as infill development. I accept that just because the proposal would be similar in height and width, and sit no further forward than that house, does not justify it in character and appearance terms. However, the site already contains a building fronting the street, and the additional area of garden which would be lost to the proposal could absorb the scale and mass of the proposal without ill-effect on the character of the street or surrounding buildings and gardens. The building lines, form and scale of the proposal would follow that established to the north; and it would have sufficient space around three of its sides to soften the edges of the plot in the context of the street and garden character of the surroundings.
9. For these reasons, while the plot size and garden size of the proposal may be comparatively small, I consider it would not appear incongruous with its neighbours, or appear as over development. I conclude on this issue that the proposed development would not harm the character and appearance of the area. It would accord with Policies QD1, QD2 and QD3 of the Brighton and Hove Local Plan 2005 (LP), which seek amongst other things, buildings with a high standard of design, and proposals which enhance the positive qualities of the neighbourhood, with an intensity of development appropriate to the locality and prevailing townscape.

*The living conditions for future occupiers in terms of light and outlook*

10. The basement accommodation, which would contain two bedrooms, would, by virtue of its floor level being around 3m lower than ground level, have limited access to light. However, the bedrooms would be surrounded on their window walls by light wells which would capture and reflect the available diffuse skylight into their openings which would be both wide and floor-to-ceiling in

height. This would be assisted by the relatively clear aspects above ground to the south and west which would let sunlight into the wells. The ensuite bedroom would have two aspects at ninety degrees to each other, and the second bedroom, a broad, glazed wall.

11. I note that the ground floor of the house would be arranged around a single, central space lit by numerous openings and extensive areas of glazing. I find that the living area of the house would be exceptionally well lit; this would offset to some degree any shortfall in light in the bedrooms. In terms of light, because of the size and arrangement of the light-wells and their good access to sunlight and unobstructed skylight, as well as the extensive areas of glazing and aspects to the basement, I consider that though the bedrooms would be at basement level, they would have sufficient access to natural light.
12. I agree with the Council that the outlook from the bedrooms would be constrained, but I disagree that the degree of constraint would be harmful to the occupiers. The ensuite bedroom would have an outlook onto two light wells through large, floor to ceiling openings centred upon the longest dimensions of the light wells, which would be substantial in size compared to the rooms they would serve. The second bedroom would have a wall of glass providing outlook onto two light wells and the understair. The floor to ceiling height of the basement level would be generous, at around 2.5m, which, combined with the extent of the openings serving the rooms, would maximise what outlook there is available. Given the breadth and depth of the light wells, there is ample opportunity for the walls and ground of the wells to be treated to provide an interesting and pleasant environment.
13. In respect of this issue, I conclude that the proposed development would provide acceptable living conditions for future occupiers in terms of the light received into and the outlook from the basement accommodation. There would be no conflict with Policy QD27 of the LP which requires development not to cause material loss of amenity to proposed occupiers or to be detrimental to human health.

### **Other matters**

14. The Council, in its statement of case, and in its delegated report, has indicated that it seeks a contribution to footway improvements by means of a planning obligation in order to offset the impact of the additional dwelling. However, it has not submitted any quantified evidence of the additional demand or the details of the methodology of its calculation. The obligation would not meet all the statutory tests, and has therefore not been taken into account.

### **Conditions**

15. The Council has suggested a number of conditions that it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of the Planning Practice Guidance (PPG); for clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
16. In the interests of proper planning and for the avoidance of doubt, I have imposed a condition requiring the development to be carried out in accordance with the approved plans. Conditions to secure finishing materials, the provision of refuse storage, boundary treatments, as well as a scheme of landscaping are

necessary to safeguard the character and appearance of the area, though in view of the limited scale of the proposal and opportunity for tree planting I have reduced the requirements of the landscape condition, as proposed. In the interests of sustainable development, it is necessary to secure the provision of cycle parking. In order to reduce the risk of flooding, a condition for the drainage of hard surfaces is needed.

17. The positive conclusions in the main issues above are finely balanced. The potential to develop the house further without adversely affecting the character and appearance of the area or the living conditions of surrounding and future occupiers is limited. I therefore agree that the withdrawal of permitted development rights under classes A, B, D and E is necessary, though I consider the withdrawal of rights under class C to be excessive.
18. The Council requests that a condition be applied requiring compliance with optional requirement M4(2) (accessible and adaptable dwellings) of the Building Regulations. However, the adopted policy referred to does not include M4(2) or set out the proportion of new dwellings which should comply with the requirement, as advised by the Planning Practice Guidance (the PPG). In this light, I do not consider such a condition necessary or reasonable.
19. It also seeks conditions requiring a performance standard of energy efficiency and water usage, whereas the adopted policy it refers to requires only that proposals demonstrate a high standard of efficiency in the use of energy and water. While I note the reference to Policy CP8 of the emerging City Plan Part One, the plan remains under examination, which limits the weight I can accord it, as set out in paragraph 216 of the National Planning Policy Framework 2012. In these circumstances, I am not convinced that the development would be unacceptable without these conditions, so I have not imposed them.

### **Conclusion**

20. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should succeed.

*Patrick Whelan*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 01 Site location and block plans; 02 Site survey as existing; 02b Street facing elevation as existing; 3B Ground floor inc. site survey; 04 Lower ground floor as proposed; 05 Section AA as proposed; 06 Section BB as proposed; 07 Street facing elevation/ section CC as proposed; 08 South west facing elevation as proposed; 09 South east (rear) facing elevation as proposed; 10 North west facing elevation as proposed; 11 Street facing elevation as proposed.
- 3) No development above the lowest floor slab level of the dwelling hereby approved shall take place until samples of the external materials to be used for the construction of the building hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) Prior to the occupation of the dwelling, details of both hard and soft landscape works shall have been submitted to and approved in writing by the local planning authority. The approved hard landscape works shall be provided in accordance with the approved details and prior to the occupation of the dwelling. The approved soft landscape works shall be carried out in accordance with the approved details, in the first planting and seeding seasons following the occupation of the dwelling or the completion of the development, whichever is the sooner.
- 5) Prior to the occupation of the dwelling, cycle parking facilities shall be provided in accordance with approved plan Ref 3B Ground floor inc. site survey, and shall thereafter be retained for use by the occupants of and visitors to the development.
- 6) Prior to the occupation of the dwelling, refuse and recycling storage facilities shall be provided in accordance with approved plan Ref 3B Ground floor inc. site survey, and shall thereafter be retained for use at all times.
- 7) Prior to the occupation of the dwelling, details of the proposed boundary treatments shall have been submitted to and approved by the local planning authority. The boundary treatments shall be provided in accordance with the approved details prior to the occupation of the dwelling, and shall thereafter be retained.
- 8) No extension, enlargement, alterations or provision within the curtilage of the dwelling house as provided for within Schedule 2, Part 1, Classes A, B, D and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) shall be carried out.
- 9) The hard surfaces hereby approved shall be made of porous materials or provision shall be made to direct run-off water from the hard surface to a permeable or porous area within the curtilage of the site.

