

## Appeal Decision

Site visit made on 22 March 2016

**by Richard S Jones BA(Hons) BTP MRTPI**

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

**Decision date: 11 April 2016**

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**Appeal Ref: APP/Q1445/W/15/3139186**  
**19 Withdean Road, Brighton, Sussex BN1 5BL**

- 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 Mr Kevin Fitzpatrick against the decision of Brighton & Hove City Council.
  - The application Ref BH2015/01308, dated 2 April 15, was refused by notice dated 11 September 2015.
  - The development proposed is the demolition of existing house and construction of new 6 bed detached house.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this appeal are:
  - the effect on the living conditions of neighbouring residents with particular reference to outlook; and
  - the effect of the proposal on the character and appearance of the area.

### Reasons

#### *Living conditions*

3. The appeal dwelling would extend significantly beyond the rear building line of No 17 Withdean Road, which, for the majority of its width is single storey, including that part of the dwelling closest to the appeal site. I appreciate that efforts have been made to set the appeal dwelling further away from the common boundary between these two properties and that the design is in part intended to avoid overlooking. However, the rearward projection of the appeal dwelling would present 2 storeys of largely unrelieved blank wall that is higher than the ridgeline of No 17. Consequently, the outlook from the rear windows and amenity space of No 17 would be dominated by a mass of built form in a way that I consider would be overbearing and oppressive.
  4. The third storey would be less obvious, due to its set back, however, this would add further to the overall mass of the building and resulting impacts. I do not consider that the existing boundary treatment at this point would acceptably mitigate this harm.
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5. The more central position of the side of No 21 Withdean Road, relative to the side of the appeal dwelling, is such that the forward and rear projections would be much less significant. Moreover, given the comparable overall scale of both dwellings and greater separation, I do not find that the proposal would result in comparable effects on the occupiers of No 21.
6. Whilst the existing bungalow is set back behind the building line of the two flanking dwellings, given its relatively modest height and the established natural boundary screening at this point, it has little impact on those dwellings. Therefore, because of the significant increase in scale of the appeal dwelling, I do not agree that moving its footprint forward within the plot would result in the house being much less visible from the flanking properties.
7. I acknowledge that the proposal would not have unacceptable effects in terms of overlooking and loss of privacy, however the lack of such harm cannot weigh in favour of the proposal and should properly be considered as neutral in the planning balance. It follows therefore that this cannot mitigate the harm I have explained above.
8. I therefore conclude on this main issue that the proposal would cause significant harm to the living conditions of the occupants of No 17, contrary to Policy QD27 of the Brighton & Hove Local Plan 2005 (LP), which states that planning permission will not be granted where it would cause material nuisance and loss of amenity to adjacent residents.

#### *Character and appearance*

9. I agree with the Council's characterisation of this part of Withdean Road, which is that of 'a very low density residential area of large detached houses in their own grounds surrounded by extensive mature trees bordering woodland, with an almost rural feel.' The appeal site is characteristic in this respect and presently accommodates a bungalow set back from and above the road frontage.
10. The immediate built context for the site comprises a part two storey and part single storey dwelling to the south and a large two storey dwelling situated to the north, located at Nos 17 and 21 respectively. Both dwellings are traditional in style and therefore contrast strongly with the highly contemporary design of the appeal proposal. However, given the variety to the dwellings in the area, including other highly contemporary dwellings to the north along Withdean Road, I agree that there is no reason in principle to resist a modern approach to the design and materials used at the appeal site.
11. In terms of the design as proposed, I accept the massing of the dwelling along with its strong horizontal emphasis would combine to create a sense of bulk which would appear greater than that of its neighbouring properties and that the two storey element of the appeal dwelling would be appreciably higher than the eaves height of No 21. However, in overall terms the maximum heights of both dwellings would be the same. Moreover, although the top of the second floor level would clearly be much higher than the eaves of the single storey part of No 17, it would not be unduly higher than its ridgeline. The set back of the third storey would also assist the visual transition in scale from No 21 and the appeal site to No 17.

12. Because of the screening provided by the trees and vegetation along the Withdean Road frontage and in front of the appeal site and flanking dwellings, it is only possible to achieve glimpsed views of each along the street scene and it is not possible to view the dwellings as a combined street elevation as shown on the supporting plans. Consequently, the dwelling would not appear unduly dominant or discordant in relation to the two neighbouring properties and the wider street.
13. In terms of width, the new dwelling would be slightly narrower than the existing dwelling and similar to that of the neighbouring properties and there is sufficient separation off both boundaries to ensure that the dwelling would not appear unduly cramped. In character and appearance terms there would also be a benefit to bringing the dwelling forward within the plot.
14. For these reasons I am satisfied that the dwelling could be accommodated at the appeal site without material harm to the character and appearance of the area. Accordingly I find no conflict with LP Policies QD1 and QD2, which state, amongst other matters, that all proposals for new buildings must demonstrate a high standard of design and make a positive contribution to the visual quality of the environment and should be designed to emphasise and enhance the positive qualities of the local neighbourhood by taking into account local characteristics.

### **Other matters**

15. The appellant has stated that it is common ground that the Council is unable to demonstrate a five year supply of housing land and has referred to Paragraph 49 of the NPPF. This states that housing applications should be considered in the context of sustainable development and that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. However, in this case LP policies QD1, QD2 and QD27 relate to design and the protection of amenity. They are not therefore relevant to the supply of housing. Moreover, as stated by the appellant, the principle of the proposed development is acceptable as it is a replacement dwelling within the development boundary. Also, replacing one family sized home with another, albeit larger one, the appeal proposal does not increase the supply of housing as anticipated by paragraph 47 from the Framework.
16. Nevertheless, in consideration of the 3 dimensions of sustainable development, as set out in paragraph 7 of the Framework, I acknowledge that the proposal would make a short term contribution to the economic role through the construction of the dwellings. I have also not found undue harm to the environmental role and note that the building would be built to a high level of energy efficiency. However, I have found significant harm to the living conditions of the occupants of No 17 such that the proposal would not meet the social dimension of sustainable development. Thus the appeal scheme is not sustainable development when considered against the policies in the Framework taken as a whole.
17. As explained by paragraph 211 of the Framework, policies should not be considered out of date simply because they were adopted prior to the publication of the Framework. Rather, paragraph 215 explains that due weight should be given to relevant policies according to their degree of consistency with the Framework. In this regard, I do not find inconsistency with LP Policies

QD1, QD2 and QD27 and have therefore given them full weight. It is the conflict with Policy QD27 that leads me to conclude that the appeal should be dismissed.

**Conclusion**

18. For these reasons, and taking all other matters into consideration, the appeal does not succeed.

*Richard S Jones*

Inspector