Appeal Decisions

Site visit made on 20 April 2009

by John Papworth **DipArch(Glos) RIBA**

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

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Decision date:
30 April 2009

Appeal A: APP/Q1445/A/07/2054442
6 & 7 Powis Villas, Brighton BN1 3HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Ray Charmak against the decision of Brighton & Hove City Council.
- The application Ref BH2007/00700, dated 8 February 2007, was approved on 5 July 2007 and planning permission was granted subject to conditions.
- The development permitted is the conversion to two dwelling houses including new lightwells.
- The condition in dispute is No 2 which states that: No development shall take place until details of a scheme to provide sustainable transport infrastructure to support the demand for travel generated by the development and to remain genuinely car-free at all times has been submitted to and approved in writing by the Local Planning Authority. This shall include a timetable for the provision to be made and shall be carried out in accordance with the approved details.
- The reason given for the condition is: To ensure that the proposed development does not put undue pressure on existing on-street car parking in the city and to comply with policies HO7 and SU15 of the Brighton & Hove Local Plan.
- This decision supersedes that issued on 18 March 2008. That decision on the appeal was quashed by order of the High Court.

Appeal B: APP/Q1445/A/07/2054441
5 Powis Villas, Brighton BN1 3HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Ray Charmak against the decision of Brighton & Hove City Council.
- The application Ref BH2007/00696, dated 2 February 2007, was approved on 5 July 2007 and planning permission was granted subject to conditions.
- The development permitted is a conversion to a single family dwellinghouse including new light wells.
- The condition in dispute is No 2 which states that: No development shall take place until details of a scheme to provide sustainable transport infrastructure to support the demand for travel generated by the development and to remain genuinely car-free at all times has been submitted to and approved in writing by the Local Planning Authority. This shall include a timetable for the provision to be made and shall be carried out in accordance with the approved details.
- The reason given for the condition is: To ensure that the proposed development does not put undue pressure on existing on-street car parking in the city and to comply with policies HO7 and SU15 of the Brighton & Hove Local Plan.
- This decision supersedes that issued on 18 March 2008. That decision on the appeal was quashed by order of the High Court.

Decision Appeal A

1. I allow this appeal and vary the planning permission Ref BH2007/00700 for the conversion to two dwelling houses including new lightwells granted on 8 February 2007 by the Brighton & Hove City Council by deleting condition 2).

Decision Appeal B

2. I allow this appeal and vary the planning permission Ref BH2007/00696 for a conversion to a single family dwellinghouse including new light wells granted on 2 February 2007 by Brighton & Hove City Council by deleting condition 2).

Main Issue

3. I consider the main issue in both appeals to be whether the condition is reasonable and necessary in the context of the proposed development.

Reasons

4. There are two parts to the disputed conditions, which although connected with transport matters, may be dealt with separately. The first is the requirement for a scheme to provide sustainable transport infrastructure to support the demand for travel generated by the development. Policy TR1 requires development to provide for the demand for travel that they create and Policy HO7 states that a contribution from the developer will be sought to improve public transport facilities among other matters. In response to this the appellant has presented a unilateral undertaking, providing £2,000 in respect of 5 Powis Villas and £4,000 in respect of 6 and 7 Powis Villas. I attach significant weight to this undertaking as I consider it satisfies the tests in Circular 5/05 *"Planning Obligations"*. As a result I consider it right to remove the reference in Condition 2), in both permissions, to a requirement for a scheme to provide sustainable transport infrastructure to support the demand for travel generated by the development, as that wording is no longer necessary with the existence of the undertaking, whether originally justified or not.

5. The second part also concerns Policy HO7 and the proposals being car free. The appeal schemes as originally permitted did not provide parking on site. Policy HO7 is phrased positively to encourage car-free housing where it can be demonstrated that the proposed development will remain genuinely car-free over the long term. The method of achieving this is stated in the supporting text as either by way of legal agreement or a lease/tenancy agreement. Where the site is within a resident's parking zone, the relevant Traffic Regulation Order will ensure residents of the car-free development do not have access to permits. This last course of action would be funded by a contribution which the Council seeks but the appellant is resisting. I understand that the rules of the parking scheme are that residents without on-site parking may apply, but the number of permits is regulated. The appellant considers the parking demands of the new development less than was previously the case and that with a short waiting time for a permit the new occupiers should be able to apply.

6. I am advised that planning permission and listed building consent have now been granted to provide a front area parking space to number 5 and this is a material consideration in my determination of the appeal. That being the case,

number 5 cannot now be said to be 'car-free' and the remaining part of the disputed condition in Appeal B is redundant.

7. The other two properties, 6 and 7 Powis Villas, would remain without on-site parking and these properties would normally therefore be eligible for a permit, or at least to be placed on the waiting list. The site is within reasonable walking distance of Brighton Station, the town centre and other facilities, transport and services. I consider it possible to live here without a car. However I also consider it reasonable to have access to a car provided this new development does not adversely affect the balance of parking provision in the area for existing residents or displace it to areas of pressure. In that respect the short waiting time for a permit indicates that the demand can reasonably be met and control in the wider area would prevent harmful displacement.

8. This development is not 'car-free' for the usual reasons referred to in the policy; to make better use of land and hence increase the density of occupiers. In this case the reason is to preserve the architectural and historic interest and there would not appear to be a greater density of use than has previously been the case. These are listed buildings built as dwellings but which have, until recently, been in what I consider inappropriate uses which severely detracted from their architectural or historic interest and hence that of the conservation area. Their return to residential use and the significant improvements that this brings to their character and appearance are of very great weight in my judgement. The lack of parking on site for these two houses is warranted by reason of possible harm to their heritage interest, in pursuance of Sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

9. In conclusion with respect to numbers 6 and 7 I consider that there are substantial planning and conservation benefits accruing from the grant of permission for renewed residential use and the physical works that this will bring, which far outweigh the policy objections to the development not providing on-site parking. Seeking to make the scheme truly car-free by restricting the issue of permits in this case is not reasonably necessary within the broader aims of the Development Plan and listed building and conservation area statutory requirements, and could jeopardise the heritage benefits. I can identify no harm that outweighs these benefits. I consider therefore that in both appeals Condition 2) is unnecessary or not reasonable having mind to the merits of the proposal and therefore does not satisfy tests in Circular 11/95 *"The Use of Conditions in Planning Permissions"*. For the reasons given above I conclude that both appeals should succeed. I vary each planning permission by deleting the disputed condition.

S J Papworth

INSPECTOR