



Appeal Decision

Site visit made on 5 November 2012

by David Harmston FRICS DipTP MRTPI

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

Decision date: 12 November 2012

Appeal Ref: APP/Q1445/A/12/2179615

46 Freehold Terrace, Brighton, East Sussex BN2 4AB

- 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 ASP against the decision of Brighton & Hove City Council.
 - The application (Ref BH2011/03217), dated 21 October 2011, was refused by notice dated 19 January 2012.
 - The development proposed is the demolition of the existing buildings and the erection of replacement Class B1 unit(s) and nine residential units.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council refused the application for nine reasons. I shall deal with each of these in turn as issues in this appeal. Since the appeal application was refused, a further application has been submitted for a similar development of the site comprising replacement Class B1 unit(s) and eight residential units.¹ I have been supplied with full details of that scheme together with the Committee Report of 29 August 2012. The Council has resolved to grant permission for that development subject to the completion of a Section 106 Agreement which I understand is now close to being finalised.

The Site, its Surroundings and the Proposals

3. The site lies within the northern part of the City within a densely developed area of mixed uses. To the immediate north is the Brighton-Lewes railway line whilst a main traffic route into the City (Hollingdean Road) is a short distance away to the west from which Freehold Terrace is accessed. This road is a narrow one-way street serving a mixture of commercial premises and residential properties. The appeal site is about 0.04ha in area and is occupied by various buildings and a yard formerly in Class B1 usage with a floor area of about 278sqm. The buildings are now dilapidated and run down and the main structure is boarded up to deter squatters.
4. The existing structures on the site would all be demolished and replaced with a building comprising 287sqm² of Class B1 floorspace on the ground floor with 9 x 2-bedroom apartments above on the upper three upper floors. The

¹ Planning application Ref No:- Ref BH2012/01789 dated 7 June 2012

² Figure as stated on the application form but referred to as 297sqm by the appellant in various documents

development is supported by the Council on economic development grounds as it would replace outdated employment floorspace with modern, flexible accommodation leading to more job opportunities. The principle of the mixed use of the site with the introduction of nine small, residential units onto the site is also seen as a positive element of the scheme. The highly sustainable credentials of the site's location and the development itself are also acknowledged as being significant points of substantial weight in favour of the proposals in compliance with various paragraphs in the National Planning Policy Framework (the 'Framework')³.

Reasons

First Main Issue – Reasons 1, 2 & 3 – Design and Quantity of Development

5. The appeal site is basically triangular in shape and is sandwiched between two substantial structures – an old, high commercial building to the south with its blank brick wall facing the site and the edge of a large elongated, block of three and four storey flats to the east (Popes Court). To the west the tree-covered railway embankment towers above the site. Opposite there is a large commercial building of a utilitarian design. I agree with the appellant that the site calls for an innovative design solution. It is heavily constrained by the presence of the adjoining structures and the railway, together with its shape and location.
6. The character and appearance of the area is not one that calls for a form of building which should replicate or respect any particular style. Any new structure on the site will be perceived as one which has been introduced as a form of infill and should be judged on its own merits. Amongst other matters, the Council criticises the design in respect of the height of the building and its 'contrived' and 'haphazard' footprint, following the site boundaries with an excessive degree of site coverage.
7. Paragraph 56 of the Framework states that good design is a key aspect of sustainable development and it is important to plan positively for the achievement of high quality and inclusive designs for all development.⁴ Decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain forms or styles. Securing high quality and inclusive designs goes beyond aesthetic considerations.⁵ I conclude that in broad terms the development as proposed provides an acceptable design solution for the site and is compliant with the terms of Policies QD1, QD2 and QD3 of the Brighton & Hove Local Plan.
8. Notwithstanding, there are two aspects of the scheme which I consider to render it unacceptable on this issue. Firstly, and in this respect I agree with the Council, the projecting 'solar balconies' would not integrate adequately with the main structure. They would be excessively bulky and would occupy an exposed and prominent position producing a visually overpowering impact in relation to the building and its surroundings. Secondly, the footprint of the

³ National Planning Policy Framework – Paragraph 14 refers

⁴ National Planning Policy Framework – Paragraph 57

⁵ National Planning Policy Framework – Paragraphs 60 & 61

building is excessive retaining an inadequate amount of space around it. The areas of undeveloped space to be retained within the scheme are very limited in size and would be largely given over to non-amenity purposes.

9. I acknowledge that the balconies should be taken into account in assessing the provision to be made for private amenity space. Nevertheless the overall perception of the developed site would be one of excessive site coverage and overdevelopment, contrary to Policies QD1, QD2, QD3, EM3 and HO5 of the Local Plan. In these respects I conclude that the development would fall below an acceptable standard and the appeal fails on this issue for these reasons.

Second Main Issue - Reason 4 – Impact on Neighbouring Amenity

10. This issue primarily relates to the effects of the development on the residents of Popes Court. Habitable room windows face towards the appeal site which would be about 6.5m away from the side elevation of the new building. This juxtaposition of the two structures would cause a significant diminution in the amount of light reaching the rear windows in the side of Popes Court and the consequent negative impact on the living conditions of the affected residents. Whilst it is the case that the existing structure has a similar impact in these terms, and the outlook from the flats is compromised by the adjoining buildings and land uses, I consider that on this issue the development would fail to meet the terms on Policy QD27 of the Local Plan and is unacceptable for these reasons.

Third Main Issue – Reason 5 – External Walkways

11. It is proposed to provide decked access routes at the rear of the building for three of the flats. The Council considers this to be an unsatisfactory arrangement offering a poor level of amenity for the future residents. I note that the walkways would be covered and secure. I consider that there is nothing particularly out of the ordinary or objectionable in this element of the proposals which complies with the provisions of Policy QD27 of the Local Plan. The development is acceptable on this issue.

Fourth Main Issue – Reason 6 – Lifetime Homes Standards

12. The sixth reason for refusing the application concerns the compliance or otherwise of the scheme with the Lifetime Homes Standards, particularly in relation to the main bathrooms. The appellant explains that all of the bathrooms are of a sufficient size to conform to the required standard and the other requirements can be achieved in full in accordance with the details shown on the amended drawing (1143-SK-18B). The scheme therefore accords with the provisions of Policy HO13 of the Local Plan. I am satisfied that the development is capable of meeting the criteria of these standards and, subject to the development being implemented in accordance with the revised details, and/or the imposition of a suitable condition, the development is acceptable on this issue.

Fifth Main Issue – Reasons 7 & 8 – Refuse, Recycling and Cycle Storage Provision

13. The appellant points out that the proposals make provision for the capacity of the residential ancillary space to accommodate 10 x 360 litre bins and the

outdoor space associated with the commercial unit to accommodate 3 x 360 bins. This exceeds the Council's normal requirement and had I been minded to allow the appeal and grant planning permission, an appropriate condition could have been imposed to ensure that satisfactory arrangements for these facilities were made within the site. There is therefore no conflict with Policies QD27, SU14 or EM3 of the Local Plan in this respect.

14. Policy TR14 of the Local Plan requires new developments to comply with the Council's parking guidance standards. This is at the rate of one cycle space per dwelling plus one space for every three dwellings resulting in a total requirement of 12 spaces. For the commercial use the standard requires one space plus a further space for every 200sqm of floorspace (or part thereof) resulting in a requirement for three spaces. The total requirement for the whole development is therefore 15 spaces. The appellant has demonstrated how this provision would be made and, again, there is no conflict with the Local Plan in this regard. In the event of planning permission being granted, an appropriate condition could be imposed to ensure that the necessary provision was made in a satisfactory manner. The development is therefore acceptable on this issue.

Sixth Main Issue – Reason 9 – Travel Demand and Car Parking

15. The site lies within a highly sustainable location close to a range of local shops and services and excellent public transport facilities. The residential component of the development is designed as being 'car free'. The site is not within a Controlled Parking Zone (CPZ) wherein the Council considers that, normally, the most effective means of achieving a 'car free' development is by placing a restriction on the number of parking permits issued. In the case of the appeal development (outside a CPZ) the Council concludes that the residents of the dwellings would endeavour to park on the surrounding streets so that the development would not, in fact, be 'car free'. This would be detrimental to highway safety and convenience.
16. There are parking restrictions present in Freehold Terrace and many of the nearby roads. At the time of my visit any available spaces, for instance the few that exist in Hollingdean Road, were fully occupied. To the south of Hollingdean Road is the commencement of the CPZs. The opportunities for uncontrolled on-street parking within the vicinity of the site are, therefore, small and unreliable. The nearest available, uncontrolled area for on-street parking is probably in Davey Drive some distance to the north of the site, on the opposite side of the railway line. At the time of my visit, together with other roads leading off it, this street was heavily used by parked vehicles.
17. With these considerations in mind it is my conclusion that the definition of the site as a 'car free' development is a fair and reasonable description. In these circumstances it is acceptable for no on-site parking to be provided within the scheme for its residents who would be likely to favour walking, cycling and public transport as a means to travel. This solution would be consistent with the Government's approach to sustainable transport.⁶

⁶ National Planning Policy Framework – Paragraphs 29, 30, 32, 34 and 39

18. I note the comments of the Council concerning the negative impact of the development on the local highway network. I also understand that as part of the Section 106 Agreement which the Council would seek if planning permission were to be granted for this scheme a contribution towards financing off-street highway improvements would have been sought. I have not seen any form of Undertaking so I cannot reach any conclusions as to its need and its fairness and reasonableness in scale or kind to the development.
19. Bearing in mind my conclusions above concerning the 'car free' status of the development, and having regard to the former usage of the site and the vehicular movements and parking demand which that would have generated, I am satisfied that that the proposals are capable of being acceptable on this issue, in compliance with Policies HO7, TR1, TR2 and TR19 of the Local Plan, with the possibility of an Undertaking being made concerning mitigation measures in respect of the impact on the local highway network.

Unilateral Undertaking

20. As I have referred to above, I understand that a Unilateral Undertaking under Section 106 of the Act would have been prepared in relation to this proposal. No such document has been supplied in support of the appeal although I gather that such an Undertaking has been prepared and is at the point of being finalised in support of the revised application which the Council has resolved to approve. In these circumstances I cannot attach any weight in support of the appeal to such an Undertaking.

Summary of Conclusions

21. Whilst I have found in favour of the appeal on the third, fourth, fifth and sixth main issues set out above, I conclude that the scheme would be unacceptable in respect of the first two main issues for the reasons I have given. I have considered and taken into account everything else that has been raised in relation to this matter but nothing outweighs my conclusions above and the reasons for them.

David Harmston

Inspector

