



Appeal Decision

Site visit made on 25 February 2013

by David Prentis BA BPI MRTPI

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

Decision date: 7 March 2013

Appeal Ref: APP/Q1445/A/12/2184704

Flat 3, 5 Preston Park Avenue, Brighton BN1 6HJ

- 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 D Golding against the decision of Brighton & Hove City Council.
 - The application Ref BH2012/01753, dated 7 June 2012, was refused by notice dated 6 August 2012.
 - The development proposed is: *Conversion of existing first and second floor maisonette to form 2 no. self contained flats and installation of rooflights to front and rear elevations.*
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr D Golding against Brighton & Hove City Council. This application is the subject of a separate decision.

Preliminary matters

3. The description of the proposed development set out in the Council's decision notice provides a fuller description than that contained in the application form and I have adopted it for the purposes of my decision.
4. The Council raises no objection to the principle of the proposed conversion. I see no reason to disagree because the scheme would have little impact on the external appearance of the building and, other than in relation to the matters discussed below, it would meet the various criteria for conversions set out in Policy HO9 of the Brighton and Hove Local Plan 2005 (BHLP). The Council's objection to the scheme is based on the effect of a proposed cycle/bin store on the character and appearance of the Preston Park Conservation Area. The appellant does not agree that the store would be harmful. That is a matter I shall return to later in my decision. The appellant also argues, in the alternative, that the store is not necessary and that the scheme should be approved without it.
5. A unilateral undertaking (UU) under section 106 of the Town and Country Planning Act 1990 has been submitted. This states that the developer would make a financial contribution towards the provision by the Council of a cycle stand in the locality. This is intended to be an alternative to the provision of

cycle storage on the site. I consider that there are difficulties with the way in which the UU is expressed. First, because the amount of the contribution is unspecified, I cannot say whether it would be reasonably related in scale and kind to the proposed development. Second, the UU states that the Council will use its reasonable endeavours to install a cycle stand. However, as the obligation is unilateral, it cannot impose any requirements on the Council. This leads on to my third concern which is that there is no evidence that the Council would be either willing or able to install a cycle stand in the vicinity of the appeal site. It follows that I cannot know whether a cycle stand would actually be provided or, if it was, whether the location would be directly related to the appeal scheme. In my view the UU does not meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and in the National Planning Policy Framework (*the Framework*). Consequently, I shall not take it into account in my decision.

6. In addition to the above concerns, the copy of the UU provided to me has not been signed by the mortgagee. Nevertheless, I recognise the appellant's intention to make the contribution and I have approached my decision on this basis. Given my conclusion on the substance of the UU, I have not pursued this point further.
7. The UU is intended to deal with a situation in which the appeal is permitted without the cycle/bin store. However, the scheme before me includes the store. In effect, the appellant invites me to allow the appeal subject to a condition deleting the store from the proposals. I have considered this matter in the light of the *Wheatcroft* case¹. The difficulty with the appellant's suggestion is that it would introduce a potentially significant change to the scheme. Allowing the appeal without the cycle/bin store could have consequences which adjoining residents would wish to make representations about. I am concerned that those residents who have commented on the appeal scheme would be deprived of an opportunity to be consulted on a scheme which did not include facilities for cycle/bin storage. I conclude that it would not be appropriate to impose a condition which would have the effect of removing the store from the proposals and I shall determine the appeal on the basis of the scheme before the Council.

Main issue

8. The main issue is the effect of the proposal on the character and appearance of the Preston Park Conservation Area.

Reasons

9. The Council's *Preston Park Conservation Area Character Statement* describes the area as predominantly residential in character dating mainly from the mid to late 19th century. Preston Park Avenue is described as having a prestigious location overlooking Preston Park, the houses having front gardens behind low brick walls which relate visually to the green open space of the park on the other side of the road. I agree with this general description. No 5 Preston Park Avenue is a substantial semi-detached property, comprising two storeys plus an attic above a semi-basement, which has been converted into 2 flats and a maisonette. It is an imposing building which is characteristic of, and makes a positive contribution to, the character and appearance of the conservation

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment and Another

- area. The front garden provides an attractive setting for the building and contributes to the street scene.
10. The detailed design of the cycle/bin store seeks to mitigate its visual impact by the use of appropriate materials such as facing brickwork, timber doors and a slate roof. Even so, it would appear as a utilitarian box-like structure. Being around 3m in length and 1.5m high it would be quite large in relation to the front garden space. It would be prominent in views from the footway and unduly dominant in views from the windows of the flat at semi-basement level. The low planting which currently exists would do little to screen it and taller and/or thicker planting would have an overbearing and enclosing effect on the occupiers of the semi-basement flat.
 11. The appellant argues that the street scene is already much affected by the presence of wheelie bins. I saw that there are many such bins stored in the open along Preston Park Avenue – some in discreet positions and others in full view. Nevertheless, the presence of these bins is not a sound argument for allowing a permanent built structure which would be harmful.
 12. I conclude that the proposed cycle/bin store would erode the garden setting of No 5 thereby reducing the contribution the property makes to the conservation area. It would conflict with BHL P Policies HO9(g) and HE6 which seek to protect conservation areas². Policy HE6 makes specific reference to the protection of gardens which contribute to conservation areas.
 13. The proposal would fail to preserve or enhance the character and appearance of the conservation area and would be harmful to its significance. In the terms of the Framework, I consider that the degree of harm to significance would be less than substantial. However, such harm is not to be regarded as unimportant. The Framework emphasises the importance of sustaining and enhancing the significance of heritage assets. It is necessary to weigh the harm to the conservation area against any benefits of the proposal. I shall return to that balance in the conclusion to my decision.

Other matters

14. The appeal scheme would result in a net increase of one residential unit. Bearing in mind that the Framework seeks to boost the supply of housing, I consider this to be a benefit of the proposal.
15. The appellant points out that the option of placing the store alongside the property, rather than in front of it, is not open to him because the area in question is not within his control. Whilst I accept that point, it does not affect the merits of the appeal scheme. The appellant also argues that it is not necessary to provide an enclosed store for cycles and bins in the particular circumstances of this case. As explained above, I am considering the scheme which was before the Council. It is not for me to comment on the merits of an alternative scheme without a cycle/bin store.

Conclusion

16. The proposal would have the benefit of providing an additional residential unit. However, this benefit is not sufficient to outweigh the harm which would be

² The Council's decision also refers to Policy QD14. That policy relates to extensions and alterations and is not relevant to the cycle/bin store which would be a free-standing structure.

caused to the significance of the conservation area. The appeal should therefore be dismissed.

David Prentis

Inspector