



Appeal Decision

Site visit made on 27 November 2013

by **C J Leigh BSc(Hons) MPhil MRTPI**

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

Decision date: 2 January 2014

Appeal Ref: APP/Q1445/A/13/2202907

26a St Martin's Place, Brighton, BN2 3LE

- 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 Mark Buckle against the decision of Brighton & Hove City Council.
 - The application Ref BH2012/02631, dated 21 August 2012, was refused by notice dated 5 February 2013.
 - The development proposed is described as mixed use development at 26a St Martins Place, comprising office accommodation at ground floor and 5 residential flats above'.
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Preliminary matters

1. A planning obligation has been submitted relating to the provision of infrastructure contributions arising from the proposed development.
2. I consider the Council's description of the proposed development as contained on their decision notice more accurate than the appellant's so I have determined the appeal on that basis, namely the erection of a four storey building to replace existing garage comprising of office accommodation on ground floor, 2 no. one bedroom flats and 3 no. two bedroom flats on upper floors incorporating terraces, bicycle parking and associated works.

Decision

3. The appeal is allowed and planning permission granted for the erection of a four storey building to replace existing garage comprising of office accommodation on ground floor, 2 no. one bedroom flats and 3 no. two bedroom flats on upper floors incorporating terraces, bicycle parking and associated works at 26a St Martin's Place, Brighton, BN2 3LE, in accordance with the terms of the application, Ref BH2012/02631, dated 21 August 2012,, subject to the conditions set out in the attached schedule.

Main issues

4. The main issues in this appeal are the effect of the development on, firstly, the character and appearance of the surrounding area and, secondly, the living conditions of adjoining occupiers.

Reasons

Character and appearance

5. The appeal site contains a single storey industrial building. This is somewhat of an anomaly in this predominately residential area and stands at the end of a

tall terrace of residential properties; there are three storey houses on both sides of St Martin's Place. There are also tall properties to the north west, facing Lewes Road, though set at a lower level due to a change in ground levels. To the south of the appeal site are large blocks of flats within an estate setting, whose scale and height dominate the wider area.

6. The proposed development is a considerably greater scale of building than currently exists on the site, and would rise slightly above the height of the adjoining terrace. However, the design and scale of the building clearly takes cues from the surrounding area, with the eaves height, floor heights and window cill levels of the terrace continued in the proposed building. The proposed development would turn the corner of St Martin's Place, to create a well-articulated building, with the top floor set-back from the floors beneath and so creating an appearance of reduced massing at upper floors. The design is clearly contemporary in the fenestration detailing, though there is the use of traditional materials in the elevations.
7. The building would extend to the boundaries of the site, including to the rear south west and south east boundaries. This increased massing of building on the site would not appear out of character to the area, which is largely dominated in views by the substantial flats that adjoin the site. The row of the St Martin's Place housing is also a large terrace of buildings, with large visual presence in the area, and the scale of the building would be appropriate when seen in this context.
8. The design, scale and form of the proposed building would therefore be an innovative interpretation of a high density residential infill development situated within an existing area of terraced housing. It would be a successful contemporary approach to extending the terrace and turning the corner on this prominent site, effectively resolving the relationship between the terraces along St Martin's Place and Lewes Road, and the tall flats to the south. For this reason, it would represent an enhancement to the area.
9. The National Planning Policy Framework states that the Government attaches great importance to the design of the built environment, and that development should respond to local character and history, reflecting the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation. The submitted drawings in this appeal sit comfortably within that approach; an approach with which the relevant saved policies of the Brighton & Hove Local Plan 2005 are broadly consistent, namely Policies QD1 and QD2 whose general thrust is to require all new development to make a positive contribution to the area and enhance the local neighbourhood.
10. On the first issue it is therefore concluded the proposed development would not be harmful to the character and appearance of the surrounding area.

Living conditions

11. The proposed development shows windows facing towards the Lewes Road properties, and I viewed the appeal site from 180A Lewes Road. The distance between the rear of the Lewes Road properties and the closest elevation of the proposed flats is around 19m. Although visible from the existing housing, this distance is sufficient to ensure that the impression of the building would not be unduly overbearing to rooms or the gardens, with an acceptable degree of open and spacious area between the Lewes Road properties and the new

building. For these reasons I further consider that, on the basis of the information presented to me, there would not be any material effect on levels of light to the Lewes Road properties.

12. The proposed flats show windows in the north west elevation. Those on the first and second floors serve bathrooms or are very slim, secondary windows to a living room. Those on the upper floor serve a bathroom and a bedroom. I consider the incidence of use of these windows would be low, and they evidently are not primary outlooks to the flats. Furthermore, they are broadly in line with the large array of windows that currently exist along the adjoining St Martin's Place terrace of housing. Thus, there would not be any material increase in overlooking to the adjoining houses along Lewes Road or St Martin's Place.
13. The proposed development projects to the rear, which would result in the new building being visible from the gardens to the adjoining St Martin's Place properties. I viewed the appeal site from 24 St Martin's Place. There is clear articulation in the design of the building to provide a step-back in building mass at upper floors to the rear of the building: the first and second floors recede from the adjoining gardens, with the third floor set back again. This would ensure no unreasonable overbearing impact upon the gardens to the adjoining properties, nor loss of outlook. On the basis of what I have read and seen, I further consider no material effect upon levels of daylight or sunlight would occur to adjoining occupiers. The positioning of windows would mean no loss of privacy to those gardens, whilst the submitted drawings show that an external terrace is to have a privacy screen to prevent views to the gardens.
14. The proposed development shows external terraces and balconies facing south west and south east, towards the car parks and flats of the existing flats to the south. There is sufficient distance to those flats to ensure no unreasonable degree of overlooking would occur, nor any harm to outlook.
15. On the second issue it is therefore concluded that the proposed development would not be harmful to the living conditions of adjoining occupiers. Thus, it would be consistent with the core planning principle of the Framework that requires planning to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other considerations

16. I note comments from third parties relating to parking provision and access. The submission to the local planning authority contained evidence to demonstrate the likely car parking demand for the development and the existing capacity for car parking in the surrounding area. The scheme shows the provision of cycle parking spaces (whose details are proposed to be secured by condition) and a contribution to sustainable transport improvements, as well as additional mitigation measures. Based on this, the Council's Traffic Engineer concluded adequate provision was made for the parking and highway requirements arising from the proposed development. Based on all I have read and seen, I concur that the mitigation measures are adequate and that there is capacity in the area for accommodating any need for parking. The opinion of the Traffic Engineer supports my view that there would not be any harm to highway safety or the free flow of traffic.

17. The Council have raised no objection to the removal of the existing commercial use on the site, with the proposed development showing new office space on the ground floor. On the basis of the evidence presented to me on this matter, I agree this replacement is a suitable alternative commercial space.
18. The appellant has submitted a Unilateral Undertaking relating to the provision of contributions towards sustainable transport measures arising from the proposed new dwellings, in line with locally adopted planning policy. From the evidence submitted on this I am satisfied that this would ensure adequate mitigation against the effect of the proposed development on local infrastructure and are necessary and directly applicable, whilst also being fairly and reasonably related in scale and kind. Accordingly, the appropriate legislative and regulatory tests have been satisfied.

Conclusions and conditions

19. For the reasons given, and having regard to all other matters raised, the appeal is allowed. The Council's Report to Planning Committee suggested a number of conditions be attached to any grant of planning permission. I agree that conditions are necessary requiring the submission of details for the materials to be used, and for the green wall, in the interests of securing a satisfactory appearance to the development. Conditions are necessary to show details of the cycle store, and for the retention of this facility and for the refuse store facilities, to ensure adequate provision.
20. The Council have suggested a number of conditions relating to ensuring the new dwellings are built to Lifetime Homes standards, and to the submission of information for Code for Sustainable Homes for the dwellings and BREEAM information for the commercial space, as well as for the implementation of such measures. I agree these are necessary to comply with policies relating to sustainable building design. Due to the current and past uses of the land, a condition relating to potentially contaminated land investigations is necessary.
21. The conditions specifying the reinstatement of the footway and the provision of a Travel Plan are reasonable and necessary in the interests of highway safety and to manage the transportation effects arising from the proposed development. Finally, a condition is necessary to specify the approved drawings in order that the development shall be carried out in accordance with the approved drawings, for the avoidance of doubt and in the interests of proper planning.

C J Leigh

INSPECTOR

Appeal decision APP/Q1445/A/13/2202907: Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The new dwellings hereby permitted shall be constructed to Lifetime Homes standards prior to their first occupation and shall be retained as such thereafter.
- 3) The development hereby approved shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.
- 4) No development shall take place until samples of the materials (including colour of render, paintwork and colourwash) to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 5) No residential development shall commence until:
 - (a) evidence that the development is registered with an accreditation body under the Code for Sustainable Homes and a Design Stage/Interim Report showing that the development will achieve Code level 3 for all residential units have been submitted to the Local Planning Authority; and
 - (b) a Design Stage/Interim Code for Sustainable Homes Certificate demonstrating that the development will achieve Code level 3 for all residential units has been submitted to, and approved in writing by, the Local Planning Authority. A completed pre-assessment estimator will not be acceptable.
- 6) Unless otherwise agreed in writing by the Local Planning Authority, no non-residential development shall commence until:
 - a) evidence that the development is registered with the Building Research Establishment (BRE) under BREEAM (either a 'BREEAM Buildings' scheme or a 'bespoke BREEAM') and a Design Stage Assessment Report showing that the development will achieve an BREEAM rating of 50% in energy and water sections of relevant BREEAM assessment within overall 'Very Good' for all non-residential development have been submitted to the Local Planning Authority; and
 - b) BRE issued Design Stage Certificate demonstrating that the development has achieved a BREEAM rating of 50% in energy and water sections of relevant BREEAM assessment within overall 'Very Good' for all non-residential development has been submitted to, and approved in writing by, the Local Planning Authority. A completed pre-assessment estimator will not be acceptable.
- 7) The development hereby permitted shall not be commenced until details of secure cycle parking facilities for the occupants of, and visitors to, the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of the

development hereby permitted and shall thereafter be retained for use at all times.

- 8) (i) The development hereby permitted shall not be commenced until there has been submitted to and approved in writing by the Local Planning Authority:
- (a) a desk top study documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Contaminated Land Research Report Nos. 2 and 3 and BS10175:2001 - Investigation of Potentially Contaminated Sites Code of Practice; and, unless otherwise agreed in writing by the Local Planning Authority,
 - (b) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with BS10175:2001; and, unless otherwise agreed in writing by the Local Planning Authority,
 - (c) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include the nomination of a competent person to oversee the implementation of the works.
- (ii) The development hereby permitted shall not be occupied or brought into use until there has been submitted to the Local Planning Authority verification by the competent person approved under the provisions of (i) (c) above that any remediation scheme required and approved under the provisions of (i) (c) above has been implemented fully in accordance with the approved details (unless varied with the written agreement of the Local Planning Authority in advance of implementation). Unless otherwise agreed in writing by the Local Planning Authority such verification shall comprise:
- a) As built drawings of the implemented scheme;
 - b) Photographs of the remediation works in progress; and
 - c) Certificates demonstrating that imported and/or material left in situ is free from contamination.
- Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under (i) (c).
- 9) No development shall commence until details of the proposed green walling, timetable for implementation and maintenance programme have been submitted to and approved in writing by the Local Planning Authority. The scheme shall then be carried out in accordance with the approved details.
- 10) None of the residential units hereby approved shall be occupied until a Final/Post Construction Code Certificate issued by an accreditation body confirming that each residential unit built has achieved a Code for Sustainable Homes rating of Code level 3 has been submitted to, and approved in writing by, the Local Planning Authority.
- 11) None of the non-residential development hereby approved shall be occupied until a BREEAM Design Stage Certificate and a Building Research Establishment issued Post Construction Review Certificate confirming that the non-residential development built has achieved a BREEAM rating of 50% in energy and water sections of relevant BREEAM assessment within overall

'Very Good' has been submitted to, and approved in writing by, the Local Planning Authority.

- 12) Prior to the occupation of the development the applicant shall reinstate the redundant vehicle crossover in front of the development back to footway by raising the existing kerb and footway. The works shall be completed prior to the occupation of the development hereby permitted and shall thereafter be retained.
- 13) Prior to first occupation of the development a Travel Plan (a document setting out a package of measures tailored to the needs of the site and aimed at promoting sustainable travel choices and reduce reliance on the car) for the development shall be submitted to the Local Planning Authority. The Travel Plan shall be approved in writing prior to first occupation of the development and shall be implemented as approved thereafter. The Travel Plan shall include a process of annual monitoring and reports to quantify if the specified targets are being met, and the council shall be able to require proportionate and reasonable additional measures for the promotion of sustainable modes if it is show that monitoring targets are not being met.
- 14) The development hereby permitted shall be carried out in accordance with the following approved plans: 11785/PA/001RevB, 11785/PA/002, 11785/PA/003RevA, 11785/PA/010RevA, 11785/PA/020RevA, 11785/PA/021RevB, 11785/PA/022 & 11785/PA/023.