



Appeal Decisions

Site visit made on 31 March 2014

by David Harmston FRICS DipTP MRTPI

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

Decision date: 14 April 2014

Appeal A - Ref: APP/Q1445/A/13/2206383

26A West Hill Road, Brighton, East Sussex BN1 3RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the failure of the Local Planning Authority to give notice of its decision within the appropriate period on an application for planning permission.
 - The appeal is made by the Thew Family Trust against Brighton & Hove City Council.
 - The application (Ref BH2013/02012) was dated 18 June 2013.
 - The development proposed is the demolition of the existing buildings and the erection on 1no four-bedroom dwelling.
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Appeal B - Ref: APP/Q1445/E/13/2207387

26A West Hill Road, Brighton, East Sussex BN1 3RT

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against the failure of the Local Planning Authority to give notice of its decision within the appropriate period on an application for Conservation Area Consent.
 - The appeal is made by the Thew Family Trust against Brighton & Hove City Council.
 - The application (Ref BH2013/02013) was dated 18 June 2013.
 - The development proposed is the demolition of the existing buildings and the erection on 1no four-bedroom dwelling.
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for the demolition of the existing buildings and the erection on 1no four-bedroom dwelling at 26A West Hill Road, Brighton, East Sussex BN1 3RT in accordance with the terms of the application (Ref BH2013/02012), dated 18 June 2013, subject to the conditions set out in the attached Schedule.

Appeal B

2. The appeal is allowed and Conservation Area Consent is granted for the demolition of the existing buildings and the erection on 1no four-bedroom dwelling at 26A West Hill Road, Brighton, East Sussex BN1 3RT in accordance with the terms of the application (Ref BH2013/02013), dated 18 June 2013, subject to the conditions set out in the attached Schedule.

Preliminary Matters

3. The Planning Practice Guidance was published on 6 March 2014. The content of that Guidance has been considered but in the light of the facts of this case it does not alter my conclusions.
4. The application was made to the Council jointly for planning permission for the development and Conservation Area Consent to demolish the existing buildings on the site. This was subsequently separated by the Council into two applications proceeding concurrently with consecutive reference numbers. The appeals are made against the Council's non-determination of both applications. Had it been able to do so, the Council would have refused planning permission for the development in respect of application Ref:- BH2013/02012 for the following reasons:
 - (1) The development, by reason of its siting, footprint and form in relation to the adjoining West Hill Street terrace, and through the inclusion of on-site vehicular parking to the West Hill Road frontage, would fail to emphasise and enhance the positive qualities of the local neighbourhood. The resulting development would appear unduly prominent and out of keeping with the wider streetscene and would fail to preserve or enhance the character or appearance of the West Hill Conservation Area. The proposal is thereby contrary to policies QD1, QD2 and HE6 of the Brighton & Hove Local Plan.
 - (2) The development, by reason of its siting, height, design and massing, would be detrimental to the amenities of the occupiers of No 1 West Hill Street and adjoining properties to the rear on Compton Avenue through an overbearing and enclosing impact and increased overshadowing. The proposal is thereby contrary to policy QD27 of the Brighton & Hove Local Plan.
5. In relation of the application for Conservation Area Consent (BH2013/02013), permission would have been refused for the following reason:
 - (1) In the absence of an acceptable replacement scheme for the site, the demolition of the existing buildings would result in the creation of an unsightly area of land that would be detrimental to the character and appearance of the West Hill Conservation Area, contrary to policy HE8 of the Brighton & Hove Local Plan.¹

Main Issues

Appeal A

6. The main issues upon which the outcome of Appeal A turns are:
 - (a) the effects of the development on the character and appearance of the area having regard to the location of the site within the West Hill Conservation Area;

¹ Hereinafter referred to as 'the local plan'.

- (b) whether the development would cause unacceptable harm to the living conditions of the occupants of any nearby and adjoining dwellings for reasons associated with overlooking, an excessively overbearing impact or the increased overshadowing of land and buildings.

Appeal B

7. For Appeal B, the main issue is whether the demolition of the buildings on the site (which are located within the West Hill Conservation Area) would be acceptable without the implementation of a suitable replacement scheme for the site's redevelopment being ensured within a reasonable timescale.

Reasons – Appeal A

The Site and the Proposals

8. The curtilage of No 26A West Hill Road comprises an irregularly-shaped parcel of land containing a yard and a number of small buildings with a frontage to that road. It is situated behind and to the side of No 1 West Hill Street. This is a two-storey dwelling divided into flats with a basement. The structures present on the appeal land are now vacant and in a poor condition. As I understand it, these were last used for business purposes.
9. The site is secure and has a gated entrance. It is untidy and unkempt and, although not prominent as a feature in the streetscene, its presence and condition detracts from the overall appearance of the area. Its former use, which would seem to be long established, is something of an anomaly in this neighbourhood.
10. From a point a short distance away to the west of the site, at the junction of West Hill Road and Dyke Road, the area to the east thereof is almost exclusively residential in character and land use. The neighbourhood comprises long terraces of mid to late Victorian buildings which have mostly retained their original features without being unduly harmed by unsympathetic alterations.
11. There is an attractive and special character to the area for this reason. These expanses of two-storey dwellings with basements present a fine vista and the occasional examples of redevelopment and alterations that have been undertaken do not unduly detract from the character and appearance of the area.
12. The Conservation Area is described in detail in the *West Hill Conservation Area Character Statement* which I have studied and taken into account. Any redevelopment proposals for the appeal site must therefore be considered in the context of whether they would serve to preserve or enhance the character or appearance of the Conservation Area.
13. The principle of residential development on the site is not in dispute and it is accepted by the Council that the retention of an employment use of the land is no longer an issue. Having regard to paragraphs 22 and 51 of the National Planning Policy Framework (the 'Framework'), as well as policies EM5 and EM6

of the local plan, I have no reason to disagree with this assessment and, in terms of residential amenity, there would be a planning benefit if the commercial use of the site were not to be reinstated. I have taken into account the views expressed by a local resident on this issue who has referred to another appeal in Brighton where the retention of the employment use was found to be an overriding consideration.² Without further detailed information, I cannot afford that decision any significant weight.

14. The appeal scheme is for the demolition of all the existing structures on the land and the erection of a two-storey, four-bedroom house attached to the side of the host property with its main frontage to West Hill Road behind a low wall with railings above. Because of the shape and size of the plot the building would have an irregularly-shaped footprint with a hardstanding and cycle store to its side. Internally the development would provide for satisfactory living conditions for its occupants and, in terms of land use and site coverage, and although the size of the proposed amenity area would be small, it would be adequate and comparable to many in the area.
15. The development would provide for one off-street car parking space in a position that would be alongside one already existing at the rear of No 2 Compton Avenue. There is no objection on highway grounds and the Council accepts that matters such as the sustainability credentials of the building, the effects of the development on the trees on the adjoining land, loss of an on-street car parking space and landscaping are all considerations which are either acceptable, or could be the subject of appropriate conditions to make them acceptable, if planning permission were to be granted.

Character and Appearance and the West Hill Conservation Area

16. With these points in mind, and as a straightforward point, the acceptability or otherwise of the development turns on its design and its possible impact on the living conditions of the adjoining residents. I note that a number of proposals have been put forward previously for the development of the site for the erection of two dwellings. These have all been refused. Extensive negotiations between the Council and the appellant appear to have taken place over a long period of time and the appellant states that it was understood that the Council's concerns had all but been overcome with this much scaled-down proposal.
17. On the first main issue, the Council considers that the significance of the site lies in it being within an area of strongly coherent character and attractive street facades. It is accepted that the present appearance of the site detracts from the character of the area and that the site has the potential for redevelopment by way of a single dwelling. Because of the unusual shape and location of the land, the Council takes the view that the design of an appropriate and acceptable development for it poses special problems with the overriding consideration being the preservation or enhancement of the character or appearance of the Conservation Area. I agree with this analysis.

² Appeal Ref:- APP/Q1445/A/13/2190024 – 39 Mafeking Road, Brighton – August 2013

18. Nevertheless, the particular character of the short section or spur of West Hill Road running westwards towards the Dyke Road from its junction with West Hill Street is appreciably different from that of the neighbourhood to the east and north-east where a much more uniform and cohesive character to the buildings exists. Within this particular location there are uncharacteristic breaks in the pattern to the development formed by the truncated ends of the terraces and the rear of the opposing elevations to the buildings facing Dyke Road.
19. The immediate character is defined by the unattractive views of the rear of the properties facing the east side of Dyke Road. The same uniformity of design as exists elsewhere in the Conservation Area is not present within the tight vicinity of the site. For instance, the long vistas along the streetscapes in West Hill Street and West Hill Road are not available to the same extent. In my view, the design of a scheme for the site needs to be considered in the context of the immediate locality rather than the wider Conservation Area.
20. With this in mind it seems to me that the scale, detailing and general form of the proposed building would satisfy the test of preserving the character or appearance of the Conservation Area. This is because the building would not, for instance, interrupt the continuity or architectural integrity of the terraces of dwellings in the area nor would it be an incongruous form of infilling within an otherwise built-up frontage.
21. Care and attention to detail has been applied to the design of the facades and the scale and proportions of the dwelling to ensure that, as far as possible, it would complement rather than detract from the surrounding structures. Taking account of the particular constraints of the site, and its unusual configuration and location, an acceptable solution to the design problems has been conceived, in my view.
22. The provision of the car parking space would cause no material harm bearing in mind that such a form of land use already takes place on the immediately adjoining property.
23. As the Framework makes clear, good design is a key aspect of sustainable development.³ Architectural styles or particular tastes should not be imposed and innovation should not be stifled although it is right to promote or reinforce local distinctiveness.⁴ Not all the elements of a Conservation Area will necessarily contribute to its significance.⁵
24. Bearing in mind the presumption in favour of sustainable development contained within the Framework, the absence of harm to a designated heritage asset which the development would create, and the fact that the test of preservation or enhancement would be satisfied, I conclude that the development would be in compliance with the provisions of the Framework as well as policies QD1, QD2 and HE6 of the local plan. The proposals are therefore acceptable on this issue.

³ National Planning Policy Framework – paragraph 56

⁴ National Planning Policy Framework – paragraph 60

⁵ National Planning Policy Framework – paragraph 138

Impact on Neighbouring Properties

25. On the second main issue, the site lies within a very tightly-knit residential neighbourhood where buildings closely adjoin each other, gardens are small and overlooking between properties is a common feature. The fact that many of the original dwellings have been converted into flats, including No 1 West Hill Street itself, exacerbates the compromises to privacy which occurs with living rooms on the first floors and a high density of population. In this context the effect of the appeal development would cause no material harm.
26. In terms the Council has acknowledged these points and accepts that a two-storey development of the site could be acceptable subject to the retention of adequate space between dwellings and the absence of any unacceptable losses of privacy. Whilst the effects of the scheme on the properties in Compton Avenue has been criticised because of a possible overbearing impact, the distance retained between the opposing elevations of the new dwelling and the rear of those properties would be adequate.
27. The north-west elevation of the new dwelling would be comparable in its siting to the furthest outward projections of some of the rear outriggers of the dwellings in West Hill Street and the separation distance would be similar. Adequate space would remain.
28. As regards overshadowing to the adjoining properties in West Hill Street, structures at single-storey height are already present on the north-eastern boundary of the site. No 1 West Hill Street is already enclosed to an extent by the existing structure on its side boundary with the adjacent building (No 2) and whilst some additional loss of light and overshadowing would be caused by the development, that would not be so serious as to render the development unacceptable on this issue.
29. As regards overlooking, the windows in the first floor of the rear and side of the development serving the bathrooms could be fitted with obscure glass to overcome any loss of privacy. The first floor window serving Bedroom 1 would not directly overlook the rear garden of the adjoining property. This would be at an oblique angle facing almost due north and would not face directly towards the rear of the adjoining dwelling.
30. In the context of this site I do not consider that that the development would have any materially greater impact on the amenities of the immediately adjoining occupants than already occurs here or elsewhere locally and which is not unusual in a highly developed residential neighbourhood of this kind.
31. A Core Planning Principle of the Framework is that development should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Policy QD27 of the local plan states that new development will not be permitted where it would cause a material loss of amenity to existing or adjacent. Having regard to my conclusions above I do not consider that this proposal would be in conflict with either the Framework or the local plan on this issue.

Other Matters

32. I have taken into account all the representations made by persons who have an interest in this proposal and I have afforded their views weight in the planning balance. Nevertheless my conclusion is that all the factors in favour of this scheme, including the presumption in favour of sustainable development and my conclusions that the development would be generally in conformity with the Framework and the local plan, outweigh all other material considerations. I allow the appeal accordingly.

Conditions

33. Concerning conditions I have considered those suggested by the Council and the response received from the appellant. Other than the statutory time limit condition, I have attached a condition to ensure that the development is carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning.
34. In the interests of visual amenity details and samples of all the external materials to be used in the construction of the development should be approved before work commences. Precise details of the doors and windows are necessary in the interests of the preservation of the appearance of the Area.
35. Although the scope for such works is limited, landscaping should be undertaken in accordance with details to be approved to enhance the appearance of the development as far as possible. Minor external alterations and clutter should be avoided and a condition in this respect is necessary. The parking facilities and the cycle store should be available for use prior to the occupation of the dwelling in the interests of highway safety and sustainability.
36. The dwelling should be constructed to achieve a Code Level 3 in the interest of sustainability. To ensure privacy the bathroom windows in the first floor rear and side elevations of the dwelling should be permanently fitted with obscured glazing. The conditions recommended concerning the vehicular crossovers lie outside the site and would therefore be inappropriate.
37. With the former commercial use of the site, some contamination of the land may exist and this possibility needs to be safeguarded against. In this instance it is reasonable and necessary to remove permitted development rights to preclude any unsympathetic alterations to the building and to avoid any overlooking from, for instance, dormer windows. I note that the Council has referred to the existence of an Article 4 Direction for the Conservation Area but in the absence of any detailed information in this respect I have imposed an appropriate condition. With the current condition of the site and its former usage, a condition concerning nature conservation would be unreasonable.

Reasons – Appeal B

38. As far as the appeal in relation to the application for Conservation Area Consent is concerned, the buildings on the site now are a visual detraction from the

appearance and character of the Conservation Area. They are incongruous, disused, poorly-maintained and of no architectural merit. Their removal would benefit and enhance the character and appearance of the area. Having regard to policy HE8 of the local plan it is important however to ensure that a suitable scheme replaces the buildings rather than that the site should remain vacant.

39. In accordance with policy HE8 of the local plan I shall therefore impose a condition in this regard to the effect that the buildings should not be demolished and the site cleared except when it is certain that the site will be redeveloped in accordance with an approved scheme and that this should not be longer than a period of six months prior to that development taking place.

David Harmston

Inspector

SCHEDULE OF CONDITIONS

APPEAL A – APP/Q1445/A/13/2206383

- (1) The development hereby permitted shall be begun before the expiration of three years of the date of this permission.
- (2) The development hereby permitted shall be carried out in accordance with the following approved drawings:- 2013/2.01; 2013/2.02; 2013/2.03 and 2013/2.04.
- (3) Details, including samples, of all the materials and finishes to be used on all the external surfaces of the development hereby permitted, including those for the roof, fenestration, doors, boundary wall(s) and cycle store shall be submitted to and approved in writing by the Local Planning Authority before any demolition or building works commence. The development shall be completed in accordance with the approved details and samples.
- (4) No development shall take place until full details of all external doors (including 1:20 scale elevational drawings and sections and 1:1 scale joinery sections), and details of all sash windows, and their reveals and cills, (including 1:20 scale elevational drawings and sections and 1:1 scale joinery sections), have been submitted to and approved in writing by the Local Planning Authority. The works shall thereafter be carried out in accordance with the approved details and shall be retained as such.
- (5) No development shall be commenced until details of the vehicle parking area and cycle store have been submitted to and approved in writing by the Local Planning Authority. Thereafter the vehicle parking area and cycle store shall be constructed in accordance with the approved details prior to the first occupation of the dwelling hereby permitted and thereafter retained in use for those purposes only.
- (6) Other than the requirement to provide a covered entrance, the new dwelling hereby permitted shall be constructed to Lifetime Homes standards prior to its first occupation and shall be retained as such thereafter.
- (7) The dwelling hereby permitted shall achieve a Code Level 3 in accordance with the Code for Sustainable Homes : Technical Guide (or such national measures of sustainability for house design that replaces that scheme). The dwelling shall not be occupied until a Final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
- (8) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority full details of both hard and soft landscaping for the site, including any hard surfaced areas. These works shall be carried out as approved prior to the first occupation

of the dwelling hereby permitted or in accordance with a programme to be first agreed in writing with the Local Planning Authority.

- (9) Any trees or plants which, within a period of five years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.
- (10) No development shall be commenced until a scheme detailing the measures to be undertaken for the protection of the trees which are located adjacent to the application site, and any trees to be retained within the site, have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full in accordance with BS5837 (2012) with any required protection measures erected prior to the commencement of development, including any works of demolition. These measures shall be retained until the completion of the development. No vehicles, demolition items, plant or materials shall be driven or placed within those areas enclosed by any required protection fences and there shall be no bonfires therein.
- (11) The first floor windows for the bathroom and en-suite bathroom in the side and rear elevations of the dwelling hereby permitted shall be permanently fitted with obscure glazing. The windows shall be non-opening except that those parts of the windows which can be opened are no less than 1.7-metres above the finished floor level of the room in which the window is installed, and thereafter permanently retained as such.
- (12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no extensions, additions or enlargements to the dwelling, including any alterations to its roof (including the construction of dormers) as provided for within Schedule 2, Part 1, Classes A – F of the Order shall be carried out without the prior written permission of the Local Planning Authority.
- (13) No cables, wires, aerials, pipework (except for the rainwater downpipes), meter boxes, ventilation grilles or flues shall be fixed to or penetrate any external elevation, other than those shown on the approved plans, without the prior written consent of the Local Planning Authority.
- (14) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority, a plan detailing the positions, height, design, materials and type of all existing and proposed boundary treatments. The boundary treatments shall be provided in accordance with the approved details before the building is first occupied. The development shall be carried out in accordance with the approved details.

- (15) No development shall take place until a site investigation of the nature and extent of any contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the Local Planning Authority. The results of the site investigation shall be made available to the Local Planning Authority before any development begins. If any contamination is found as a result of the investigation, a report specifying the measures to be taken to remedy the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The site shall be decontaminated in accordance with the approved measures before development begins.
- (16) If, during the course of the development hereby permitted, any contamination of the land is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted to, and obtained written approval from, the Local Planning Authority detailing how this contamination will be dealt with. The development shall thereafter be carried out in accordance with these details.

SCHEDULE OF CONDITIONS

APPEAL B – APP/Q1445/E/13/2207387

- (1) The demolition of the buildings hereby authorised shall be begun before the expiration of three years of the date of this permission.
- (2) The demolition of the buildings hereby authorised shall not be begun until documentary evidence has been produced to the Local Planning Authority demonstrating that contracts have been entered into by the developer to ensure that the building work on the site the subject of the planning permission for the erection of one dwelling is commenced within a period of no more than six months following the commencement of the demolition works.

END
