



Appeal Decision

Site visit made on 13 October 2014

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 25 November 2014

Appeal Ref: APP/Q1445/A/14/2223461
Rear of 28 Eastern Place, Brighton BN2 1GJ

- 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 Christopher Pearce and Ms Lucy Lauener against the decision of Brighton & Hove City Council.
 - The application Ref BH2014/00119, dated 15 January 2014, was refused by notice dated 6 March 2014.
 - The development proposed is erection of 3No two bedroom dwellings (C3) and 1No commercial unit (B1).
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Decision

1. I dismiss the appeal.

Main Issues

2. These are;
 - The effect of the proposal on the character and appearance of the Eastern Place area of Brighton.
 - The effect of the proposal on the living conditions of neighbouring residential occupiers with particular regard to privacy, daylight and outlook.

Reasons

Generally

3. The site is presently unused and not formerly in a use that the Council considers should be protected for its employment provision. The development for housing would further the stated aims of paragraph 47 of the National Planning Policy Framework to boost significantly the supply of housing, and would make use of previously developed land in an urban area. It is close to frequent bus routes to the railway station, the marina for entertainment and shops, and to other parts of the city and beyond, as well as other facilities and the should be regarded as being in an accessible location. The provision of a work unit would be beneficial and could reduce the need to travel.
4. Therefore, the proposed lack of parking and the statement that the development is car-free can be given full weight for the benefits that would bring in reducing congestion, and a condition could be attached to prevent future occupiers from obtaining a parking permit for on-street space as set out in Local Plan Policy HO7. Local Plan Policy HO3 makes clear that to secure

efficient and effective use of a site, proposals will be expected to incorporate an intensity of development appropriate to the locality and townscape among other considerations.

Character and Appearance

5. Local Plan Policy QD1 sets out the considerations on the design of development in general, and Policy QD2 seeks to emphasise and enhance the positive qualities of the local neighbourhood. In addition to the points detailed in the preceding paragraph with regard to Policy QD3, the policy goes on to say that town cramming is to be avoided and backland development will be rigorously examined for its effect. Section 6 of the Framework seeks a wide choice of high quality homes and section 7 requires good design.
6. The site is backland in that it is behind established built form along Eastern Place and in a space between that frontage and the more recent development of Lewes Mews, and the site also adjoins the rear boundaries of properties on Arundel Road. As illustrated in the Design and Access Statement, the site is within an area of open space formed by the rear gardens of many of these properties in addition to the appeal site itself. This space does not contribute greatly to the character and appearance of the area although the site is seen in public views from the entrance onto eastern Place alongside number 28. Development on the site would impinge into this open space, but the effect would be limited by the height of the boundary fence to the south and the boundary wall to the west and the site level relative to the street.
7. It appears that the proposed scheme for three dwellings follows a scheme for four dwellings that was refused in September 2013 (Ref; BH2013/01251), and the Council describe the present scheme as being 1.8m further from the southern boundary and 0.6m further from the western boundary, the residential units would be shallower in depth but wider, and the commercial unit would be slightly shallower and wider. This redistribution of built form has therefore resulted in a limited increase in the space around the building, and no difference in height. The Council Officer's Report states that the contemporary, flat roofed design was previously considered acceptable.
8. There are many aspects of the layout that relate well to the context of the site, the north-south orientation and the lower link to the rear of number 28 are appropriate responses to the access point and buildings on Eastern Place, and the low, flat roofed design avoids protruding over-much into the open space. The fenestration is restrained and contemporary and the change from a more industrial style previously proposed is appropriate in relation to the residential properties around.
9. The balance between open areas to the rear and to the front of the units appears to provide space for light and air within the dwellings, but results in the front projecting forward of the side wall of number 28 and this arrangement leaves an uncharacteristically narrow shared space visible to the street. The area in front of the units would appear cramped and would leave little space for meaningful landscaping whilst still allowing access for cycles.
10. Whilst agreeing to the flat roof, the Council object in the first reason for refusal to the roof materials. This is described as a 'brown roof' and the Design and Access Statement says that this would be 'non-seed' allowing self colonisation of plants and insects, the base being sourced from 100% recycled materials.

The appellant says that this will add visual interest when seen from above, and aid biodiversity. 'Green roofs' are well known, using sedum and the like to present an acceptable appearance and to suppress unwanted colonisation, reducing the need for maintenance, an activity that would likely require access and a fall-restraint system.

11. However, there is real doubt as to how the proposed 'brown roof' would be controlled or maintained on three separately occupied dwellings and a risk of invasive, or straggling species such as buddleia, taking hold and being visible from the street. In any event the roof would be plainly visible from a number of properties that have a view over the site. Were all else acceptable a condition might address these doubts, but in the absence of further information on the operation of a 'brown roof' the concerns of the Council are shared.
12. In conclusion on this issue, there are two main areas of concern remaining; the site coverage with feeling of cramped spaces and over-development of the site; and the doubts over the appearance and management of the 'brown roof'. As a result, conditions would not be able to address all concerns and the proposal is found to fail to show a high enough standard of design contrary to the aims of Local Plan Policies QD1, QD2 and QD3, and those of the Framework.

Living Conditions

13. The Council's reason for refusal concerns the visual effect of the development as seen from dwellings in Lewes Mews to the south. That development is a staggered terrace of three storey modern town houses, and numbers 6, 7 and 8 have shorter gardens that back onto the appeal site, whilst numbers 5 down to 1 have longer gardens that reach the rear of properties on Eastern Place. This arrangement has been assisted by numbers 6 to 8 being staggered further south, away from the appeal site, than the others in the terrace, but not by much considering the proximity of the appeal site boundary. Nevertheless, that is the arrangement in place. In addition two of those properties have rear additions that take up a significant area of their gardens.
14. As previously described, this proposal has resulted in a larger space between the proposed flank wall and the rear of Lewes Mews and daylight and access to air would not be so affected as to be harmful in planning terms. The flank wall would still feature in the outlook and although it has been kept low by the use of the flat roof and although there would remain open space to left and right as well as over, the proximity is so close that the flank wall would appear as an intrusive element in the outlook of number 7 in particular, the other two having the more open views. All three dwellings would have a close view of the proposed roof, and the doubts expressed earlier, if realised, would be particularly felt by these occupiers. Policy QD27 of the Local Plan seeks to protect the amenity of adjoining occupiers, and in this case the relationship between the flank wall and number 7 fails to satisfy this aim.
15. The Council are satisfied as to the position of windows and the risk of harmful overlooking, on the basis that the flank wall has no windows and that is the nearest to other gardens and facades, and the gardens further from the rear walls of such as 2, 3, 4 and 5 Lewes Mews already experience a similar degree of overlooking. Both of these considerations are true, however, the occupiers of one of the dwellings at the rear have objected on the basis of overlooking in addition to the other matters already considered.

16. The proposed dwellings would have slot windows at first floor level that would appear to be able to view over the wall and into the rear gardens nearby. Whilst that view is generally to the part further from the rear of the dwellings, and therefore to a part away from that where a higher degree of privacy is reasonably expected, the slot window to the proposed Plot 1 would be to the southern end of the unit and would risk being perceived by the neighbouring occupiers as having a direct view to the rear of the house. This is a risk of infill development, but in this case insufficient steps have been taken to design-out this risk, and on balance, the location of the window and the perception of being overlooked would cause undue harm to the living conditions of the occupiers of numbers 3, 4 and 5 Lewes Mews, again contrary to the aims of Policy QD27.

Planning Balance and Conclusions

17. As set out in the general paragraphs, there are positive features of the development in the use of land in a sustainable location and contributing to the supply of housing close to transport and facilities. Of the three dimensions of sustainable development detailed in paragraph 7 of the Framework the proposal would further the economic and social roles, with the work unit, economic activity in the construction and through introducing residents to the area, but would not sufficiently further the environmental role through shortcomings in the design, notwithstanding the energy saving and biodiversity proposals. The principle of the development of the site is not in question, but the particulars of the proposed design and layout fall short of what should be expected on this site, failing to accord with the Development Plan policies referred to and the aims of the Framework. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR