



Appeal Decision

Site visit made on 4 February 2015

by **S Emerson BSc DipTP MRTPI**

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

Decision date: 13 February 2015

Appeal Ref: APP/Q1445/A/14/2220057 18 Wellington Road, Brighton, BN2 3BG.

- 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 Mrs N Blencowe against the decision of Brighton & Hove City Council.
 - The application Ref BN2013/01254, dated 18 April 2013, was refused by notice dated 13 December 2013.
 - The development proposed is construction of 30 flats.
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Procedural Matters

1. Amended plans were submitted at various stages whilst the application was still under consideration by the Council. The final plans on which the Council refused the application are listed in the Council's refusal notice and I have determined the appeal on the basis of these plans. The reference to 30 flats in the description of development on the application form appears to have been an error. The scheme is for 31 flats in 2 separate blocks following the demolition of the existing building on the site.
2. The appellant's comments on the Council's appeal statement referred to a further plan (0769_P-120) showing a re-arrangement to provide 2 flats suitable for wheelchair users on the ground floor to try to address the Council's concerns about such provision. This plan appears not to have been provided at the time the comments were made. In view of the potential importance of the matter, I requested a copy of this plan from the appellant and have taken into account the Council's comments on the drawing. I have treated this drawing as illustrative of how 2 wheelchair accessible units might be provided. The plan shows that accommodating these units as now proposed would have consequences for the layout of the rest of the ground floor, for other floors and the external elevations, but plans showing such consequential changes have not been submitted. I cannot therefore treat the plan as amending the application drawings.

Application for costs

3. An application for costs was made by Mrs Blencowe against Brighton and Hove City Council. This application is the subject of a separate Decision.

Decision

4. The appeal is dismissed.

Main Issues

5. The main issues are:
 - (a) Whether the proposal would result in the harmful loss of a needed community facility or open space.
 - (b) The effect on the character and appearance of the area.
 - (c) Whether the proposal would provide adequate living conditions for future residents with respect to outlook from some of the flats, outside amenity space and suitability for wheelchair users.
 - (d) Whether the development makes adequate provision by way of S106 contributions to make the development acceptable in planning terms.

Reasons

Loss of community facility and open space

6. The existing building on the site (known as St Gabriel's) was for many years a children's home and subsequently the base for the Children's Society's Brighton Portage Project, which I understand, provides (or provided) support for families with children with disabilities in the Brighton area. The Children's Society moved this project to what it regarded as more suitable premises at the Hangleton Community Centre when St Gabriel's was closed in 2004. From the evidence, I have found it difficult to be clear what community facilities or functions the appeal *building* provided (other than as a base for services provided generally across the City). The Council's appeal statement refers to the opportunity to rent facilities at the premises, including a soft play room, kitchen and garden for regular weekly drop-in facilities. Such uses/activities would have occupied only a modest proportion of the building. I note that the existing building does not have any particularly large single space for communal activities.
7. I do not know when the Society sold the appeal site, but there has been no community use of the building for the past 10 years. In the intervening years it has been subject to vandalism and squatting and all the windows are now bricked-up. It is reasonable to assume that there are no specific facilities inside which could be readily reused. The Council does not dispute the appellant's view (drawing on a statement from the Children's Society) that the existing building is unsuitable to meet community needs as the building is not readily accessible for people with disabilities and basic services in the building were in need of improvement back in 2004. The thrust of the Council's objection is that, unless the specific exceptions provided by policy HO20 of the Brighton and Hove Local Plan are met, then any redevelopment of the site should incorporate some community facility, such as a day room, for wider community use.
8. There is no evidence of a local need for a community room of this nature. The appellant refers to various long-standing community facilities in the area, but there is no indication from either party whether such facilities are fully utilised or otherwise adequate to meet local needs. The Council highlights one charity (*Safety Net*) that in 2013 expressed an interest in using the building for *safety services for families and children*. But there is no evidence that this was ever a serious or realistic proposition or that the building/location was particularly suitable for the charity's use.

9. Policy HO20 of the Brighton and Hove Local Plan indicates that planning permission will not be granted for development proposals that involve the loss of community services unless one of 4 exceptions applies. Clearly, the current proposal does not directly trigger the loss of the community facilities at this site since that event occurred 10 years ago, but it would consolidate that loss and preclude any opportunity for any replacement community use on the site. Accordingly, I consider that it is an applicable policy.
10. The Children's Society's relocation of its Portage Projects to better facilities at Hangleton met exception (b) of the policy. However, there is no evidence that the use of some facilities on the site for general community purposes was mitigated in anyway. I cannot conclude that any of the exceptions in the policy were met with regard to that element of the community use prior to closure of the building in 2004. Thus there is some conflict with the policy, albeit largely historic.
11. Planning permission was granted in 2009 and subsequently renewed in 2012 for the part demolition and conversion of the existing building on the site and an extension to provide 26 self contained flats with 24 hour support for people with learning /physical disabilities. This scheme included a day room as a drop-in centre for people with disabilities. The scheme was developed with the City Council's Social Services Department, but it is no longer interested in the project. The Council regards the drop-in facility as acceptable replacement for what it regards as the community use that has been lost.
12. The appellant has submitted details of the regular marketing of the site in recent years with the benefit of this permission and indicates that there has been no interest at a reasonable valuation. In my view, the marketing undertaken of the property does not demonstrate that there is no local need for some form of community use on the site, only that there is no realistic prospect of this being provided commercially as part of the permitted development. However, the Council rather than the appellant would be best placed to provide evidence of local non-commercial need for additional community space in the local area and no such evidence has been provided.
13. Taking all these circumstances into account, the weight I give to the conflict with policy HO20 is very limited because of the long passage of time since the facilities were effectively lost or made unavailable; the unsuitability of the existing building to meet community needs at the time it was closed and even more so now; and the lack of evidence that there is a need for the rather limited community facility that was actually lost. In short, there is no evidence of any practical harm arising from this conflict with policy which first occurred when the building was closed in 2004.
14. The southern part of the appeal site to the south of the existing building is designated as Open Space and subject to policy CP16 in the Brighton and Hove City Plan. This plan is currently at Examination. The precise area that is designated is not easy to discern because of the small scale of the plans showing the proposed changes to the Policies Map that would come into effect when the City Plan is adopted. The Council has not provided any explanation as to why part of the appeal site was designated under policy CP16 or what this designation is actually intended to achieve. There does not appear to be any proposal in the plan to make this *public* open space, only to prevent development on it (other than in certain limited circumstances). The Council

has provided a copy of its *Open Space and Recreation Study* Update 2011, but has not highlighted what parts of the Study are relevant or why. It is a substantial document. There are plans which show a wide variety of types of open space by ward (Appendix 3a), but these are small in scale and the printed version lacks clarity. There appears to be areas on the plan for Hanover Ward which include part of the appeal site as *Privately owned Parks and Gardens* (but the key is difficult to read and apply to the maps). The appellant does not dispute that part of the site is subject to policy CP16.

15. There is a long drive with entrances at either end, which occupies most of the frontage of the appeal site. Behind this, on higher ground is overgrown land on different levels. There is no public access to this land and clearly has not been for the past 10 years. The only open space function that it currently provides and would have done at the time of the 2011 Study and when the City Plan was published is of a visual break between buildings in which trees at the front and rear of the site are visible from the street. The appellant refers to a small playground on the site when St Gabriel's was in use, but this appears to have broken-up or become overgrown. Its physical suitability for any future *public* open space use would seem very limited given its sloping nature, small size and the proximity of the flats in the neighbouring building.
16. There is conflict with policy CP16 in as much as the proposal would result in the loss of most of the designated private garden or amenity space which triggered its original identification as open space. I am not in a position to determine whether exception (d) in the policy applies since this requires a detailed interpretation of the findings of the *Open Space Study* and no such analysis has been provided by either party.
17. Only limited weight can be given to the policy conflict as the plan is still under Examination. However, the Council indicates that no objection was made to the designation of this site under policy CP16 when the plan was first published. I note that the Inspector has required the Council to make greater efforts to provide additional housing sites, with a particular focus on the potential of the urban fringe and some employment sites. She did not highlight the need to review land within the built-up area designated under C16. The appellant has objected to the Council's published modifications to the plan on the basis that the appeal site should not be so designated, but in my experience, when potential modifications of this kind are published the focus is on the soundness of those possible changes, not matters which could have been addressed at an earlier stage. Accordingly, it may well be that the designation of this land under CP16 remains in the plan when it is finally adopted.
18. The loss of open space identified in the *Open Spaces Study* in 2011 was not addressed at the time the 2009 permission was renewed in 2012. This was before the publication of the City Plan. The approved development would result in a building on the designated open space similar in scale to that now proposed as block B. The permission remains valid until April 2015, and I note that the appellant has been pursuing amendments to the pre-commencement conditions. But given the short time left before it lapses, the lack of interest in implementing it following 5 years of marketing by the appellant, and the withdrawal of interest from social services, it is questionable whether it represents a realistic fallback position. The appellant was pursuing with the Council the removal of a S106 restriction which limited occupation of the flats

to people with disabilities, but I do not know the outcome. It is understandable that the Council regarded that scheme as having specific benefits greater than would arise from conventional housing on the site, as it was intended to meet particular needs identified at the time. Overall, on the evidence before me, this extant permission does not set aside the conflict with policy CP16.

Character and appearance

19. The appeal site is in a part of Brighton mainly characterised by dense terraced housing, but Wellington Road is noticeably different with a variety of types and scales of building including some 1960 high-rise blocks directly opposite and a block of flats in modern style adjoining to the south west. There are also Victorian Villas in the road.
20. The existing building was clearly an attractive Victorian building, but has suffered from being empty for the past 10 years. It is not listed nor of listable quality and the site is not in a conservation area. Prior approval exists for the demolition of the building. The Council did not refuse the application because of the loss of the existing building, but its appeal statement expresses concern about its loss. The building is not on the Council's list of buildings of local interest. The Council explains that the list is under review (and has been for some time) and that the building was among those nominated to be included in an updated list. In the interim, it has decided that it should treat all nominated buildings as locally listed. However, I do not consider that such an approach is justified as there has been no opportunity for parties to comment on the merits of local listing of the nominated buildings and the process appears to have been particularly protracted with no clear date for completion. In all the circumstances of this case, the loss of the existing building does not weigh materially against redevelopment of the site.
21. The 2 proposed new buildings on the site would reflect the classically-styled Victorian facade of the existing building and in this respect would be in keeping with one of the characteristic styles of the street. The Council is concerned with specific details of the design. The 3 proposed dormer windows at the front of block A would align with the windows below, but the Council is concerned that the 2 outer dormers would not do so. I do not regard these dormers as substantial features of the front elevation. They are set well within the roof space and the facades below to which they relate are stepped back from the front of the building. I do not consider that this element of the design would be visually harmful.
22. The rear elevation would incorporate a dormer which would be wider than the others, but of limited height. Despite its width it would still be a very modest feature within the roof slope. I note that it was substantially reduced in size compared with what is shown on the plans as originally submitted. Given its comparative small size in the context of the roof slope, I do not regard it as conflicting with the advice in the Council's Supplementary Planning Document (SPD) 12 *Design Guide for Alterations and Extensions* (2013).
23. The lift shafts on both buildings would project about 1.1m above the flat roof. These shafts would be readily noticeable only from the private rear gardens at the rear and the upper stories of the blocks of flats opposite. Subject to careful choice of materials and detailing, I consider that they would not detract materially from the overall appearance of the buildings. If the shaft on block A

was noticeable at all from street level it would only be the top part and it would appear as a minor, inconsequential feature.

24. I see no objection to the large flat roofed areas. In public views only the sloping roof elements would be readily noticeable. The Council consider that the entrance porticos and the false windows above them are not sufficiently articulated to form an entrance feature of appropriate scale. Whilst these elements are rather cramped between the adjoining pairs of windows I consider that this is not a serious shortcoming in the design, particularly given the variety of building styles in the road and the fact that these elevations would not be seen alongside any comparable facade.
25. Overall, I consider that there would be no harm to the character and appearance of the area arising from the design of the building and that there is no conflict with the aim of Local Plan policies QD1 and QD2 for good design.

Living conditions

26. The Council highlights that the lower half of some of the windows at the rear of block A would be obscure glazed to prevent overlooking of neighbouring gardens at close quarters. The application plans show obscure glazing to the rear end bedroom windows closest to the rear boundary on the ground, first, and second floors.
27. In my view, harmful direct overlooking into the most private parts of the rear garden of the properties in De Montford Road would occur only from rear windows at second and third floor level of the rooms closest to the rear boundary, namely both rear bedroom windows of flat 5 and the rear dormer window of flat 15. Only these windows would require obscure glazing to the lower half of the window. As shown on the submitted cross-sections the rear ground floor windows would be facing a bank within the site; the first floor windows would be facing the existing retaining wall on the boundary and even some views from the second floor might be blocked by fencing or vegetation on top of the retaining wall.
28. It is generally undesirable for direct outlook to be blocked from the windows of main habitable rooms. The significance for the living conditions of future occupiers depends on the outlook available from other habitable rooms. Flat 5 would have 2 good sized windows with an outlook from the main living space as well as from one bedroom, so the obscure glazing to bedrooms 2 and 3 would not make living conditions unacceptably poor. In flat 15 the outlook from the main living space and from the main bedroom would be provided by a small dormer window, much smaller than the windows serving the flats on the lower floors, so the obscure glazing to the second bedroom would reinforce an already limited outlook. I consider that the living conditions here are on the margins of acceptability.
29. Flat 16 in block A on the third floor would have one small dormer window serving the main living space, but all other light (and outlook) would be provided by skylights too high in the roof slope to see out when looking straight ahead. This flat would therefore have a very poor outlook for its occupiers. Bedroom 2 of flat 14 on the third floor of block B would also only be served by a skylight. The other bedroom and the main living space would have only a small dormer window each (plus another skylight each). This would be

- similar to the situation in flat 15 above and again be on the margin of acceptability.
30. In respect of flat 16 therefore I consider that there is conflict with policy QD27 of the Local Plan for the protection of amenity which is intended to encompass the amenity of future residents, as well as existing. Subject to the provision of the obscure glazing described above (and as proposed by the appellant in the south western elevation of block B to protect the amenity of residents in Ainsworth House) the impact on adjoining residents would be acceptable. From the rear of properties in De Montford Road, block A would have a similar profile as the existing building. Block B would be similar to the scheme with planning permission. Whilst it would be readily noticeable from the adjoining rear gardens, the substantially lower ground floor level of this building compared with these gardens would ensure that it was not overbearing.
 31. Four flats on the ground floor of block B and 2 in block A would have doors leading to outside amenity space. However 3 of these spaces would be at the front of the building and would not be particularly private. Communal amenity space is shown at the rear of the buildings. Half of the width of the area at the rear of block B would be unusable as it would be a steep bank necessary to provide the outlook from the ground floor rooms of this building. No access route to this space is shown and although the appellant refers to a path between the buildings it is difficult to envisage how this could easily be accommodated, given the difference in levels, the proposed visitor cycle stands and the need to respect the privacy of the ground floor flats alongside which the path would need to pass. Accordingly I do not regard this area as meeting the need for amenity space.
 32. The proposed amenity space at the rear of block A would be directly accessible by residents of that block because of the rear door to the building. Steps are shown behind the building up to the amenity space at a higher level. Subject to some careful landscaping this area could accommodate a small sitting area.
 33. Overall, I consider that the development does not demonstrate the provision of adequate amenity space for future residents, particularly in relation to block B. Accordingly there is conflict with policy HO5 of the Local Plan which requires such provision.
 34. Policy HO13 of the Local Plan requires a proportion of all new dwellings on sites with more than 10 new dwellings to be built to wheelchair accessible standards. The Plan refers to a need for 5% provision of such accommodation which the Council interprets as requiring 2 units in this scheme to meet wheelchair accessible standards for future occupiers. I agree with the Council that if there is only one lift in the building (as is the case with each of the blocks proposed here) then such units should be on the ground floor to ensure that access is always available. I also agree that the Council's requirement for the internal arrangements of the unit is reasonable to ensure that the living accommodation is as practical as possible for wheelchair users. Where a development includes 2 bedroom units I consider that the units for wheelchair users should have 2 bedrooms to allow an overnight carer to stay.
 35. Given that most existing dwellings are not suited to wheelchair users, I consider that it is particularly important to secure the 5% provision in new development. New build schemes such as this are much more likely to be able to meet the required arrangements than many conversion schemes. In

addition, as this development would include 6 private parking spaces at the front of the building, 3 of which are identified on the plans as being for disabled users, the development has the potential to be particularly suitable for wheelchair users. It is in the public interest for this potential to be realised in accordance with the Local Plan policy. The policy is consistent with the objectives for the provision of new housing in paragraph 50 of the National Planning Policy Framework.

36. The plans on which the Council refused permission showed the wheelchair accessible units above the ground floor and they did not meet the all internal layout standards. The revised plan I referred to in paragraph 2 above proposes that 2 units on the ground floor of block A be redesigned to meet the Council's requirements. Subject to some detailed adjustments, these flats could meet the required standards internally. However, achieving this requires considerable change to the internal layout of the whole ground floor, most significantly moving the lift shaft to the rear of the building. This would have a noticeable impact on the external appearance of the rear of the building, which requires an amended plan to properly assess. I also note that the remaining 2 ground floor flats are reduced from 3 bed units to 2 bed units and the entrance corridor is narrowed. Accordingly, I would not be in a position to deal with provision of these units by condition because the consequences of doing so have not been fully demonstrated or assessed as part of this decision. The appeal proposal does not therefore make adequate provision for accessible housing and conflicts with policy HO13. I regard this as a serious shortcoming.

Section 106 undertaking

37. As part of the appeal, the appellant has submitted a S106 undertaking, although the version I have seen is not dated. If I were minded to allow the appeal I would need to verify that the Council held a dated copy. This undertaking makes provision for financial contributions towards education provision and for highway improvements, including improvements to a nearby bus stop. It also makes provision for an employment and training strategy for the construction work and a construction and environmental management plan to minimise disruption. I consider that the provisions for education, transport and construction management are necessary to make the development acceptable and meets the requirements of the CIL Regulations.
38. The appellant disputes the Council's request for financial contributions to the local employment scheme, for public open space and towards public art. The Council's aims and requirements for local employment and training are set out in the Council's *Developer Contributions - Technical Guidance on the main types of contributions*. Whilst I understand that these training and employment proposals are important and beneficial to the City, the Council has not explained why the proposed development is unacceptable in the absence of such contributions. Accordingly, I have not taken into account the employment and training strategy included in the Undertaking nor do I consider that the financial contribution to the local employment scheme sought by the Council is necessary. I also see no justification for the Council's requirement for a public art contribution. No public art is being lost as a result of the development and no public space is being created which would benefit from public art. I do not regard policy QD6 as requiring public art in all circumstances.

39. Local Plan policy HO6 sets a standard for the provision of outdoor recreation space in all housing schemes (in addition to the amenity space already referred to). No such provision is made in this scheme and therefore there is a conflict with this policy. Where this requirement cannot be provided on site, provision is normally met by improvements to existing open space through financial contributions. The method of calculating contributions for different types of open space is set out in the Guidance referred to above. The Council has listed the local parks and recreational spaces at which the requested payment would be spent. But it has not explained, such as by specific reference to the *Open Spaces Study 2011* whether the local area is deficient in all those types of open space. I am not in a position to determine whether the precise sum requested is necessary. However, there is a clear conflict with the requirement of policy HO6 and in the absence of either provision on site or a financial contribution this amounts to another objection to the development.
40. The appellant proposes that 12 units would be affordable housing and the Council appears content with this provision and for this to be secured by means of a suggested condition.

Other Matters

41. The Council considers that the applicant failed to demonstrate that sufficient protection would be afforded to nature conservation features on the site. The application was accompanied by a Phase 1 Habitat Survey undertaken in February 2013. This concluded that the building had some potential to house bats and recommended further assessments for the presence of bats and reptiles on the site. It concluded that overall the ecological value of the site was low and I have seen no evidence to suggest otherwise. I accept that it is normal practice to fully establish the need for ecological mitigation measures before any permission is granted so that conditions can be designed to specifically mitigate any identified harm. I also recognise however that with the passage of time since the survey was undertaken, including the length of time taken by this appeal, even if bats and reptiles were previously absent they might now be present or when the scheme came to be implemented. In the circumstances of this case, the interests of protected species would be suitably addressed by conditions requiring further surveys and appropriate mitigation measures if necessary.
42. The Council does not have an up-to-date and agreed figure for its housing requirement and it is well established that the emerging City Plan does not provide enough housing to meet objectively assessed housing need. Accordingly, the Council cannot currently demonstrate an appropriate 5 year supply of housing land. The policies of the adopted Local Plan for the supply of housing must therefore be considered out of date and the application should be determined in accordance with that part of paragraph 14 of the National Planning Policy Framework relevant to decision-taking.
43. The proposed development would have clear social benefits in providing for 31 new dwellings in a City where housing needs are not being met, including provision of 12 affordable housing units. The development would have economic benefits arising from the substantial construction work involved and environmental benefit in bringing back into use a site which is currently derelict.

Overall balance

44. I have found that there would be some conflict with the emerging plan policy which designates part of the site as open space. One of the proposed flats would have unacceptable internal living conditions and the provision for outdoor amenity space is poor. It has not been demonstrated that appropriate wheelchair housing can be provided within the scheme as currently proposed. The scheme makes no provision (either on site or through financial contributions) for appropriate open space to serve the needs of the new residents. It has not been demonstrated that the appeal scheme is the only means of providing this scale of new housing on this site. I consider that, taken together, these adverse impacts do significantly and demonstrably outweigh the benefits and justify dismissal of the appeal.

Simon Emerson

Inspector