



Appeal Decision

Site visit made on 4 February 2019

by **David Fitzsimon MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28th March 2019

Appeal Ref: APP/Q1445/W/18/3212075
10 Shirley Drive, Hove BN3 6UD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs B Packham and A Rizzoni against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/02869, dated 24 August 2017, was refused by notice dated 25 July 2018.
 - The development proposed is the demolition of existing house and construction of a new 10 no. unit apartment block with associated car parking.
-

Application for Costs

1. An application for costs was made by the appellants against the Council which is the subject of a separate decision.

Decision

2. The appeal is allowed and outline planning permission is granted for the demolition of existing house and construction of a new 10 no. unit apartment block with associated car parking at 10 Shirley Drive, Hove, BN3 6UD in accordance with the terms of the application, Ref BH2017/02869, dated 24 August 2017, subject to the conditions contained within the attached Schedule.

Procedural Matter

3. The application was made in outline with the matters of appearance and landscaping reserved for subsequent consideration.

Main Issues

4. The main issues in this case are the effect of the proposal on the character and appearance of the surrounding area, along with its effect on the living conditions of the occupiers of No. 12 Shirley Drive with particular regard to noise and disturbance.

Reasons

Character and appearance

5. The site is a generous plot which sits on the corner of Shirley Drive and The Drove Way. It currently accommodates a large, imposing single dwelling, with
-

a lower ground addition accommodating a swimming pool, gym, spa and home cinema which occupies a large proportion of the rear garden.

6. The proposal seeks to demolish the dwelling and erect an apartment building which would include 10 individual units. The Council asserts that the proposed apartment building would result in an overdevelopment of the site as it would have a greater footprint, scale and bulk than the existing dwelling and therefore it would be out of character with the prevailing form of development within the local area.
7. The submitted plans show an apartment block with a main body that would not be as tall as the current dwelling which occupies the site. In addition, the plans show an apartment block that would be only marginally wider and deeper. Accounting for the existing lower ground floor addition, the appellants assert that the scheme would actually reduce the footprint of built development on the site by almost 30%. In addition, the appellants argue that the volume of built development would increase by less than 10%. These figures are not disputed by the Council.
8. To my mind, the scale of the proposed apartment building shown on the submitted plans would not be substantially larger than the dwelling to be replaced. The apartment block would be read as a large building in a row of other large buildings. Whilst the indicative plans show a design that is more contemporary than the existing dwelling, which is of a more traditional design, the actual design and detailing of the proposed apartment block is reserved for future consideration.
9. Built form is not the only factor which can affect character and appearance and I am mindful of concerns about an increase in the intensity of residential use at the appeal site. Whilst the existing dwelling is large, it seems logical to me that the apartment building would be likely to accommodate more people and generate more comings and goings. Nevertheless, the appeal site enjoys a sustainable location close to local services and transport nodes and the scheme makes adequate provision for private car parking. In addition, secure cycle storage would be provided. I am also satisfied that the scheme could provide adequate amenity space for future occupiers.
10. For the above reasons, I find that subject to appropriate design detailing, a 10 unit apartment block of the size proposed could be introduced to the site without harming the character and appearance of the surrounding area. In such terms, the proposal complies with policies CP12 and CP14 of the adopted Brighton & Hove City Plan Part 1 which promote high quality design that respects its surroundings.

Living conditions

11. The car parking area would be sited at the rear of the site and at the bottom end of the rear garden of the neighbouring dwelling, No. 12 Shirley Drive.
12. A tall retaining wall defines this part of the boundary shared with No. 12 Shirley Drive. This would separate the car parking area from the rear garden of No. 12 and additional landscaping could act as a further buffer, which could be considered at the reserved matters stage. As I have explained, the apartment development would be likely to lead to increased activity and vehicle

movements. However, the level of activity would be limited and it would be screened from No. 12. Further, a Noise Assessment has been commissioned by the appellants which concludes that the predicted noise levels likely to be generated by motor vehicles accessing and egressing the car parking area would be significantly below existing day time and night time noise levels. In addition, I note the Council's Environmental Health Officer does not share concerns that vehicle movements associated with the apartment development would be unduly disruptive.

13. On this basis, I am satisfied that the proposal would not cause undue noise and disturbance for the occupiers of No. 12 Shirley Drive. In this respect, I find no conflict with policy QD27 of the adopted Brighton & Hove Local Plan which seeks to ensure that development does not result in a loss of amenity for existing residents.

Other considerations

14. In reaching my decision, I have considered the additional issues raised by third parties.
15. As the proposed building would not be materially larger, deeper or wider than the main body of the existing dwelling, I am satisfied that it would not have a significantly greater impact on the outlook from, and levels of natural light available to, the neighbouring properties. I am also satisfied that the apartment block could be designed in a manner which would ensure that any overlooking of existing properties fell within acceptable parameters for such a suburban location.
16. Concern has been raised that the development would cause undue noise and disruption during the construction phase. However, a degree of disturbance is somewhat inevitable during building works. This is a short term inconvenience which can be limited to a reasonable degree by adherence to a Construction Management Plan. It has also been suggested that occupiers of the flats would generate increased noise, but planning decisions must be based on an assumption that future residents will live in a considerate manner. Legislation is in place to deal with those who do not.
17. Questions have been raised about the capacity of existing infrastructure to accommodate the proposed development, but no technical evidence has been advanced to support such concerns. Moreover, I note these concerns are not shared by either the Council's Drainage Engineer or Highway Engineer. It has been pointed out that the scheme does not include any 'affordable housing' provision. However, the proposal was supported by a Viability Appraisal which concluded that the provision of affordable housing is not viable. This position has been accepted by the Council and I have no reason to disagree.
18. I am mindful of a suggestion that approval of the scheme would set an undesirable precedent for similar developments within the locality. However, one of the fundamental principles underpinning the planning system is that each planning application should be considered individually and on its merits, as I have done in this case. Concerns have also been raised about property values and restrictive covenants, but these are not matters for me to consider.

19. Finally, the Council has requested a contribution of £8,100 towards sustainable transport infrastructure improvements such as dropped kerbs and tactile paving on routes between the development site and local amenities and also nearby bus stop improvements on Shirley Drive. However, the Council has not explained how this request complies with the tests outlined within the Planning Practice Guidance relating to such contributions. On this basis, I cannot be satisfied that it does.

Overall Conclusions

20. I conclude that a 10 unit apartment block could be introduced to the appeal site without harming the character and appearance of the local area and without unduly compromising the living conditions of the occupiers of No. 12 Shirley Drive. As such, the proposal complies with the development plan policies outlined above.

Conditions

21. In addition to the standard conditions relating to the grant of outline planning permission, the Council has suggested a range of conditions in the event that the appeal succeeds. I agree that conditions to secure precise ground level details and details of boundary treatment are required to ensure a visually acceptable development. Details of secure cycle storage and refuse and recycling storage are necessary because such facilities are required and their details have not been provided. A scheme to protect existing trees is required for reasons that are obvious, whilst drainage details are required to ensure that the method of disposal is appropriate.
22. Details of the surfacing material of the car park are required in order to ensure that it is appropriately drained. Details of the new crossover and access and also details for the stopping up of the existing access are required in order to ensure the safety of highway users. Details of external lighting are required in the interests of visual amenity and to safeguard appropriate living conditions for neighbours. A Construction Management Plan is needed to control the impacts of the demolition and build phase, whilst details of measures to minimise CO2 emissions and water usage are required to ensure resource efficiency.
23. I am satisfied, however, that matters relating to soundproofing and access for people with disabilities are more appropriately dealt with by the Building Regulations. Meanwhile, as the elevation plans are for indicative purposes only, matters relating to balconies and roof terraces can be addressed at the 'reserved matters' stage if necessary.
24. In allowing the appeal, I will impose conditions accordingly, avoiding repetition where necessary.

David Fitzsimon

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans in so far as they relate to access, layout and scale:

2017/02/01 Rev A, 2017/02/012, 2017/02/013, 2017/02/014 Rev C, 2017/02/015 Rev C, 2017/02/016, 2017/02/017, 2017/02/18, 2017/02/19 Rev B, 2017/02/20, 2017/02/21, 2017/02/22
- 5) The development hereby permitted shall not commence until full details of existing and proposed ground levels (referenced as Ordnance Datum) within the site along with the finished floor levels of all buildings and structures, have been submitted to and approved by the Local Planning Authority. The development shall take place in accordance with the approved details.
- 6) The development hereby permitted shall not be occupied until a scheme of boundary treatment has been implemented in accordance with details first submitted to and approved in writing by the local planning authority. The approved boundary treatments shall be retained thereafter.
- 7) The development hereby permitted shall not commence until a detailed design and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local Planning Authority. The drainage system shall be implemented in accordance with the approved details before the development is first occupied.
- 8) The development hereby permitted shall not commence (including demolition and all preparatory work), until a scheme for the protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan and an arboricultural method statement has been submitted to and approved in writing by the Local Planning Authority. The development shall take place in accordance with the approved details.
- 9) The development hereby permitted shall not be occupied until secure cycle parking facilities have been provided in accordance with details first submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be retained and shall be available for use at all times thereafter.
- 10) The development hereby permitted shall not be occupied until facilities for the storage of refuse and recycling have been provided in accordance with

details first submitted to and approved in writing by the Local Planning Authority. The facilities shall be retained at shall be available for use at all times thereafter.

- 11) The development hereby permitted shall not be occupied until the car parking area has been finished in a porous material in accordance with details first submitted and approved in writing by the Local Planning Authority. The car parking area shall be retained in accordance with the approved details and shall be used only for the parking of private motor vehicles.
- 12) The development hereby permitted shall not be occupied until the new vehicular crossover and access has been constructed in accordance with details first submitted to and approved in writing by the local planning authority.
- 13) The development hereby permitted shall not be occupied until the redundant vehicle crossovers on Shirley Drive and The Drove Way have been reinstated back to a footway/ grass verge in accordance with details first submitted to and approved in writing by the local planning authority.
- 14) No external lighting shall be installed at the development hereby permitted until its details (including levels of luminance, predictions of both horizontal illuminance across the site and vertical illuminance affecting immediately adjacent receptors, hours of operation and details of maintenance) have been submitted to and approved in writing by the Local Planning Authority. The external lighting shall be installed, operated and maintained in accordance with the approved details.
- 15) The development hereby permitted shall not be occupied until each individual residential unit within the building has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline) and written confirmation has been issued by the local planning authority.
- 16) The development hereby permitted shall not be occupied until each individual residential unit has achieved, as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption and written confirmation has been issued by the local planning authority.
- 17) No development, including demolition works, shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The development, including demolition works, shall be carried out in accordance with the approved CEMP.