



Appeal Decision

Hearing held on 28 October 2009
Site visit made on 28 October 2009

by **David Morgan BA MA MRTPI IHBC**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
11 November 2009

Appeal Ref: APP/Q1445/A/09/2108358

53a New Church Road, Hove, East Sussex BN3 4BA

- 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 Philippa Stephen-Martin against the decision of Brighton & Hove City Council.
- The application Ref BH2009/00837, dated 7 April 2009, was refused by notice dated 11 June 2009.
- The development proposed is three new detached houses and ancillary landscaping works and demolition of existing dwelling.

Decision

1. I dismiss the appeal.

Procedural matters

2. A unilateral undertaking was submitted at the Hearing facilitating a financial contribution of £4,500 towards sustainable transport improvements. I have taken this unilateral undertaking into account when making my decision.
3. This appeal and the planning application have been submitted following the dismissal at appeal of a previous residential scheme on the site (Appeal ref: APP/Q1445/A/2081031). Given the similarities of both schemes and key issues involved, I consider the previous Inspector's decision to carry substantial weight as a material planning consideration in this case, and have taken it into account when making my decision.

Main issues

4. I consider these to be a) the effect of the proposed development on the character and appearance of the area, b) its effect on the living conditions of occupiers of adjacent properties by virtue of loss of privacy, loss of sun light and overbearing impact and c) their effect on the safety of highway users of the access lane to the site.

Reasons

Character and appearance

5. The appeal site comprises a backland plot set back from the New Church Road frontage and accessed off a narrow lane. The area is primarily residential in character with a diverse mix and pattern of housing of differing vintage. Being a backland site, the plot is enclosed by residential development on all sides.

6. The site is certainly in a sustainable location, being close to a major arterial public transport route into the city centre and at a distance that would encourage both walking and cycling as travel modes alternative to the car. There are also a good range of local services which provide a useful practical function and reinforce a sense of attractive local identity to the area. I, like the previous Inspector, conclude the principle of development in such a sustainable location to be in accord with the thrust of both local development plan and national housing policy.
7. The proposals seek the demolition of one of a pair of bungalows currently occupying the backland area and its replacement with three detached dwellings of contemporary design. Amenity space would also be provided, as would ancillary landscaping, which incorporates a disabled parking space and turning area for visiting vehicles and deliveries.
8. Purely in respect of character and appearance, and acknowledging that the designs of the dwellings have been modified in form and detail, I concur with the views of the previous Inspector that the proposed houses would add to the diverse mix of housing in the area, indeed broadening that pleasing diversity. In this respect I consider the proposals to be fully in accord with the requirements of policies QD1 and QD2 of the Brighton and Hove Local Plan 2005 (BHLP). I also consider it to be broadly in accord with the aims of policy QD3 of the BHLP which, consistent with the aims of Planning Policy Statement 3 *Housing* (PPS3) seeks to encourage the more efficient and effective use of previously developed land. The pursuit of these aims as set out by the BHLP policy are calibrated however against the impact of such development on 'amenities', and these matters are addressed below.

Effect on living conditions of adjacent occupiers

9. The central issue in relation to the previous appeal was its impact on the living conditions of occupiers of adjacent properties, most specifically no 53b (the bungalow opposite to the east) no 25 Richardson Road to west and nos 34 and 36 Lawrence Road to the north. To be assured that any successive application or appeal might succeed, these concerns would need to be addressed. The appeal proposals have endeavoured to achieve this aim, with a reduction in the scale of the houses, their relocation further away from the northern boundary of the site and the reconfiguration of their fenestration. Despite these amendments, and acknowledging some of the concerns have been met, I conclude the proposed development would have adverse consequences for a remaining number of these dwellings and their occupants.
10. I agree with the appellant and the Council that the amendments to the front elevational treatment of the dwellings successfully overcome the concerns relating to no 53b New Church Road. The high-level clearstorey windows, the recessed stair hall window and the angled dining room window all overcome concerns over overlooking causing loss of privacy to habitable rooms and garden associated with the previous scheme. Whilst the proposed dwellings would undoubtedly have greater visual presence than the existing bungalow, because of the distances between proposal and dwelling, this would not amount to an overbearing one, causing material harm to living conditions of occupiers.

11. With regard to no 25 Richardson Road I again acknowledge that the appellant has sought to mitigate the impact of development through the reconfiguration of the rear fenestration and a reduction in the scale of the development. However, the boundary between no 25 and the development site is defined by a reasonably low brick wall supported by relatively modest planting. The rear elevation of the three houses would be just over 5m from this boundary and though the rear lounge window would be formed by a concave angled recess, they would be raised 1.2m above ground level in each case. In my opinion these raised floor levels would afford a platform from which views into the garden of no 25 would be afforded. This harm would be compounded by the fact that the steps down from the lounge give access to the private amenity space of each of the dwellings and proposed cycle stores; both facilities that would be actively used by future occupants. In my view such a degree of overlooking would cause material harm to the living conditions of occupiers of no 25, the garden area of which already sustains a significant degree of overlooking from the adjacent flats.
12. Similarly, the appellant has sought to mitigate the impact of the development on occupiers of Lawrence Road to the north by reducing the height of the flank elevations of the dwellings and drawing the northernmost elevation just over 4m away from the boundary. However, though this has certainly reduced the impact of this part of the development, I conclude that because of its height and proximity to the boundary, the proposed development would be both unacceptably overbearing in relation to nos 34 and 36 Lawrence Road in particular. Moreover, again because of its height and aspect in relation to the boundary, the development would result in a loss of sunlight to the gardens of both houses, particularly in the winter months. Though this loss of sunlight would be less with regard to no 34, I conclude the outcome would result in material harm to the living conditions of users of both gardens.
13. I too, like the previous Inspector, have taken full account of the close juxtaposition of properties in this backland area and the visual inter-connectivity that is a concomitant of such urban living. I have also considered the measures the appellant has employed to address the challenges identified in the previous appeal decision. However, these challenges have not been satisfactorily overcome and material harm to living conditions of adjacent occupiers would result if the development were to proceed. For these reasons therefore I conclude the proposals would be contrary to policy QD27 of the BHLF.

Highway safety

14. The appellant has sought to address concerns over pedestrian and vehicular conflict along the access lane by reducing the parking for all dwellings to one disabled space and an access turning area shared by all. The absence of on-site dedicated parking is consistent with BHLF policy and the Highway Authority consider the proposals acceptable on this basis, subject to a financial contribution to sustainable transport provision, which has been provided. I also agree with the appellant that given the sustainable location of the development, it is a reasonable expectation that such development will prove attractive to people who choose not to own a car; such an expectation is again in line with the thrust of local and national policy. Notwithstanding this point, I also noted that New Church Road and surrounding roads are the subject of a
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controlled parking scheme and at the three times of day on which I visited the site (evening, morning and mid day) there was spare capacity which could accommodate future on-street parking demand. Indeed, the Highway Authority confirm there is currently no waiting list for permits in the zone area. I acknowledge that the appellant has gone some way to addressing concerns over the increased use of the lane by reducing the number and availability of dedicated parking spaces for each of the dwellings, and that this would incrementally reduce the scope for pedestrian//vehicular conflict along its length.

15. I also acknowledge that whilst there is a major concern of residents over the management or restriction of 'unauthorised' parking within the residual space on the site, this could be substantially overcome through a detailed landscaping scheme for this area that defined the disabled parking, delineated the turning area and restricted the potential use of the residual area for parking.
16. However, the lane is the only means of access to the site and is currently used by six properties along its length. Even though dedicated parking spaces are not provided this does not eliminate the primary cause for concern: the conflict between vehicles and pedestrians and cyclists along it. The reverse in fact, as the three houses would generate considerable more pedestrian/cyclist movements than at present, and they would have to compete with existing levels of vehicular movement (or a slightly reduced level is one of the two existing spaces if discounted) along the lane. Moreover, if those future occupiers chose to have a car and park on-street they would still need to use the lane to provision their homes. If they chose not to own a car there would be a likelihood that deliveries to the home would be the alternative means of supply. In either scenario greater use of the lane for vehicular access would result. This, combined with the increase in pedestrian/cyclist activity as a result of the development and the existing vehicular activity, would result in an increase in the conflict between road users, to the material detriment of their safety. This would be in direct conflict with policy TR7 of the BHLP.

Unilateral undertaking

17. A signed and dated unilateral undertaking has been submitted facilitating a financial contribution of £4,500 towards improvements to sustainable transport in the area. These relate to the BHLP policy framework in relation to transport planning obligations and are calculated on the basis of an agreed formula. I was told that such contributions would be put towards improvement to public transport infrastructure, specifically improving access at bus stops and augmenting the existing programme of real-time bus information. I am therefore satisfied such contributions accord with the requirements of Circular 05/2005 *Planning Obligations* in all respects, I therefore attach substantial weight to the obligation when making my decision.

Conclusions

18. I have found that the proposals offer positive benefits in terms of more effective and efficient use of land, make a positive aesthetic contribution to the character and appearance of the area and contribute appropriately towards improvements in sustainable transport facilities in the area. However, these benefits are outweighed by the harm that would be caused to the living

conditions of adjacent occupiers and by the increased risk to users of the access lane caused by increased vehicular/pedestrian conflict that would result. For the reasons given above therefore, I conclude that the appeal should be dismissed.

David Morgan

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Malcolm Lewis Dip Arch
(Dist)

Mrs Philippa Stephen - Martin

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Earp

INTERESTED PERSONS:

Mr Mark Bailham

Mr and Mrs Lucy Eagan

Ms Louise Winn

Ms Christine Crowley

Mr Hal Mileham

Mr S Haggard (for Mrs E
Haggard)

Mr James Marinko

DOCUMENTS SUBMITTED AT THE HEARING

1. Notification of arrangement of Hearing and list of recipients - BHCC
2. Sunlight trajectory drawing - (Mr E)
3. Photographs from appendix Mr Lewis
- 4.** signed and dated unilateral undertaking - Mr Lewis

