



Appeal Decision

Site visit made on 4 March 2010

**by Megan Thomas BA Hons in Law,
Barrister**

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

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**Decision date:
9 April 2010**

Appeal Ref: APP/Q1445/A/09/2111981 The Priory, London Road, Brighton BN1 8QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Anstone Estates Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2009/00058, is dated 9 January 2009.
- The development proposed is a roof extension to blocks C and D to provide 4 x 3 bedroom flats, each with own roof garden, and a cycle store.

Application for Costs

1. An application for costs was made by Anstone Estates Ltd against Brighton & Hove City Council. This application is the subject of a separate decision.

Decision

2. I allow the appeal, and grant planning permission for a roof extension to blocks C and D to provide 4 x 3 bedroom flats, each with own roof garden, and a cycle store at The Priory, London Road, Brighton BN1 8QS in accordance with the terms of the application, Ref BH2009/00058, dated 9 January 2009, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A1008/01B, A1008/02D, A1008/03C, A1008/05, A1008/08.
 - 3) Access to that part of the flat roof to the original building to the north-east of the roof extension marked on drawing A1008/02D shall be for maintenance purposes only and the area shall not be used a roof garden, terrace, patio or similar amenity area.
 - 4) No development shall take place until a scheme for the storage of refuse and recycling has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out in full as approved prior to first occupation of the development and the refuse and recycling storage facilities shall thereafter be retained for use at all times.
 - 5) No development shall take place until samples of the materials (including colour of render, paintwork and colourwash) to be used in the construction of the external surfaces of the development hereby

- permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) Unless otherwise agreed in writing by the local planning authority, the new dwellings hereby permitted shall be constructed to Lifetime Homes standards prior to their first occupation and shall be retained as such thereafter.
 - 7) Unless otherwise agreed in writing by the local planning authority, no residential development shall commence until:
 - (a) evidence that the development is registered with the Building Research Establishment (BRE) under Ecohomes and a Design Stage Assessment Report showing that the development will achieve an Ecohomes Refurbishment rating for all residential units have been submitted to the local planning authority; and
 - (b) a BRE issued Design Stage Certificate demonstrating that the development has achieved an Ecohomes Refurbishment rating for all residential units has been submitted to, and approved in writing by, the local planning authority.
 - 8) Unless otherwise agreed in writing by the local planning authority, none of the residential units hereby approved shall be occupied until an Ecohomes Design Stage Certificate and a Building Research Establishment issued Post Construction Review Certificate confirming that each residential unit built has achieved an Ecohomes Refurbishment rating has been submitted to, and approved in writing by, the local planning authority.
 - 9) The development hereby permitted shall not be commenced until details of secure cycle parking facilities for the occupants of, and visitors to, the development hereby approved have been submitted to and approved in writing by the local planning authority. These facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times.
 - 10) Unless otherwise agreed in writing by the local planning authority, construction work on block D shall not be carried out outside the period 1 September to 1 November in any year.
 - 11) The flight corridor of the bats into the roost located on block D and to nearby trees as shown on figure 4 of the Bat Assessment Report dated January 2009 by the Ash Partnership shall be kept clear of all obstructions, including construction equipment, from sunset to sunrise for the duration of the construction period.
 - 12) No development shall commence until details of bat boxes to be installed on the development and on trees on the site have been submitted to and approved in writing by the local planning authority. The bat boxes shall be installed prior to the first occupation of the development and shall be so retained.

Procedural issue

3. The original planning application sought permission for 6 car parking spaces (of which 2 were for use by the disabled). However, during the course of consideration of the application, some amendments were made including the deletion of the 6 car parking spaces. I have therefore amended the description of the planning application by omitting reference to the parking spaces.

Main issues

4. The main issues are the effect of the proposal on the character and appearance of the streetscene with particular regard to height and bulk, and the effect on the living conditions of occupants of Homeleigh flats and The Priory flats with regard to privacy and noise.

Reasons

Effect on character and appearance

5. The appeal site is located on the western side of London Road near its junction with the Deneway. It stands back from the road behind a very wide swathe of grass and some mature trees on the eastern site boundary. The Priory consists of four separate blocks of flats each of four storeys with flat roofs. They are of brick construction with projecting bays clad in white fascia boarding. Blocks A and B are located to the rear of the site and blocks C and D are situated at the front. There are 80 flats in total.
6. To the north of the site is Homeleigh, a four storey purpose-built block of flats. On the opposite side of London Road (a busy distributor road), is a further purpose-built block of sheltered homes known as Elwyn Jones Court. To the south of the appeal site are the rear gardens of detached two storey houses and bungalows fronting The Deneway. There is a veterinary practice in a building between the site and the elevated railway line to the west.
7. The proposal is to construct an extra storey on top of blocks C and D consisting of 4 flats with roof terraces. The materials used would include large panels of glazing and white powder-coated flat metal panels. New lift motor rooms would replace the existing ones and a new brick built cycle store would be provided near one of the existing garage blocks.
8. The additional height to blocks C and D would be about 3 metres. However, the new north-facing flank elevation would be set back by about 4m from the roof parapet and would be difficult to see when viewed from north to south along London Road above the neighbouring blocks of flats known as Homeleigh and Brangwyn Court. There would also be about a 4m set back from the south-facing roof parapet of the building which would make views of the new built development hard to see from the dwellings along The Deneway and on London Road to the south. The east-facing elevation would also be set back from the perimeter of the roof with the central section very deeply recessed. Consequently, owing to the careful design, the streetscene would be little affected by the proposal. I am not persuaded that the building would appear any taller than Elwyn Jones Court on the east side of London Road. The two developments are separated by a busy main road and tend not to be viewed together in any event. They are both stepped back from the road with either

parking and/or vegetation in front of them. Even if they were viewed together, any differences in height are likely to be perceived as small and such views are not harmful or visually adverse in any way whatsoever.

9. On the western elevation, the new built elements would, for the most part, step back from the edge of the roof, and the widespread use of glazing would give the extra storey a lightweight appearance ensuring that the mass and bulk of the new building was not overwhelming.
10. I conclude therefore that the proposal would not harm the character or appearance of the streetscene by reason of its bulk or height and would not conflict with policies QD2, QD3, QD14 or HO4 of the Brighton & Hove Local Plan 2005 'LP'.

Effect on Living Conditions

11. Although there are habitable room windows in the south-facing side elevation of Homeleigh, the built element of the development nearest to it would be set back by about 4m from the edge of the roof leaving a separation distance of over 14m between windows. Moreover, there would be no access to that 4m strip of roof other than for maintenance purposes and this can be secured by planning condition. Therefore, I consider there would be no unacceptable loss of privacy for the occupants of any Homeleigh flats or any undue disturbance from noise emanating from the new development.
12. Turning to the occupants in blocks A and B of the Priory, the western elevation of the proposal is made up of bedroom windows and stairway/lift windows but occupants of the new flats would have access outside to terraces. However, given that there would be a separation distance of about between 22m to 25m between block B and the roof terraces, and a separation distance of about 21m between block A and the usable roof terraces, I am not persuaded that any loss of privacy through overlooking would be other than negligible. In coming to that view I have borne in mind the difference in site levels of the blocks of flats. Similarly, with those separation distances, I am not persuaded that the occupants of blocks A and B would be unduly disturbed by noise emanating from the occupants of the new flats whether inside or using the roof terraces.
13. The proposed 4 new kitchens would not be directly over bedrooms in the flats situated on the floor below. The kitchen in proposed Flat D2 at the north eastern corner of the site would have a small overlap with a bedroom below. There would be some lounges of the new flats over bedrooms in the floor below. However, I do not consider these proposed vertical arrangements to be unusual, or likely to cause any unacceptable noise or disturbance given that building regulations impose requirements in relation to sound insulation between floors.
14. Turning to use of the roof terraces, there is always potential for noise disturbance in blocks of flats with private outdoor space. Balconies and roof terraces are a common way of providing such space in flat development. I am not convinced in this case that the potential for such disturbance should be a reason for refusing this appeal.
15. Accordingly, I conclude that the proposal would not result in undue harm to the living conditions of the occupants of Homeleigh or The Priory with regard to

noise or loss of privacy. There would be no conflict with policies QD14 or QD27 of the LP.

Other matters

16. The separation distances between Homeleigh and the proposed roof extension and blocks A and B and the proposed roof extension are more than sufficient to prevent any loss of light to those surrounding flats or any other dwellings in the area.
17. I am satisfied that any new traffic generated by the development could be accommodated safely on the estate roads and would not present a hazard to pedestrians, and that the access into the site would be able to accommodate any additional traffic movements. I note that the Highway Authority have not objected to the proposal on highway safety grounds.
18. The appeal site is in a very sustainable location in relation to public transport. London Road is part of a city centre bus route and there are stops very close to the site. There is a rail service from Preston Park into the city. Moreover, a cycle store would be provided as part of the scheme. The number of delineated parking spaces including garages would be about 74 for the 84 flats. There is also some parking available on The Deneway and a pedestrian route through to the site from there. Given all these factors, I am not persuaded that the lack of provision for the parking of any additional cars associated with the development is a reason for refusing planning permission.
19. Whilst the appellants have volunteered a financial contribution of £6000 towards sustainable transport improvements there is no planning obligation pursuant to s.106 of the Town and Country Planning Act 1990 before me. The Committee Report dated 14 October 2009 indicates that "transport generation will be off-set by a financial contribution" but the lack of a s.106 obligation was not a deemed reason for refusal of the planning permission. There is no indication from the Council as how or why a sum of £6000 might fairly and reasonably relate in scale and kind to the proposed development. The Secretary of State's policy requires that planning obligations are only sought when they meet that test, which is one of four other tests found in Circular 5/05 *Planning Obligations*. Accordingly, the absence of a s.106 obligation securing £6000 for sustainable transport improvements is not a factor which, in my view, weighs against the grant of planning permission in this case.
20. It appears that Pipistrelle Bats are roosting and possibly hibernating behind the shiplap timber boarding to block D. English Nature have no objection to the proposal subject to the imposition of appropriate conditions. They are content that the mitigation measures proposed would mean that there would be no detriment to the maintenance of the population of the species concerned. I too am satisfied that, with the imposition of suitable conditions, the bat population associated with the site would not be unduly harmed. I have addressed these matters below in the conditions section.
21. Reference is made to land ownership issues but these are outside the scope of factors I can generally take into account in my decision-making process.

Conditions

22. I have considered the imposition of conditions in the light of Circular 11/95 *The Use of Conditions in Planning Permissions*. Bats are a protected species and in order to safeguard their habitat, I have attached three conditions; one limits the period of construction work on block D to only two specified months in any year because, subject to further survey results, it appears that bats may be using part of block D as a winter hibernation location as well as a roost. The option is given in the condition for the Council to revise the condition because further survey results are awaited. I appreciate that the restriction allows only a very short time for construction on block D but the appellants, having seen the condition and had the opportunity to comment on it, have not objected to it. The second bat-related condition protects their flight corridor and the third secures the provision of bat boxes.
23. In the interests of the proper planning of the area and for the avoidance of doubt, I have attached a condition which ensures that the development is implemented in accordance with the specified plans. In order to protect privacy and tranquillity, part of the original roof is prohibited from being used as a roof terrace.
24. To ensure satisfactory provision of homes for people with disabilities and to meet the changing needs of households, I have imposed a condition ensuring that Lifetime Homes Standards are met. Compliance with Lifetime Homes Standards, which exceed current building regulation requirements, is voluntary. However, the application design and access statement indicates that the dwellings would be built to those Standards and the appellant has made no objection to the Council's suggested relevant conditions referred to in the report to Committee. To ensure that the development is sustainable and makes efficient use of energy, water and materials, I have imposed conditions seeking to achieve ecohomes ratings at design stage and post construction.
25. To secure and encourage the use of transport other than the car, I have required details of the cycle facilities to be approved prior to the start of development, and to protect amenity, details of refuse and recycling storage are required to be submitted and approved prior to commencement of development, as are details of external materials to be used in construction.

Conclusions

26. Whilst there would undoubtedly be disruption to surrounding residents during construction of the scheme through the potential for additional noise, dust and parking congestion and the lifts being out of use for a period of time, there are substantial benefits to balance against that which flow from the addition of four units to the housing stock which make full and effective use of previously-developed land in a sustainable location. In addition to that I find that there would be no unacceptable harm to the character or appearance of the area or to the living conditions of surrounding residents. Accordingly, having taken into account all representations made, I allow the appeal.

Megan Thomas

INSPECTOR