



Appeal Decisions

Site visit made on 4 August 2008

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Decision date:
5 September 2008

Appeal A: APP/Q1445/E/08/2072967

Car Park Site, Clifton Hill, Brighton

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
- The appeal is made by 3rd Avenue Developments Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH/2007/03019, dated 3 August 2007, was refused by notice dated 2 April 2008.
- The demolition proposed is of boundary wall fronting Powis Grove, Brighton.

Appeal B: APP/Q1445/A/08/2072966

Car Park Site, Clifton Hill, Brighton

- 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 3rd Avenue Developments Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2007/03022, dated 3 August 2007, was refused by notice dated 2 April 2008.
- The development proposed is construction of 5No new dwellings including below ground car parking.

Decisions

1. I allow Appeal A, and grant conservation area consent for demolition of boundary wall fronting Powis Grove, Brighton in accordance with the terms of the application Ref BH/2007/03019, dated 3 August 2007 and the plans submitted subject to Conditions numbered 1) to 5) set out in the attached Annex 1.
2. I allow Appeal B, and grant planning permission for construction of 5No new dwellings including below ground car parking at Car Park Site, Clifton Hill, Brighton in accordance with the terms of the application, Ref BH2007/03022, dated 3 August 2007, and the plans submitted with it, subject to Conditions numbered 1) to 26) set out in the attached Annex 2.

Main Issues

3. I consider the main issue in Appeal A to be;
 - The effect of the demolition on the character and appearance of the Montpelier and Clifton Hill Conservation Area.

and in Appeal B;

- The effect of the development on the character and appearance of the Montpelier and Clifton Hill Conservation Area and the setting of listed buildings and including the effect on trees.
- The effect of the development on the living conditions of neighbouring residential occupiers with particular regard to daylight, outlook, noise and disturbance.

Reasons

4. I have received representation, and have read of previous comments to the Council, on the history of the site. It appears that a windmill stood here or close-by when much of the surrounding land was open, and this was removed when the area was developed. The site itself then remained open land as either the garden to an adjoining villa or more recently as a car park for the hospital. I acknowledge therefore that the land has stood open for a significant time. I shall consider the contribution that this open land and trees make to the character and appearance of the area and the merits or otherwise of redevelopment in later sections, but state now that in principle I consider the site well located within the urban area for new housing, within walking distance of transport, shops and employment, in line with policies at national, regional and local levels. In addition I acknowledge the likelihood of re-development of the hospital but the lack of permitted proposals at present.

Demolition

5. The boundary wall fronting Powis Grove is a pebble-dashed retaining wall supporting the higher level of the car park and its appearance contrasts poorly with the quality of walls to each side. Whilst not contributing to the character and appearance of the conservation area in itself, it does however provide the base for two trees which would be lost as part of the removal and subsequent redevelopment. One tree, sycamore T2, is protected by TPO whilst both are within the conservation area. I have studied the appellant's Arboricultural Implications Assessment and the Council arboriculturist's advice on the condition of the protected tree in particular as well as the views expressed on the merit of replacement with nursery stock trees, an aim that accords with Local Plan Policy QD16 on trees and hedgerows.
6. There is clear evidence that tree T2 is causing harm to the wall that could lead to collapse. There is contrary evidence from a consultant instructed by the Montpelier and Clifton Hill Association over the future of this tree and reference to the holm oak which is not covered by the TPO but is a tree in the conservation area. There are benefits resulting from the removal of the wall in my view, but also disbenefits in the loss of trees. I consider this a less clear cut case as referred to in paragraph 4.27 of Planning Policy Guidance Note 15 "*Planning and the Historic Environment*" and I shall now consider whether there are acceptable plans for redevelopment of the site, including the Powis Grove frontage.
7. I have read of concern over impact damage to historic structures off-site through demolition, as well as through the redevelopment. The Party Wall etc

Act 1996 provides, separate from the Planning system, for a proper process to protect adjoining property, whether of historic interest or not.

Character and Appearance of the Development Proposals

8. As stated, the site is open and has been so for a long time. However, I do not consider this openness as presently utilised as a car park to contribute to the character and appearance of the conservation area. It is poorly surfaced and unattractive, and not well-related to either road or the adjoining listed buildings and detracts to a considerable extent from the street scene. Whilst the trees provide vegetation and form to the space, I find the presence of the car parking and the poorly defined and enclosed space to detract from the urban grain of the area, not comparable with the attractive enclosed spaces of churchyards to the south. The open space does not, in my view, perform any vital role in the townscape, unlike more formal open areas in front of terraces and the like, and gives the impression of a forgotten space left over from a previous use.
9. I acknowledge statements about the trees and wildlife and that development of the site would occasion change, but in the terms of the character and appearance of the conservation area I find the presentation of the open site of limited value. Similarly I do not consider the site to be a part of the curtilage or even a significant part of the setting of listed buildings, those on Powis Villas relate more to that road, and the Coach House has its attractive gable facing the site but separated from it by land that is off the site and would, it appears, remain open. I do not consider this proposal to be one for infill between the Coach House and the original main house, due to intervening uses. The historical use as a site for a mill is long gone, and the possibility of interest below ground can be addressed through a robust archaeological condition.
10. Dealing first with the loss of trees, I have referred to the sycamore, T2, but there is also an elm, T1, that the Council arboriculturist considers should be kept, and would be, and elms T3 and T4 that have defects that demand work that the officer considers would remove their amenity value. The report commissioned by the amenity association queries the species of three trees and differs over the condition attributed to the trees and the measures proposed for retention during works. I consider that there are uncertainties over the precise amount of root spread and that the presence of the appellant's consultant at particular previously agreed times would provide ready access to advice. A landscaping scheme has been submitted and I concur with the views of the officer that this and the proposed trees off site represent a valid compensation in line with Policy QD16. In coming to this view I have assumed that the off-site trees would be in the conservation area and hence would contribute to its character and appearance.
11. Looking at the boundaries of the site, the flint wall to the Clifton Hill frontage would be stabilised and its missing end reinstated, and the undefined boundary to the rear of listed properties on Powis Grove would be contained by new planting, the side of the Clifton Hill block and the walls attached to the car park ventilation slot, to the benefit of their setting. As stated, the wall to Powis Grove would be removed, but the replacement with steps, echoing those opposite, and a new brick and flint wall to match those neighbouring the site would be an enhancement. There would be the opening to access the

underground parking, but gates are shown and these would, in my judgement add interest and containment to the foot of the ramp. That ramp would result in a limited difference in level due to the building-up of the entrance floor and existing rise in level at this boundary. Lastly, the wall to number 5 Powis Grove would be retained and strengthened, and the open space at the Clifton Road end, where there is a right of way, would remain, as a setting for the Coach House. Overall I find the four boundaries to be maintained in one case and enhanced in three cases, to the benefit of the setting of listed buildings and the character and appearance of the conservation area.

12. Turning to consider the built form, in themselves I find the buildings attractive, well-detailed and well-proportioned. They are contemporary in style and their height is visually constrained by the use of semi-basements, flat roofs and the setting back of the top floor. Most importantly, I consider their response to the context wholly appropriate; the use of the accommodation below entrance level, steps to the front of the pair on Powis Grove, their siting relative to views of the listed buildings, the window arrangements in predominantly vertical format within rendered panels and the definite termination as a cornice at the top of the wall all hark back to features of buildings in the area without mimicking them which would erode their special interest and confuse the streetscene. Building heights are appropriate in my opinion and whilst the two nearest existing buildings have pitched roofs, the use of the flat roof and set-back serves to differentiate the new work whilst remaining within the same overall scale.
13. I am of the view that the proposals as a whole, including landscaping, boundary treatment and built form would enhance the character and appearance of the conservation area and the settings of listed buildings, in line with advice on gap sites in PPG15 at paragraph 4.17. That statement makes clear the possibility of imaginative, high quality design which need not imitate earlier styles but should be designed with respect for their context. I consider this proposal to follow that guidance and to accord with Local Plan policies on the quality of design at QD1, QD3 and QD4, housing policies HO3 and HO4, and of particular relevance to this site, the heritage policies at HE3 and HE6 on the settings of listed buildings and on conservation areas.

Living Conditions

14. I have acknowledged that development of the presently open site would occasion change and that change would be experienced by those living close to the site. However, I consider the layout, siting of buildings, their profile with the set back upper floor and the preservation of the eastern boundary wall to limit the degree to which the change would affect neighbours. I attach significant weight to the 'right to light' study carried out by the appellants at application stage and consider that the siting, orientation and finish of the blocks would not unduly affect daylight or the outlook from existing windows. There would be vehicle access at the south-east corner from Powis Grove, but there is a high wall here and the access would serve only five parking spaces, substantially less than the number of cars that could park on the site at present. In addition, much of the manoeuvring and starting would be contained within the underground garage, further reducing the possibility of harm through noise and disturbance. The highway authority have not objected

to the location or type of access and air quality would be improved through the reduction in car numbers.

15. There would be activity and people living in an area that is at present car park, but within this urban area I do not consider this likely to affect the living conditions of neighbours unacceptably in planning terms. The car park would have caused noise through comings and goings. I conclude that the proposals have been designed so as to accord with the aims of Local Plan Policy QD27 and hence would not cause material nuisance and loss of amenity to the proposed, existing or adjacent users, residents, or occupiers and would not be liable to be detrimental to human health.

Conditions and Undertaking

16. The demolition of the wall should only proceed provided the replacement development and landscaping is assured. A condition linking demolition to the signing of contracts for the redevelopment work is therefore essential. As this demolition is likely to occur first, I consider that archaeological conditions should be attached to the consent as well as the planning permission. I note the root protection area for T1 shown on the Arboricultural Implications Assessment but having mind to the fall in the land at the boundary and the possible need for battered slopes after demolition, I consider that a condition to protect this tree at this stage would be reasonable.
17. Turning to the planning application for the redevelopment, it is essential to ensure that the landscaping that I have relied on in my reasoning, together with the new trees secured off-site by Section 106 undertaking, are provided. I attach significant weight therefore to the undertaking. Further conditions controlling the visual quality of the development, materials, details, cables and pipes, traffic management, parking and cycle storage, and floor levels would be required also. I have read of the possibility of contamination from fuels through the long-term use as car parking and consider a phased approach to this through a condition is necessary. Whilst the location and details of the former windmill are sketchy, I consider that an archaeological condition would be prudent to ensure that anything of interest is recorded. In this instance, and having regard to the proximity of dwellings and listed buildings I find there is justification for removing permitted development rights for enlargement and windows, and control of access to flat roofs, obscure glazing in particular areas and screens would be required.
18. I am not however persuaded of the need for the demolition condition put forward in the Council's suggested list (their number 25) with regard to the planning application. It appears to me that there is little other than the Powis Grove boundary wall to be demolished, and that would be covered by the conservation area consent conditions. Reference in that draft planning condition to the need for a planning permission would be superfluous in any event.
19. Finally I address a series of conditions on Lifetime Homes, waste, solar panels, grey water and energy. There are alternative floor plans submitted for Lifetime Homes and this needs to be agreed by condition and scheme. On the matter of waste arising from the works, the minimisation statement accompanying the application makes promises, but I consider it reasonable to require further

detail as to how these measures will be effectively implemented. Solar panels are shown on drawing P28a in plan but not on the section or elevation drawings and details would be required of the panels and any supporting structure, pipework and like. Grey water recycling is offered and again I consider it reasonable to require further detail as to how this will be incorporated. A requirement for Level 3 or higher in the Code for Sustainable Homes is reasonable and there is now no need to refer to EcoHomes in addition.

Conclusions

20. Development would provide housing in a sustainable location close to transport, jobs and services. Demolition and other works to the boundaries would provide benefits and the removal of open car parking would also be an improvement. The redevelopment would not copy existing styles but would be appropriate modern insertions to the historic fabric of the area and with conditions, the interests of neighbouring and prospective occupiers would be safeguarded. The disbenefits of the scheme, in the loss of trees, would be more than compensated for by the on-site and off-site planting and the improvements to the environment generally. I conclude that the proposals preserve the character and appearance of the Montpelier and Clifton Hill Conservation Area, and enhance with regard to the removal of the unattractive car park and the new wall to the Powis Grove frontage, in line with Development Plan policies and the test in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as well as protecting the setting of listed buildings in accordance with Section 66(1) of the same Act. In view of there being an acceptable scheme for the redevelopment of the site, I conclude that conservation area consent should be given. For the reasons given above I conclude that both appeals should be allowed.

S J Papworth

INSPECTOR

ANNEX 1

CONDITIONS APPEAL A Ref; APP/Q1445/E/08/2072967

Conditions attached to conservation area consent for demolition of boundary wall fronting Powis Grove, Brighton;

- 1) The works of demolition hereby permitted shall begin not later than three years from the date of this decision.
- 2) The works of demolition hereby permitted shall not be begun until documentary evidence is produced to the Local Planning Authority to show that contracts have been entered into by the developer to ensure that building work is commenced in accordance with a scheme for which Planning Permission has been granted within a period of 6 months following commencement of demolition.
- 3) The works of demolition hereby permitted shall not be begun until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority.
- 4) The works of demolition hereby permitted shall not be begun until the applicant has secured the maintenance of an on-site watching brief by a suitably qualified and experienced archaeologist during demolition work in accordance with written details which have been submitted to and approved in writing by the Local Planning Authority. In the event of important archaeological features or remains being discovered which are beyond the scope of the watching brief to excavate and record and which require a fuller rescue excavation, then demolition work shall cease until the applicant has secured the implementation of a further programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.
- 5) The demolition hereby permitted shall be carried out in accordance with the Arboricultural Implications Assessment (AIA) prepared for the site, and shall include the on-site involvement of the consultant as set out on Page 20 'Monitoring' of the AIA in accordance with a regime of attendance that shall be submitted to and approved by the Local Planning Authority prior to work commencing.

ANNEX 2

CONDITIONS APPEAL B Ref; APP/Q1445/A/08/2072966

Conditions attached to planning permission for construction of 5No new dwellings including below ground car parking at Car Park Site, Clifton Hill, Brighton;

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification), no extension, enlargement or other alteration of the buildings shall be carried out without Planning Permission obtained from the Local Planning Authority.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification), no window, dormer window or rooflight other than those expressly authorised by this permission shall be constructed without Planning Permission obtained from the Local Planning Authority.
- 4) All windows on the side elevations shall not be glazed otherwise than with obscured glass and thereafter permanently retained as such.
- 5) No cables, wires, aerials, pipework (except rainwater downpipes as shown on approved plans), meter boxes or flues shall be fixed to any elevation facing a highway.
- 6) The development hereby approved shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.
- 7) Prior to commencement of development full details of land levels of the proposed development relative to surrounding properties shall be submitted to and agreed in writing by the Local Planning Authority. The details shall also include finished floor and roof levels and the development shall be constructed in accordance with the agreed details.
- 8) Access to the flat roof to the sides and rear at second floor level hereby approved shall be for maintenance or emergency purposes only and the flat roof shall not be used as a roof garden, terrace, patio or similar amenity area.
- 9) No development shall take place until details of the window louvres shown on the approved plan 0661_P07b and/or _P11b have been submitted to and approved in writing by the Local Planning Authority. The screens shall be implemented fully in accordance with the agreed details prior to occupation of the units and thereafter retained.
- 10) Notwithstanding the approved floor plans, no development shall take place until alternative floor plans which demonstrate how the proposal complies with Lifetime Home standards have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be

- implemented fully in accordance with the agreed details and thereafter retained.
- 11) No development shall commence until a scheme has been submitted to and approved in writing by the Local Planning Authority which details measures to ensure that the development hereby approved will achieve the Code for Sustainable Homes rating of "Level 3" or higher or an equivalent level of performance if an alternative independently assessed means of sustainability assessment is used. The agreed scheme shall be implemented in strict accordance with the approved details prior to the occupation of the development.
 - 12) Notwithstanding the submitted Waste Minimisation Statement, no development shall take place until a written statement, consisting of an updated Waste Minimisation Statement, confirming how demolition and construction waste will be recovered and reused on site or at other sites, has been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in strict accordance with the approved details.
 - 13) No development shall take place until a scheme demonstrating how the solar panels will be incorporated into the scheme has been submitted to and approved in writing by the Local Planning Authority. The information will include technical details and profiles of the panels on the roof. The approved scheme shall be implemented prior to occupation of the dwellings and shall be retained as such thereafter.
 - 14) No development shall take place until a scheme demonstrating how grey water recycling facilities will be incorporated into the scheme has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to occupation of the dwellings and shall be retained for use as such thereafter.
 - 15) The development hereby permitted shall not be occupied until the cycle parking facilities shown on the approved plans have been fully implemented and made available for use. The cycle parking facilities shall thereafter be retained for use at all times.
 - 16) No development shall take place until full details of the parking arrangements, including the traffic light system has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented fully in accordance with the agreed details and retained thereafter.
 - 17) No works pursuant to this permission shall commence, unless otherwise agreed in writing by the Local Planning Authority, until there have been submitted to and approved in writing by the Local Planning Authority:
 - (a) A desk top study documenting all the previous and existing land uses of the site and adjacent land;
 - (b) A site investigation report assessing the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study; and
 - (c) A detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the

site is developed and proposals for future maintenance and monitoring. Such scheme shall include nomination of a competent person to oversee the implementation of the works.

- 18) The development hereby permitted shall not be occupied or brought into use until verification has been submitted to the Local Planning Authority by the agreed competent person that any remediation scheme has been implemented fully in accordance with the approved details (unless varied with the written agreement of the Local Planning Authority). Unless otherwise agreed in writing by the Local Planning Authority such verification shall comprise:
- (a) As built drawings of the implemented scheme;
 - (b) Photographs of the remediation works in progress; and
 - (c) Certificates demonstrating that imported and/or material left in situ is free from contamination.

Thereafter the scheme shall be monitored and maintained in accordance with the approved remediation scheme.

- 19) No development shall take place until samples of the materials (including colour of render, paintwork or 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.
- 20) No development shall take place until 1:20 sections and profiles and samples have been submitted to and agreed in writing by the Local Planning Authority in respect of windows, doors, balconies, canopies, parapets, eaves, gates, boundary walls, steps and railings. The scheme shall be implemented fully in accordance with the agreed details and retained thereafter.
- 21) No development shall take place until full details of the proposed boundary wall to the Powis Grove frontage have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be implemented fully in accordance with the agreed details and retained thereafter.
- 22) No development shall take place until full details of the proposed extension to the Clifton Hill flint wall as shown on approved plan O661_P14b and stabilisation work as shown on QED Structures Drawing 100/P1 have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be implemented fully in accordance with the agreed details and retained thereafter.
- 23) No development shall take place within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority.
- 24) No development shall take place within the application site until the applicant has secured the maintenance of an on-site watching brief by a

suitably qualified and experienced archaeologist during construction work in accordance with written details which have been submitted to and approved in writing by the Local Planning Authority. In the event of important archaeological features or remains being discovered which are beyond the scope of the watching brief to excavate and record and which require a fuller rescue excavation, then construction work shall cease until the applicant has secured the implementation of a further programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

- 25) The development shall be carried out in accordance with the Arboricultural Implications Assessment (AIA) and the Tree Planting Method Statement accompanying the application, and shall include the on-site involvement of the consultant as set out on Page 20 'Monitoring' of the AIA in accordance with a regime of attendance that shall be submitted to and approved by the Local Planning Authority prior to work commencing.
- 26) No development shall commence until full details of a landscaping scheme, which includes hard surfacing, means of enclosure, landscaping and planting and three heavy nursery stock trees, have been submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. All hard landscaping and means of enclosure shall be completed before the development is occupied.