



# Appeal Decision

Site visit made on 29 September 2008

by **Roger Mather MA Dip Arch RIBA FRTPI**

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

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**Decision date:**  
**21 October 2008**

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## Appeal Ref: APP/Q1445/A/08/2073223

### Land behind No's 67-81 Princes Road, Brighton BN2 3RH

- 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 brought by Carelet Ltd against Brighton & Hove City Council.
- The application (Ref: BH2007/04444) is dated 30 November 2007.
- The development proposed is 8 houses (two & three-storey) with private & communal gardens, a street level lift 'Gate House' and a new access off Prince's Road.

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### Decision

1. I dismiss the appeal and refuse to grant planning permission for 8 houses (two & three-storey) with private & communal gardens, a street level lift 'Gate House' and a new access off Princes Road, Brighton.

### Main Issues

2. The appeal site is a rectangular parcel of land behind a row of terraced houses that step down the slope from west to east and is at a significantly lower level. It is located in the Round Hill Conservation Area, characterised by Victorian and Edwardian terraced houses and villas, in a variety of architectural styles. The Brighton to Lewes railway line and the Centenary Industrial Estate mark the boundary of the Conservation Area as well as the northern and eastern site boundaries. There is a Tree Preservation Order on a Horse Chestnut tree on the Prince's Road frontage. The appellant company would build a terrace of two and three-storey houses parallel to houses on Princes Road, a 'gatehouse' attached to 81 Princes Road and an off-road parking space for a Car Club.
3. The Council has indicated that had it reached a decision on the proposed development, within the statutory time period, its main objections would have been over development of the site, resulting in overlooking and cramped living conditions for future occupants; poor appearance, harmful to the character and appearance of the Conservation Area; the detrimental effect of an off-road parking space and crossover on the Conservation Area; on-street parking stress; overlooking and loss of outlook for existing households; the loss of a Greenfield site of significant ecological interest; insufficient information to assess the scheme against policies for renewable energy and energy efficiency; and, the effect on the protected Horse Chestnut tree.
4. From this, the written representations and my inspection of the site and surrounding area, the appeal raises seven main issues. The first is whether in principle the loss of a Greenfield site of significant ecological interest is acceptable. The second is the effect of the proposed development on the

character and appearance of the Round Hill Conservation Area. The third is the effect on on-street parking. The fourth is whether the scheme would provide acceptable living conditions for future occupants, particularly in relation to overlooking and loss of privacy. The fifth is the effect on the living conditions of existing households, particularly in relation to outlook, overlooking and loss of privacy. The sixth is whether prevailing policies for renewable energy and energy efficiency would be compromised. The seventh is the effect on the protected Horse Chestnut tree on the Princes Road frontage.

### **Reasons for Decision**

5. National housing policies encourage local planning authorities to make the most efficient use of land, including building at higher residential densities, particularly on previously developed land in sustainable locations. Moreover, the principle of residential use has been accepted previously through consideration of earlier applications (Refs: BH2004/03605/FP; BH2005/02279; and BH2006/03214) and an appeal decision (Ref: APP/Q1445/A/05/1178381). The Council no longer view the land as previously developed and include it within an open space, sport and recreation study, currently being prepared to inform the Local Development Framework. However, until the findings of the Study are complete, little weight can be given to it.
6. The site has been cleared of significant vegetation and now provides little or no natural habitat. In these circumstances, I am inclined to agree with the Council's ecologist that a completely cleared site is unlikely to support anything other than a relict population of slow-worm. Having regard to nature conservation features that were lost, the ecologist has proposed three achievable nature conservation enhancement measures that could be required as a condition of permission. That would satisfy Policy QD17 of the Local Plan.
7. In these circumstances, there is no material change in circumstances sufficient to compel me to conclude on the first issue that the development of the site for housing is no longer acceptable in principle.
8. The Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. Planning Policy Guidance Note 15: Planning and the Historic Environment (PPG15) represents well-established Government policy on the historic environment. Moreover, good design is clearly an integral and important element of local development plan policies and an important element of Planning Policy Statement 1: Delivering Sustainable Development (PPS1), and thus an important element of planning policy generally. PPS1 introduces two separate tests: design, which is inappropriate in its context, should not be accepted; and, design that fails to take opportunities available for improving the character and quality of an area should not be accepted. PPS1 is thus consistent with the statutory duty.
9. This somewhat unsightly parcel of land lies on the very edge of the Conservation Area, not easily visible from Princes Road but seen clearly in views from outside the Conservation Area to the north and east. Nevertheless, its location within the Conservation Area coupled with its prominence in the wider area demands that new development would fit entirely naturally into the

scene. A design that is appropriate will most likely sit comfortably and harmoniously alongside its neighbours. In this case, I fully understand that the topography and shape of the site has influenced the layout in terms of height and bulk but there would be two significant consequences.

10. The first is that squeezing eight houses into the site and the consequent lack of space for significant planting would harm visual amenity in relation to the green spaces characteristics of the Conservation Area as well as views into the Conservation Area from the north. Secondly, while I share the view of the previous Inspector that a building of contrasting contemporary design would not necessarily harm the character and appearance of the Conservation Area, the stepping up and down, with two-storey houses in the middle and at one end, would contrast sharply with existing houses on Princes Road, which step down with the natural gradient of the land. Consequently, the design in terms of bulk and form of development falls short of that necessary to preserve the prevailing character of the Conservation Area. It would create entirely the wrong effect by emphasising an inappropriate form that would be a clear breach of the distinctive character of the existing terraces as well as being disruptive in its setting, seen from the north. Consequently, it would fail to match the form of development to the quality of the historic setting.
11. The design of the gatehouse on the Princes Road frontage would read as an extension to 81 Princes Road, which would neither interfere with nor breach any clearly identifiable pattern, such as to harm the character and appearance of the Conservation Area. However, the car space in front of the gatehouse would introduce an open-fronted feature into a street characterised by boundary walls and front gardens. It would thereby erode the character of the street and by doing so change the important relationship of front garden space to building at 67-81 Princes Road. That would harm the street scene. This matter could, however, be addressed by a Grampian style condition to bring forward proposals to secure a Car Club space on the highway.
12. I conclude on the second issue that the proposed development would neither preserve nor enhance the character or the appearance of the Round Hill Conservation Area. To permit the development in these circumstances would be to disregard the historic context that led to the designation of the Conservation Area as well as the duties imposed by the Act, national guidance in PPG15, paragraph 34 of PPS1 and saved Policies QD1, QD2, QD4 (e) and HE6 contained in the Brighton & Hove Local Plan that was adopted in 2005.
13. Earlier applications were not refused on their traffic impacts but the previous Inspector, when dismissing an appeal against a refusal to grant planning permission for 30 flats, considered that the lack of a guaranteed traffic-free scheme reinforced his view that the proposed development was unacceptable. The appellant company contends that its vehicle parking beat survey identified sufficient on-street parking for occupants of the houses, within easy walking distance, that would not give rise to any material harm or inconvenience to existing residents. However, observations during the visit lead me to believe that there is merit in the argument that inadequate on-site parking would lead to further on-street parking, in an area suffering a degree of parking stress.

14. It does seem to me that it is stretching credibility to suggest that there is sufficient on-street space to provide for travel demand from eight family houses, estimated at seven cars, based on one beat survey undertaken during the early hours, on one weekday in August. Moreover, the Survey showed only 8 spaces available within 100m of the site. A further 16 were available within a 400m walk of the site. I think that would be woefully inadequate to mitigate the harm at other times, outside the holiday season, when demand would be expected to increase. It flows from this that in the absence of controls to ensure a genuinely car free scheme, one Car Club space would be inadequate.
  15. I conclude on the third issue that without a guarantee that the development would be genuinely car free, it would be likely to exacerbate parking stress in the area, sufficient to warrant withholding planning permission. The requirements of Local Plan Policies TR19 and HO7 (b) would not be satisfied.
  16. The layout of new houses is designed to adhere to a back-to-back distance of 20m separations but overlooking is a concern, particularly at the western end of the site. Occupants of houses on Princes Road would have a clear view into first and second floor terraces/balconies below, immediately outside main living areas, where future occupants would most value privacy and seclusion. Two small communal areas would be overlooked too. The loss of privacy would not be overcome by screen planting, sufficient to mitigate the harm, due to the height of the neighbouring houses and the topography. On the northern side, a consequence of over development is that there is insufficient space to mitigate the poor outlook towards the recently completed waste transfer station, but on its own, this would not warrant withholding permission.
  17. Consequently, I conclude on the fourth issue that the proposed development would not achieve acceptable living conditions for future occupants only in relation to overlooking and loss of privacy. That would conflict with saved Policy QD27 of the Local Plan.
  18. I am mindful of the last appeal decision in which the Inspector concluded that a development of five and six storeys in height would be significantly overbearing on the outlook of existing households and overlook their gardens. Residents are equally concerned about the effect of the current proposal but the significant reduction in height, coupled with terrace planting and privacy screening, would reduce the perceived impact sufficiently to minimise any overlooking or perception of overlooking from below. The reduced height of the proposed development would also ensure no material impact on outlook. Consequently, I conclude on the fifth issue that the impact on existing households, in terms of living conditions, would be acceptable. The requirements of saved Local Plan Policy QD27 would be satisfied.
  19. Council policies require new development to demonstrate a high level of efficiency in the use of water, energy and materials and minimise construction waste and re-using it. The appellant company's comprehensive technical report shows that the scheme would comfortably achieve a satisfactory rating. That would satisfy Policies SU2 and SU13 of the Local Plan.
  20. The Horse Chestnut tree at the site entrance makes a significant contribution to the street scene and is protected by a Tree Preservation Order. Despite the
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comprehensive tree report submitted by the appellant company, the Council's arboriculture officer remains concerned that its survival is not guaranteed. However, the concern that it might suffer long-term effects that would shorten its useful lifespan, thereby harming its amenity value, would justify a 'hand-dig' construction method specification to minimize potential damage within the root protection area, rather than conventional construction methods, for access and underground services. That could be a requirement of a planning condition, which together with other appropriate protection measures, would safeguard the tree during construction. I therefore conclude on the seventh issue that the implications for the retention and health of the Horse Chestnut tree would be acceptable. Policy QD16 of the Local Plan would be satisfied.

21. Overall, while there are some factors in favour of the proposed development, I find that the scheme would seriously compromise the character and appearance of the Round Hill Conservation Area, giving rise also to increased parking stress, as well as impairing the living conditions of future occupants. These considerations are of overriding importance and outweigh all others. Consequently, I further conclude that the appeal should not succeed.
22. I have considered all of the other matters raised, including the various examples of developments in the wider area that have been drawn to my attention. There are significant differences between the settings of those developments and that of the appeal site and each case has to be considered on its individual merits in relation to the development plan and all other material considerations. Whether or not it demonstrates inconsistency, the existence of development elsewhere does not provide justification for a harmful form of development at the appeal site. Consequently, neither this nor any of the other matters raised is of such significance as to outweigh the considerations that led to my overall conclusions on the main issue.

*Roger Mather*  
INSPECTOR

