
Appeal Decision

Site visit made on 10 August 2016

by **R M Pritchard MA PhD MRTPI**

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

Decision date: 23rd August 2016

Appeal Ref: APP/Q1445/W/16/3147925

Windsor Court Car Park, Windsor Street, Brighton, BN1 1RS

- 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 Ms Nazila Blencowe (Baron Homes) against the decision of Brighton & Hove City Council.
 - The application Ref BH2015/03708, dated 15 October 2015, was refused by notice dated 15 February 2016.
 - The development proposed is the change of use of the car park to residential and the erection of a new three storey building with seven apartments in total.
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Decision

1. The appeal is dismissed.

Main Issues

2. I consider the main issues to be the effect of the proposed development on -
 - i. The living conditions of both its future occupants and those of an adjacent building, Windsor Court;
 - ii. The character and appearance of the surrounding area, especially the setting of the North Laine Conservation Area; and
 - iii. The archaeological value of the site.

Reasons

Background

3. The appeal site is within Brighton City Centre on the west side of a road that links the city's principal shopping street, North Street, to the Laines area to the north. Windsor Street is characterised by a mix of residential and commercial uses. The appeal site is currently occupied by a car park that serves Windsor Court, a modern, seven to eight storey block of flats that is immediately to the west. There is a second, more recently permitted (Council Ref BH2015/00742) block of flats, of only three to four storeys in height, Windsor Lodge, to the north of the site. The boundary of the car park was landscaped and is dominated by a mature sycamore tree that is the subject of a Tree Preservation Order (TPO). None of the surrounding buildings is locally or nationally listed and the site is not in a Conservation Area, although the northern part of Windsor Street is in the North Laine Conservation Area.

4. The appeal proposal would redevelop the southern part of the car park and erect a four-storey building, including accommodation in a mansard roof. In practice, the new building would form an eastward extension to Windsor Court. That property's eastern windows at first and second floor levels would thereby have to be removed. A courtyard area, enclosed on three sides, would be formed to the north of the new building, which would be open to Windsor Street. The TPO protected sycamore tree would be removed.
5. The Council admits that at present it cannot demonstrate a five-year supply of deliverable housing sites. As set out in paragraph 49 of the National Planning Policy Framework ('the Framework'), policies for the supply of housing in the city thereby have to be considered out of date. Furthermore, paragraph 14 of the Framework emphasises that, in such circumstances, there is a general presumption in favour of sustainable development unless any adverse impacts of a development would significantly and demonstrably outweigh its benefits when assessed against the policies of the Framework taken as a whole.

The living conditions of both its future occupants and those of an adjacent building, Windsor Court

6. 'Saved' Policy QD27 of the adopted Brighton and Hove Local Plan adopts the position that permission will not be granted where proposals would cause material nuisance and loss of amenity to proposed, existing and/or adjacent occupants. In respect of the living conditions of the occupants of new development, Policy QD27 is reinforced by Policy HO13 that requires all new residential proposals to meet the so-called lifetime homes standard whereby they could be adapted to meet the needs of people with disabilities without major structural alteration.
7. The proposed building would comprise six, one bedroom flats all with floor areas of around 38m² and a seventh two bedroom flat with a floor area of around 62m². All the flats would thereby meet the national space standards for one bedroom, one person flats and, in the case of the last, for a two bedroom, two person flat. However, the Council has suggested that the size of the bedrooms for the six, one-bedroom flats is sufficiently large that it could be reasonable to expect them to be occupied by two persons. However, the accommodation would then be well below the space standard for one bedroom, two person flats. The Council comments that this is exemplified by the small size of the communal lounge and kitchen and the lack of private amenity space. There are also issues with Policy HO13 in respect of the width of commonways in some of the flats as well as in the bedrooms were a double bed to be introduced and in respect of the size of the shower rooms.
8. The appellants counter these criticisms by pointing out that the Council did not adopt the national space standards in its 2016 City Plan and that there are no alternative locally adopted standards. In those circumstances, any space standards should be applied flexibly. Moreover, they also point out that whether or not in the future the one bedroom flats are occupied by two persons is a matter of choice. Finally, they comment that the so-called Lifetime Homes Standards are now incorporated in the Building Regulations and therefore that the proposed development should not be judged against Policy HO13.
9. In respect of the last point, I am unclear whether the appellants are conceding that the proposed residential units do not, in at least some aspects, meet the Lifetime Homes Standards, but would have to be modified to meet the current

Building Regulations. However, more generally, although I accept that the proposed development conflicts in some aspects with both Policies QD27 and HO13, I am not persuaded that were this the only issue in dispute it would be sufficient to warrant the dismissal of the appeal.

10. I am more concerned with the effect of the proposed development on the apartments on the lower floors of the adjacent Windsor Court. These are studio flats with windows on their southern and eastern elevations but the windows on the eastern elevations of the first and second floor flats would have to be blocked up. The appellants claim that since the eastern elevation windows light kitchen spaces, they should not warrant the same protection as 'habitable rooms'. But open-plan studios are usually dependent on all their windows.
11. Furthermore, I noted at my site visit that the lower floor windows on the southern elevation of Windsor Court face a taller building on the opposite side of the access lane. Contrary to the appellants' claims, I was far from persuaded that these southern windows would, on their own, provide sufficient sunlight and natural light to these properties. By contrast, the distance between Windsor Court's eastern elevation and the buildings on the opposite side of Windsor Street should mean that these eastern windows are more significant for lighting these properties. In this respect, the loss of the eastern windows at first and second levels of Windsor Court and the interference with light entering the third floor window would, in my view, constitute significant and demonstrable material harm to the living conditions of the occupants of these properties. This would represent substantial conflict with the provisions of Policy QD27.

The character and appearance of the surrounding area, especially the setting of the North Laine Conservation Area

12. The proposed development clearly replicates in height, massing, scale and broad design that recently adopted for Windsor Lodge and, as such, represents an appropriate response to the character and appearance of the area. The Council's concerns focus on the loss of the protected Sycamore tree. I agree with the Council that the visibility of this tree both from the north and south give it a significance in the wider street scene that exceeds its immediate impact on the appeal site and its surroundings. When looking north, the tree provides an introductory frame for the Laines area and I have no doubt that its loss would represent significant material harm both to the street scene and to the setting of the North Laine Conservation Area. When looking south, the trees provides a moderating influence on what is otherwise a somewhat harsh urban environment.
13. Policy HE6 of the Local Plan deals with development within or affecting the setting of conservation areas. In respect of the latter, the policy reflects the requirements of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that special attention should be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. The policy lays particular emphasis on a high standard of detailing that reflects the character or appearance of the area, and the retention and protection of trees, gardens, spaces between buildings, and other open areas which contribute to that character or appearance.

14. The appellants comment that the sycamore is causing damage to the low walls that provide an important element in the current boundary treatment. I saw this for myself but I would suggest that repair of the walls would be preferable to the loss of the sycamore tree. They would also provide two replacement trees within the new courtyard. This is to be welcomed in the context of the site but would do nothing to replace the role of the large and mature sycamore tree in the wider street scene as the replacement trees would be visible only from that stretch of Windsor Street immediately adjacent to the appeal site and would be likely to be smaller and less significant in appearance at least initially
15. Although I consider the proposed development to conflict Policy HE6 in respect of the loss of an important tree, I do not consider that the effect of its loss would amount to substantial material harm to the setting of the heritage asset represented by the North Laine Conservation Area. In such circumstances, paragraph 134 of the Framework advises that the material harm should be weighed against the public benefits of the proposed development. Those public benefits focus on the additional housing that would be provided in circumstances where there is an agreed lack of a five year supply of deliverable housing sites. In itself, it could be sufficient to outweigh the material harm to the setting of the conservation area.

The archaeological value of the site

16. The archaeological value of the appeal site apparently relates to the fact that it has been part of the built-up area of Brighton since at least the early 19th century and is now situated in an Archaeological Notification Area. No heritage information was submitted with the application and this caused the County Archaeologist to object to the proposal. However, I agree with the appellants that this matter could be satisfactorily resolved through the imposition of an appropriate condition requiring pre-development archaeological survey of the site were the appeal to be allowed.

The planning balance

17. The proposed development is clearly in a highly sustainable location, as reflected in the acceptable loss of the existing parking. It would also make a small but not insignificant contribution to housing supply in an area where there is not currently a five year supply of sites. Those are significant factors in its favour. It would produce material harm to the street scene and to the setting of the southern edge of the North Laine Conservation Area and were these the only factors weighing against the proposed development, they would, in my view, be insufficient to lead to the dismissal of the appeal. However, I afford substantially more weight to the proposal's effects on the living conditions of the occupants of the first and second floor flats in Windsor Court. That impact would represent substantial material harm in my view and, on balance, I therefore conclude that there is sufficient significant and demonstrable evidence of an adverse impact to outweigh the benefits I have acknowledged.

Conclusion

18. For the reasons given above I conclude that the appeal should be dismissed.

R M Pritchard INSPECTOR