Appeal Decision

Site visit made on 2 October 2008

by S J Emerson BSc DipTP MRTPI

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

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Decision date:
15 October 2008

Appeal Ref: APP/Q1445/A/08/2074622
13 London Terrace, Brighton BN1 4JP

- 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 Pavilion Property Maintenance Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2007/03580, dated 21 September 2007, was refused by notice dated 20 November 2007.
- The development proposed is to form a basement house.

Decision

1. I dismiss the appeal.

Main issues

2. The main issues are:
   (a) Whether the development would result in the harmful loss of a family dwelling.
   (b) Whether the development makes adequate provision for parking.

Reasons

3. The appeal property is a 2 storey house with basement. It is part of a short terrace of similar houses. London Terrace is a short cul-de-sac at the rear of substantial retail and other commercial premises fronting London Road and gives access to several service yards at the rear of these premises. The proposal is to create a 1 bedroom flat in the basement with access via the external steps from the pavement, leaving a 2 bed maisonette on the ground and first floors. The latter would have access to the small rear garden via a new flight of steps at the rear.

4. Policy HO9 of the Brighton and Hove Local Plan 2005 sets out criteria for the conversion of buildings to flats. Criterion *a* is that the original (unextended) floor area is greater than 115m^2 or that the dwelling had more than 3 bedrooms when originally built. The Council indicate that the floor area is 93m^2 and this is not disputed by the appellant. The appellant considers that it is reasonable to envisage the dwelling as having more than 3 bedrooms when built – the 2 rooms on the first floor and the 2 original rooms in the basement (with the ground floor being a living room/parlour and a kitchen), but has not provided any historical evidence to demonstrate that this was actually the case. In my view, the layout of the dwelling, with its main entrance to the middle (ground) floor suggests that only the 2 rooms on the top (first) floor were bedrooms. It is more realistic to envisage that at least one of the basement

rooms provided a service room such as a scullery/kitchen and storage. I am not satisfied that the dwelling originally had the 4 bedrooms necessary to meet criterion *a*. There is therefore conflict with policy HO9.

5. The appellant considers that the location is unsuitable for a family dwelling given that London Road is used as an access to service yards and future plans for redevelopment of the area would increase such use. I accept that the comings and goings of service vehicles would create noise and disturbance during the day. But such vehicles would be moving very slowly along London Terrace and have to pass other residential streets to get to main roads. The noise and disturbance here may be perceived by some families as less intrusive and more suitable for family living than a house on one of the many busy roads in Brighton with faster and much more frequent passing traffic. No details have been provided of the effect on the area of any redevelopment proposals and it is not clear to me that there is a finalised scheme. The location has the benefit of very good accessibility to the centre of Brighton. On the evidence before me, I do not regard the area as unsuitable for a family dwelling.

6. I am required to determine the application in accordance with the development plan unless material considerations indicate otherwise. I have identified a conflict with the development plan policy. Policy HO9 seeks to strike a balance between retaining modest family dwellings whilst enabling the provision of additional small units of accommodation, consistent with the variety of housing needs in the City. In my view, the local plan is the best mechanism for resolving the inevitable tension between these objectives and there is no evidence to suggest that the plan strikes the wrong balance. Although the conversion would provide one small family unit (the maisonette) it would result in the loss of the type of family house that policy HO9 clearly seeks to safeguard. I thus conclude that the proposal would result in the harmful loss of family accommodation which should be retained in accordance with policy HO9. This policy conflict is sufficient to dismiss the appeal.

7. I turn now to parking. Criterion *d* of policy HO9 is that secure covered cycle parking is provided. The Council's Parking Standards are set out in Supplementary Planning Guidance Note 4. For dwellings, 1 secure cycle parking space is required for each dwelling. Thus for this proposal 2 spaces are required - one for the basement flat and one for the maisonette.

8. The appellant proposes that 2 cycle spaces would be provided at basement level. The existing solid steps down to the basement would be replaced by open metal steps with the top landing step raised to pavement level so that the cycles could be accommodated underneath this landing. From what I saw, such an arrangement would provide practical space for only one bicycle, given the narrow width of the space available and the difficultly of extracting a bicycle from underneath the stairs. If 2 cycles were to be stored there would not be room for each cycle to be removed independently of the other. There are 2 further complications. It would be very unsatisfactory for the cycle parking for the maisonette to be provided at basement level since this would require the upstairs occupiers to park their bicycle immediately in front of the bedroom window of the basement floor flat which would be likely to result in disturbance and loss of privacy on occasions. In addition, although the Council consider that the provision of space for refuse and recycling could be covered by a condition, the only practical space for such provision is the basement well

and I cannot see how cycle parking and refuse storage could both be satisfactorily accommodated. The Council consider that there is inadequate detail of the proposed steps to properly assess what is proposed. I consider that the appellant's intentions are clear, but that the proposal is unsatisfactory. The required parking standard would not be achieved and there is conflict with policy HO9. The provision of adequate cycle parking is a small, but important practical step in encouraging alternative means of transport to the car.

9. No parking spaces are provided in the development. Policy HO7 indicates that planning permission will be granted for car-free housing in locations with good access to public transport and local services where there are complimentary parking controls and where it can be demonstrated that the proposed development will remain car-free in the long term. The appeal proposal meets the locational criteria of this policy. The requirement to be car-free is normally achieved by an amendment to the relevant Traffic Regulation Order (TRO) to preclude future occupiers applying for permits. This requires some administrative work by the Council and public advertisements which have to be paid for. To avoid a cumulative adverse impact from increasing car ownership outstripping the available parking spaces in the heavily parked streets of this dense urban area, I consider that the appeal development should be made permanently car-free.

10. The appellant indicated that they would accept a condition excluding future residents from getting parking permits. The Council also consider that this matter could be covered by condition, but neither party has suggested a possible wording. I am not satisfied that the requirements of policy HO7 for the development to be permanently car-free can be satisfied by a condition. It can only be achieved by an amendment to the TRO. This is very unlikely to happen unless the appellant pays the Council's administrative costs for doing so. Such a financial contribution requires a section 106 obligation. There is no such obligation before me. Circular 11/95 *The Use of Conditions in Planning Permissions* states (paragraph 13)*: Permission cannot be granted subject to a condition that the applicant enters into a planning obligation under section 106 of the Act or an agreement under other powers*. In the recent past, there are examples of conditions being imposed which, in practice if not on their face, would require appellants to enter into section 106 obligations, but I do not regard these as consistent with national advice. In the absence of the necessary financial arrangements being in place, there is conflict with policy HO7. This lends further weight to the objections already identified.

11. The Council also express concern about the lack of detail for the provision of the short flight of steps to provide access from the ground floor of the maisonette into the back garden and the related privacy screens shown on the application drawings. However, I consider that the appellant's intention is clear and acceptable and that the detail of the steps and the screens could be required by condition.

Simon Emerson

INSPECTOR