

## Appeal Decisions

Site visit made on 7 February 2017

by **L Gibbons BA (Hons) MRTPI**

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

Decision date: 9<sup>th</sup> February 2017

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### **Appeal A Ref: APP/Q1445/W/16/3158331 85 Rotherfield Crescent, Brighton BN1 8FH**

- 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 Mr Morel De Mendonca against the decision of Brighton & Hove City Council.
  - The application Ref BH2016/01796, dated 18 May 2016, was refused by notice dated 28 July 2016.
  - The development proposed is two proposed semi-detached dwellings to the rear of 85 Rotherfield Crescent.
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### **Appeal B Ref: APP/Q1445/W/16/3159819 85 Rotherfield Crescent, Brighton BN1 8FH**

- 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 Mr Morel De Mendonca against Brighton & Hove City Council.
  - The application Ref BH2016/01778, is dated 18 May 2016.
  - The development proposed is a proposed attached dwelling.
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### **Decision**

1. Appeal A is dismissed.
2. Appeal B is dismissed.

### **Application for costs**

3. An application for costs was made by Mr Morel Mendonca against Brighton & Hove City Council. This application will be the subject of a separate Decision.

### **Procedural Matter**

4. The Council indicates that had it been in a position to determine the planning application for Appeal B, it would have been refused for reasons relating to the character and appearance of the area and the living conditions of the future occupiers in respect of the standard of accommodation to be provided.

### **Main Issues**

5. The main issues are:
    - i) The effect of the proposed schemes on the character and appearance of the area;
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- ii) The effect of the proposed schemes on the living conditions of the future occupiers in respect of the standard of accommodation to be provided, and with regard to Appeal A only, the effect of the proposed development on the living conditions of the occupiers of No 83 Rotherfield Crescent in respect of outlook and privacy, and No 85 Rotherfield Crescent in respect of outlook.

## **Reasons**

### *Character and appearance*

6. The appeal site is located within a residential area which has a mix of semi-detached and terraced housing. There is variety to the designs of the houses with a mix of pitched and hipped roofs, staggered and uneven building lines and a range of materials. Where there are junctions with other roads, generally the houses are positioned so that there is a spacious quality to these areas. The area has a pleasant suburban appearance.
7. The houses on Rotherfield Crescent are set back from the road and have fairly large front gardens. Rotherfield Close consists of mainly terraced properties which are closer to the road and have slightly smaller plots than those on Rotherfield Crescent. Nos 83 and 85 is a pair of semi-detached houses set at an angle to the road. No 85 has a side garden which allows good views of the properties on Rotherfield Close and results in a sense of spaciousness which is an attractive feature of this part of the road. I acknowledge that the appeal sites are not within a Conservation Area and there are no listed buildings nearby.
8. *Appeal A*. The proposed development would involve the demolition of a garage to the rear of No 85 and the erection of a pair of semi-detached dwellings. The front elevation of these houses would come slightly forward of No 1 Rotherfield Close. However, this positioning would not result in a significant reduction in the sense of spaciousness on the corner of Rotherfield Crescent and Rotherfield Close. This is because the side garden of No 85 would be retained, and it would still be possible to see towards the houses on Rotherfield Close from the main road.
9. The roof design of the proposed semi-detached houses would be different from the adjoining properties. However, the roofscape would be seen against the backdrop of the roofs rising away from the buildings and it would have a lower ridge height than No 1 Rotherfield Close. The flat roof element is not wide and would therefore not be particularly noticeable. Although the properties would be located close to the terrace to the west, the appearance of houses close together in a row is not unusual in this area. The scheme would be separated from No 1 by the garage and due to its position it would be mainly seen in the context of Rotherfield Close, which has a closer knit pattern of development than Rotherfield Crescent.
10. For the reasons given above, I conclude that Appeal A would not cause harm to the character and appearance of the area. It would not be in conflict with Policy CP12 of the Brighton and Hove City Plan Part 1 2016 (CPP1). This amongst other things seeks new development which will be expected to establish a strong sense of place by respecting the diverse grain and character of the city's identified neighbourhoods.

11. *Appeal B*. The proposed scheme would involve the addition of another dwelling on to the north elevation of No 85 as an extension. The design of the dwelling and materials would match that of the existing houses and would have the same ridge height. Groups of three houses in a terrace are also a feature of the area.
12. However, in this case the extension would come significantly forward of the building line along Rotherfield Close. The side elevation would be very close to the road and in a prominent position on the corner. This would result in it being a dominant feature in the street scene. It would obscure the building line on Rotherfield Close and would reduce the sense of spaciousness in this area to a significant degree.
13. The proposal would result in the addition of a raised parking area at the front on No 85. This would be a specific feature of the proposal which is not generally found in the immediate area. However, parking in front gardens is not uncommon in the wider area and I consider it would not result in material harm to the streetscene. However, it is not sufficient reason to outweigh the harm I have found.
14. For the reasons given above, I conclude that Appeal B would cause harm to the character and appearance of the area. It would be in conflict with Policy CP12 of the CPP1.

#### *Living conditions*

15. *Appeal A*. The proposed dwellings would be positioned so that the side elevation of Plot 1A would be very close to the rear elevation of No 85 with very little rear garden space in between. The proposal would retain the side garden at No 85. Nevertheless, the blank elevation would be seen as a very dominant feature from the rear rooms of No 85, and would result in that portion of the rear garden and those rear rooms feeling very dark and enclosed.
16. The boundary of the appeal site with No 83 includes a mix of deciduous and evergreen planting within the garden of No 83. It is possible to see through the planting when the shrubs are not in leaf. The rear elevation of the proposed dwellings would be along the length of the garden at No 83. The aspect towards Rotherfield Close from No 83 is open, and the introduction of built form for a significant proportion of the garden would result in an increased sense of enclosure within the rear garden of No 83.
17. I accept that some overlooking is not uncommon in areas such as these. However, the rear windows of both proposed dwellings would face towards the rear garden of No 83. This would lead to a material loss of privacy for the occupiers of No 83 when within their garden. In addition, given the proximity of proposed plot 1A to the rear elevation of No 83, this would result in a significant increase in the perception of overlooking to the occupiers of No 83 when within the rear habitable rooms.
18. I note that the Council does not refer to particular size standards for outdoor space. Saved Policy HO5 of the Brighton and Hove Local Plan 2005 (LP) refers to private useable outdoor amenity space where appropriate to the scale and character of development. The outdoor rear gardens of the dwellings would be constrained by the rear boundary which would be close to the rear elevation of

the houses. In addition, the front outdoor space would be occupied by car parking spaces. The dwellings would be four bedrooms and as such they are likely to be occupied by families. I accept that not everyone would require a garden which would need some maintenance. Nevertheless, there would be very little useable space for sitting out and play. The nearby terraced properties have much larger gardens than those proposed within the scheme and the houses would be of a similar size and scale. The space provided would be considerably at odds with the surrounding properties. Overall, I consider that the scheme would not provide sufficient outdoor space which could be reasonably expected by future occupiers.

19. For the reasons given above, I conclude that the proposed scheme would cause harm to the living conditions of the occupiers of No 83 Rotherfield Close in respect of privacy and outlook and to the occupiers of No 85 in respect of outlook. It would also cause harm to the future occupiers of the proposed dwellings in respect of the standard of outdoor space to be provided. It would be in conflict with saved Policy QD27, which seeks to protect the amenity of adjacent users and future occupiers, and Policy HO5 of the LP.
20. *Appeal B*. There would be three bedrooms within the proposed dwelling with one located within the roofspace. The national Technical Housing Standards are referred to in terms of room sizes. The Council consider the bedroom within the roofspace would be particularly deficient in this respect. However, the Council does not refer to any particular room standards as set out within the development plan that would be in line with the technical standards.
21. Notwithstanding, the bedroom within the roof would have a very restricted head height within a considerable proportion of the room. This would lead to a significant lack of useable and easily accessible space within the room. The size of the other two bedrooms would not be particularly large and in combination with the lack of useable space in the second floor bedroom, I consider this would lead to an unacceptable standard of accommodation for future occupiers.
22. The rear patio area of the new dwelling would be small. Nevertheless, although the front garden of the dwelling would be lower than the road, it would provide additional space for sitting out, and would be large enough for opportunities for landscaping to provide screening for the occupiers. However, this does not outweigh the harm I have found.
23. For the reasons given above, I conclude that the proposed development would cause harm to the living conditions of the future occupiers of the proposed dwellings in respect of the standard of accommodation to be provided. It would be in conflict with saved Policy QD27 of the LP.

*Other matters*

24. The appellant refers to residential development which has taken place in the area. However, I do not have full details of the circumstances that led to these proposals being acceptable and so cannot be sure that they represent a direct parallel to the appeal schemes. In any case, I have determined the appeals on their own merits.

## **Conclusions**

25. I have found that the proposed development for Appeal A would not cause harm to the character and appearance of the area. However, it would cause harm to the living conditions of the occupiers of No 83 Rotherfield Close in respect of privacy and outlook and to the occupiers of No 85 in respect of outlook. It would also cause harm to the living conditions of future occupiers of the proposed dwellings in respect of the standard of outdoor space to be provided.
26. The proposed development for Appeal B would be acceptable in terms of the standard of outdoor space. However, it would cause harm to the character and appearance of the area and to the living conditions of future occupiers in terms of the internal standard of accommodation to be provided.
27. Paragraph 49 of the National Planning Policy Framework (the Framework) states that relevant policies for the supply of housing should not be considered up to date if local planning authorities cannot demonstrate a five year supply of housing land. My attention has been drawn to two High Court judgements in relation to five year housing land supply. The appellant contends that a five year supply of housing land does not exist within the area and that relevant policies are therefore out of date. I note that the area is constrained by the South Downs National Park to the north. However, I find the evidence regarding whether or not the Council has a five year supply of housing land inconclusive.
28. I am satisfied that the requirements of the development plan policies referred to in respect of design and the amenity of neighbouring and future occupiers reflect the objectives of the Framework, notably the core principles that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. I therefore consider that these policies are not out of date and I give them full weight.
29. The appeal sites are located in an accessible location with good access to services and facilities. The schemes would make a very small contribution to the housing supply and mix of housing types within the area, and would make use of land which is currently not in active use. However, I consider these factors would have limited weight. Having regard to paragraph 14 of the Framework, the adverse effects of each appeal scheme would significantly and demonstrably outweigh the benefits. The schemes are thus not sustainable development for which there is a presumption in favour.

### *Appeal A*

30. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

### *Appeal B*

31. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*L Gibbons*

INSPECTOR

