

## Appeal Decision

Site visit made on 30 January 2017

by **Grahame Gould BA MPhil MRTPI**

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

Decision date: 22<sup>nd</sup> February 2017

---

**Appeal Ref: APP/Q1445/W/16/3162384**

**Land to the rear and side of 146 Mackie Avenue, Brighton BN1 8SB**

- 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 Neil Foreman and Mrs Judith Rottenstreich against the decision of Brighton and Hove City Council.
  - The application Ref BH2015/03658, dated 12 October 2015, was refused by notice dated 11 May 2016.
  - The development proposed is demolition of wall and garages, and erection of a terrace of three dwellings.
- 

### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are the effect of the development on: the character and appearance of the area; the trees within the site that are subject to a tree preservation order (TPO); and the living conditions for the occupiers of the development, with particular regard to the availability of garden space.

### Reasons

#### *Character and Appearance*

3. The development would involve the demolition of four garages to the side of 146 Mackie Avenue (No 146) and the construction of a terrace of three houses with three floors of accommodation. No 146 forms part of a small parade of commercial ground floor premises with two floors of residential accommodation above, in what is otherwise an essentially residential area.
  4. The northernmost of the proposed houses (unit 1) would have a staggered siting relative to units 2 and 3 and unit 1's front elevation would align with that of Nos 148 and 150, while the other pair of houses would share a front elevation that would align with No 146. Units 1 and 2 would be gable ended properties, while unit 3 would have a hipped roof. The ridge line for unit 1 would also be markedly set below that of units 2 and 3. I find that the combination of the staggered siting of unit 1 relative to units 2 and 3, the step in the ridge line between units 1 and 2 and the mixed roof forms would result in a development with an overly fussy composition, which would not sit well within Mackie Avenue's streetscene at this point.
-

5. I consider that the junction between units 1 and 2 would be particularly awkward and would result in this development having an incongruous appearance within the streetscene. I recognise that a number of the nearby pairs of semi-detached houses and bungalows have lost their symmetry, through some having had roof extensions, leading to pairs of properties with a mixture of hipped and gable ended roofs. However, where such an unbalancing of pairs of properties has occurred that has not resulted in a staggering of one property relative to another. In this respect the appeal development would be a unique one for Mackie Avenue at this point and would not be respectful of its context.
6. The development's design has been the subject of an iterative process in seeking to respond to pre-application comments made by the Council and to ensure that the internal space available would be of an acceptable standard. I consider the need to provide suitable levels of internal space has compromised the development's appearance and is indicative of this scheme being unduly intense for this site. While the garages, front wall and recycling point are not of a particularly pleasing appearance, I consider that does not provide a justification for accepting a development that would be of a poor appearance.
7. For the reasons given above I conclude that the development would be harmful to the character and appearance of the area. There would therefore be conflict with Policies CP12 and CP14 of the Brighton and Hove City Plan Part 1 of 2016 (the City Plan) and paragraphs 56, 57, 58 and 64 of the National Planning Policy Framework (the Framework) because the development would not be of a high standard of design nor would it be respectful of the area's character.

#### *Trees*

8. Behind the garages there is a group of three ash trees, which are subject to a TPO. These trees are identified as trees T1/T2 (a single tree with two stems), T3 and T4 in the arboricultural report that accompanied the planning application. The development would involve the removal of trees T3 and T4 and the appellant has submitted that replacement tree planting could be undertaken with the highway verge in Mackie Avenue.
9. The trees collectively have an extensive canopy and the photographs included as part of the appellant's case demonstrate that when they are in leaf they have a significant visual (amenity) value. I do not accept the appellant's proposition that the collective canopy for these trees is '... almost excessively large within its residential context and as such doesn't complement the prevailing character of the area which features a lot of younger trees...'. Whilst these trees are amongst the largest in the area, I found their size did not make them uncharacteristic of Mackie Avenue, with their size providing some relief to what is otherwise a quite intensively built up part of this street.
10. While I recognise that the condition of tree T3 means that it has a short term life expectancy, I consider that the loss of tree T4 would be harmful to the character and appearance of the streetscene, given its prominence. Although it is intended that tree T1/T2 would be retained this tree is a comparatively large one and its canopy would dominate the rear gardens of the houses and would also be very close to the rear elevations of those dwellings. I therefore find it likely that the proximity of tree T1/T2 to the new houses, together with

the orientation of those dwellings, would mean that there would be implications for the receipt of light to the interiors of the properties and their gardens. Were this development to be permitted I consider it likely that following the occupation of the houses there would be pressure from their occupiers for tree T1/T2 to be removed or heavily pruned and either of those scenarios would be harmful to the character and appearance of the area.

11. While replacement trees could be planted in the highway verge, it appeared from the size of the verge trees in Mackie Avenue that they are being maintained so that they do not attain a size that is comparable with that of the trees within the site. I therefore consider that requiring replacement verge planting would not provide an appropriate level of mitigation for the trees that would be lost to this development.
12. I therefore conclude that there would be an unacceptable loss of trees subject to a TPO. The development would therefore be in conflict with saved Policy QD16 of the Brighton and Hove Local Plan of 2005 (the Local Plan) because the development would necessitate the removal of the protected trees and is not of national importance or essential to meet a recognised social or economic need that could not be located elsewhere.

#### *Living Conditions*

13. The houses would have quite small garden areas and as I have indicated above the utility of those outdoor spaces could be affected by the presence of tree T1/T2. However, there is an extensive area of informal public open space in very close proximity to the site, ie the green to the west of the parade of commercial premises. Given the proximity of that area of public open space I conclude that the living conditions for the occupiers of the houses would not be unacceptably harmed by the limited garden areas that would be available to them. I therefore find that the available private garden space would be of an appropriate scale and that would mean that there would be no conflict with saved Policy HO5 of the Local Plan.

#### **Other Matters**

14. The development would make a modest contribution to the supply of housing within the Council's area and would be in a sustainable location for housing. In those respects the development would provide some social and economic benefits. However, I consider those benefits would be outweighed by the development's harmful appearance and adverse effect on the protected trees. The nature of the harm that I have identified is such that I find that this scheme cannot be considered to be a sustainable form of development for the purposes of the Framework.

#### **Conclusion**

15. While I have found that adequate garden space would be available for the occupiers of the development, there would be harm to the area arising from the development's appearance and the unacceptable loss of protected trees. I therefore conclude that the appeal should be dismissed.

*Grahame Gould*

INSPECTOR

