

Appeal Decision

Site visit made on 29 October 2016

by R Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC

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

Decision date: 17th November 2016

Appeal Ref: APP/Q1445/W/16/3142069

67 Falmer Road, Rottingdean, Brighton BN2 7FJ

- 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 Craig Lee against the decision of Brighton & Hove City Council.
 - The application Ref BH2015/02049, dated 21 July 2015, was refused by notice dated 1 December 2015.
 - The development proposed is described as 'demolition of existing detached house and garage and erection of 9 new houses at 67 Falmer Road, Rottingdean, BN2 7FJ'.
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Decision

1. The appeal is allowed and planning permission is granted for 'demolition of existing detached house and garage and erection of 9 new houses at 67 Falmer Road, Rottingdean, BN2 7FJ' in accordance with application Ref BH2015/02049 dated 21 July 2016, subject to the conditions set out in Annex A to my Decision.

Procedural Matters

2. During the course of this appeal the Council adopted the City Plan Part One (March 2016) (CP). As this matter has been brought to my attention, I have taken this into account in determining the appeal.
3. Plans, other than those determined by the Council are before me. However, I have not been asked to consider these as part of this appeal. I am therefore determining the appeal in accordance with the plans on which the Council made its decision.

Main Issues

4. The effect of the appeal proposal on the character and appearance of the locality and on the living conditions of neighbouring occupiers, with regard to daylight, sunlight, outlook, overlooking and noise and disturbance.

Reasons

Character and Appearance

5. The appeal site includes a two storey dwelling set back from Falmer Road that sits on the edge of an existing residential area. It sits within a large garden and includes some mature trees, planting and a mostly hedged boundary. It lies on the edge of the South Down National Park (SDNP).
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6. The character and appearance of the locality is generally mixed, including residential development and some shops. Generally, due to the green open space opposite and trees and planting in generally spacious gardens, the locality has a spacious, verdant, semi-rural character and appearance.
7. The locality includes a mix of dwelling type, size, height and design. Its building line, the space between dwellings, plot size and its rhythm in Falmer Road is varied. I observed on my site visit that there is some development adjacent to the appeal site, including 6 Court Ord Road and 17 Court Farm Road that is set back from the street.
8. As there are semi-detached dwellings in the locality and the proposed dwellings on the frontage would respect the building line of those dwellings on either side along with the varying gaps between buildings identified, they would integrate successfully in the street. I note that the proposed dwellings would be slightly higher than other dwellings nearby and most include accommodation in the roof. However, I noted other development nearby with accommodation in the roof, and due to the small variation in height with other dwellings on Falmer Road that would result, the separation distance from neighbouring dwellings and as there is some variety already in the height of buildings fronting that road, it would not appear awkward. As the ground levels would be reduced slightly in places, the height of dwellings proposed at the rear would not appear out of place. As the locality includes some development set back from the street, the layout of the appeal dwellings would not be out of character. Whilst it would involve the loss of some trees, some trees and hedges would be retained near the edges and new planting would be included, such that the verdant character and appearance of the locality would not be significantly diminished. As the appeal development would include gardens roughly similar in size to others I saw in the locality and some space around the dwellings, it would not appear cramped or overdeveloped. Thereby it would not significantly compromise the semi-rural and spacious character and appearance of the locality. Even though properties at the rear of the appeal site would be visible from Falmer Road, for the above reasons, no harm would result. The proposed design of buildings would reflect features I saw on existing development. As there is some development that is similar to its neighbours in the locality, that the proposed dwellings would be similar to each other in design would not appear out of character.
9. Refuse and recycling provision near the frontage would be screened from the street, such that they would not appear out of place and odours would be unlikely to be a nuisance to local residents. Whilst it would be located at the edge of Rottingdean, as it would sit comfortably on the appeal site and integrate successfully into the locality, no harmful effect on the character or appearance of Rottingdean village as expressed by some objectors would result.
10. I have noted development allowed on appeal at 57 Falmer Road, at the junction of Falmer Road and Court Ord Road (Ref. APP/Q1445/A/09/2105411). That development does not replicate the layout of this appeal proposal, which differentiates it from this appeal. However, that development now forms part of the character and appearance of the locality and I have taken it into account, in that regard.

11. For all of the above reasons, I conclude that the appeal proposal would not adversely affect the character or appearance of the locality and would generally accord with CP Policies CP12 and CP14. These, together, seek development that would raise the standard of architecture and design and residential development that is appropriate to the identified positive character of the neighbourhood.

Living Conditions

12. Some trees near the boundary with 6 Court Ord Road would be retained along with the boundary hedge. Further, there is also planting in the garden of No.6. Even though some of that planting is deciduous, it would interrupt views of the proposed dwellings from that property and due to the separation distance, the appeal dwellings would not appear overbearing when viewed from that property, or its gardens. This would include views from the rear doors and windows to the lounge of that property that I viewed on my site visit and the oblique view from the roof light of that property that faces the appeal site.
13. For the same reasons and as those windows closest to the appeal development are secondary windows or a roof light, it would not significantly affect the daylight received into that property. Due to the orientation of that property in relation to the appeal development, it would not affect the sunlight received into it. The proposed roof lights to plots 5-9 would serve dressing rooms and ensuite bathrooms and as the views out of them would be limited, due to their position in the roof slope, no harmful overlooking would result. However, I accept that some overlooking into that property would be possible from the first floor bedroom windows of plots 8 and 9 in particular. However, due to the separation distance and the intervening planting, this would not be significant. I accept that some interruption of views to the SDNP would result from that property, but views at present are limited. As I have found that the appeal development would not be overbearing, as viewed from that property, a reduction in a particular view is not a matter that would weigh against the appeal.
14. In relation to 17 Farm Court Road and 4 Court Ord Road, due to the separation distance and intervening planting, the appeal dwellings would not be overbearing when viewed from those properties and daylight would not be significantly affected. Furthermore, for the same reasons and as there would be no windows to habitable rooms facing either property, its occupiers would not have reduced privacy. Due to their orientation in relation to the appeal dwellings, and as it would be set back from No. 17, no significant loss of sunlight would result.
15. In relation to 71 Falmer Road, the details of an acoustic fence could be controlled through a suitably worded planning condition, which would limit noise and disturbance due to the proposed vehicle access. Such a condition could control its height. As a result of any fence to achieve noise reduction, I accept that some loss of light to No. 71 would result and due to its orientation in relation to the appeal development some loss of sunlight. I noted a number of windows on the side elevation of that property facing the appeal development on my site visit. However none light habitable rooms. As the kitchen is close to the existing boundary and there are existing structures close by on the appeal site and some planting any loss of daylight or sunlight would be limited. Due to the separation distance from plots 5-9 and the intervening

planting, no harmful reduction in privacy enjoyed either in the garden or the rear rooms to that house would be a consequence.

16. Other local residents have expressed concern regarding loss of outlook, privacy, daylight and sunlight but on the basis of my previous findings regarding those dwellings closest, no harm would result in this regard. Whilst disruption to local residents during construction would be inevitable, this would be for a limited period of time. Furthermore, I have no substantive evidence before me to indicate that the proposed development would result in a reduction in household security for neighbouring occupiers.
17. I conclude that the appeal development would not adversely affect the living conditions of neighbouring occupiers, with regard to daylight, sunlight, outlook, overlooking or noise and disturbance. For this reason, it would generally accord with Brighton and Hove Local Plan (2005) Policy QD27. That policy states that planning permission will not be granted where it would cause material nuisance and loss of amenity to existing occupiers.

Other Matters

18. A completed section 106 agreement, dated 7 October 2016, is before me. It provides for off-site affordable housing, parking restrictions and footway and bus stop accessibility improvements in the local area, along with a Travel Plan to encourage a range of transport modes other than the private vehicle.
19. The affordable housing contribution would accord with CP Policy CP20, which aims to provide for affordable housing on all sites of five net dwellings or more. It would also help to ensure that a mix of dwellings to meet the needs of the community is provided overall. The exact amount would be dependent on the results of a Ground Investigation Report, the submission of which is controlled through the legal agreement, which would determine whether ground piling would be required or not. I am satisfied that in either scenario the 'higher' or 'lower' affordable housing contribution would be necessary to make the proposed development acceptable in planning terms, directly related to it and fairly and reasonably related in scale and kind. Further, evidence is before me to demonstrate that, in either scenario, this would not adversely affect its viability.
20. Furthermore, the Travel Plan, footway improvements and alterations to the on-street parking provision in the locality would help to ensure that additional traffic generated from the appeal development would not harm highway safety. The provisions specified would accord with CP Policy CP9, which aims to ensure a safe and sustainable transport system that will accommodate new development. Together, these measures would meet the same tests outlined in paragraph 19 of my Decision. The provisions in the legal agreement, therefore, weigh in favour of the appeal.
21. As the appeal proposal would integrate successfully into the semi-rural character and appearance of the locality and would include retention of some trees on the frontage and some new planting, it would not appear unduly prominent in views of the SDNP or Beacon Hill Nature Reserve. It would generally conserve the landscape and scenic beauty of the SDNP.
22. An Ecology Report, produced by Applied Ecology and dated 1 September 2015 is before me. The Council concluded, having regard to the presence of a pond

on the appeal site and at 4 Court Ord Road, that the conclusions and recommendations included within that report would be sufficient to ensure that no significant harm to the ecology of the appeal site would result. On the basis of the ecological value of the appeal site and the nature and scale of the appeal proposal, I have no reason to take an alternative view on this matter.

23. The appeal site is included within Flood Zone 1, which has the lowest risk of flooding. A surface water drainage scheme could ensure that water runoff does not cause harm to neighbouring properties; a matter that could be controlled through a suitably worded planning condition. Whilst I note that flooding to nearby property has occurred in the past, I am advised that measures have been taken to avoid reoccurrence. This includes a series of bunds to prevent overland flow washing topsoil from adjacent farmland and the New Barn Valley Flood Defence. I have limited substantive evidence of flooding since. On this basis, I have no reason to take an alternative view to that of the Council on this matter.
24. The proposed development would be located close to some local facilities and a bus service and measures would be included to ensure footway improvements in the locality. These matters, along with the provision of cycle parking would encourage future occupiers to use other modes of transport than the private vehicle. However, it is accepted that private transport would still be used by future occupiers and that there would be an increase in traffic generated by the additional eight houses. However, on the basis of the existing vehicle traffic in the locality, and the scale of development proposed, no harmful increase in traffic congestion would be a likely consequence of the appeal.
25. The Council confirms that thirteen parking spaces capable of independent use would be provided. This would accord with the parking standards set out in Brighton and Hove Local Plan (2000) Supplementary Planning Guidance Note 4: *Parking Standards*. As there would be other spaces in addition, including two garages and a space to the side of plot 5, I consider that this would be sufficient to avoid a significant increase in on-street parking, whilst complying with the Council's maximum standards. An electric vehicle charging point has also been provided. Furthermore, the development would fund a financial contribution towards measures to restrict on-street parking.
26. In terms of the access arrangements, adequate visibility along Falmer Road could be provided, by removing an existing hedge and setting development behind the visibility splay. As the appeal layout would enable vehicles to turn within the site, vehicles using the access would not harm highway safety. As the details of the acoustic fence, including its height is for consideration at a later stage, significant harm to visibility on egress from the appeal site could be avoided. As the proposed access and turning spaces would be adequate to accommodate emergency vehicles, no harm would result in this regard. No objection from the East Sussex Fire and Rescue Service is before me. Overall, the appeal proposal would provide satisfactorily for the additional vehicles that would be generated and would not harmfully impact on the safety of road users. Further, on the basis of the limited amount of additional vehicles that would be generated from the appeal development, in relation to existing traffic on Falmer Road, the impact on the Air Quality Management Area in the centre of Rottingdean would be negligible.

27. On the basis of the limited scale of development proposed, a significant impact on the provision of local services and facilities would not result. A suitably worded planning condition, along with the Building Regulations Regime could ensure that the proposed homes would be suitable, in terms of their layout and access arrangements, for all people, including those with a disability and the elderly. I have limited substantive evidence that the appeal proposal would significantly impact on fowl drainage in the locality.
28. Whilst an Emerging Rottingdean Neighbourhood Plan is brought to my attention, no document in this regard is before me. However, I am advised that it is as it is at an early stage of preparation. In these circumstances, I attach very limited weight to this matter.
29. Issues regarding the effect of the appeal development on the value of neighbouring property, the impact on private views, particularly to the SDNP and any legal covenants particular to individual properties, are not matters that fall for consideration under the planning regime. As each application is judged on its merits, my Decision does not set a precedent for other development.
30. A number of inaccuracies in the appeal documentation have been brought to my attention. This has been taken into account in my assessment. However, overall, I find that the appeal plans are sufficient on which to assess the merits of the appeal development.
31. The Council cannot demonstrate a five year supply of deliverable housing sites, a matter that is agreed between the two main parties. In this regard, the appeal development would provide additional homes which would contribute towards the Council's housing land supply. This would be a benefit to which I accord significant weight. No significant harm has been identified to outweigh this benefit.
32. In conclusion, any adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework (the Framework) as a whole. The appeal development therefore falls within the definition of sustainable development and should be allowed.

Conditions

33. I have considered the conditions suggested by the Council to ensure consistency with paragraphs 203 and 206 of the Framework, and Planning Practice Guidance: Use of Planning Conditions. I have agreed to most subject to simplification, amalgamation where appropriate and minor amendments to some wording. Standard planning conditions to control the timing of development and conformity with the approved plans are necessary for clarity and in the interest of proper planning. I have noted some discrepancies between the windows openings shown on plan Ref TA864/P14 Rev B (Typical floor plans: plots 1-8) and plan Ref TA864/P17 Rev A (Typical elevations plots 5-8). A condition to ensure that the proposed elevations match those of the proposed floor plans is required.
34. Conditions to control that the external materials proposed, including hard surfaced areas and soft landscaping are necessary to ensure that the development would blend into the locality. A separate condition to ensure that

the hard surfaced areas are finished in a porous material would therefore not be required.

35. A condition restricting further extensions and alterations is required to protect the living conditions of neighbouring residents and the character and appearance of the locality. A condition to ensure that development is carried out in accordance with the conclusions and recommendations in the Ecology Report, produced by Applied Ecology and dated 1 September 2015, are required to safeguard the ecology of the appeal site. As that would include measures to protect bats and nesting birds, specific conditions in this regard are not necessary.
36. Conditions to secure, prior to occupation, the proposed parking, usable disabled parking and cycle storage facilities and to ensure that they remain available for that use, are necessary to protect highway safety, along with a condition to control the detailed design of the road, footway and junction treatment. In addition, for the same reasons, a condition to ensure that the crossover and access is constructed prior to occupation is necessary. Whilst details sufficient to assess the proposed development are included on the approved plans, full details of proposed and existing ground levels on the site and neighbouring sites are necessary to ensure that the development blends into the locality and protects the living conditions of neighbouring occupiers. Details of a surface water drainage system are necessary to prevent an increased risk of flooding and pollution.
37. Conditions to protect trees and planting to be retained and ensure that tree works are carried out to enhance the appearance of the site are necessary to help the development blend into the locality. A condition to control measures to enhance the nature conservation interest of the site is necessary as part of the soft landscaping of the site, to increase biodiversity. Details of the proposed acoustic fence are required to protect the living conditions of the occupiers of 71 Falmer Road, with regard to noise and disturbance and to protect and highway safety. Conditions to ensure energy and water efficient homes that are accessible and adaptable are necessary to ensure a sustainable development. A condition to ensure that refuse and recycling facilities are available on first occupation of the development is necessary to ensure no nuisance to existing and future occupants would arise. A condition to control the details of all boundary treatments is required to ensure that the development blends into the locality and protects the living conditions of existing and future occupants.

Conclusion

38. For the above reasons, and taking all other matters raised into consideration, I conclude that the appeal should be allowed.

R Barrett

INSPECTOR

Annex A

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.

- 2) The development hereby permitted shall be carried out in accordance with the approved plans Ref TA864/P01; TA864/P010 Rev F; TA864/P11 Rev F; TA864/P12 Rev D; TA864/P13 Rev B; TA864/P14 Rev B; TA864/P15 Rev B; TA864/P16 Rev C; TA864/P17 Rev A excluding the window arrangement on plots 5-8 typical side (south) elevation and plot 8 garage side (north) elevation; TA864/P18 Rev B; TA864/P19 Rev B; TA864/P20 Rev C; TA864/P21 Rev C; TA864/P22 Rev A.
- 3) No development shall take place until the details of the window arrangement on plots 5-8 is submitted to and approved in writing by the Local Planning Authority. Such details should accord with typical floor plans plots 1-8 as set out on plan TA864/P14 Rev B. Development shall be carried out in accordance with the approved plans.
- 4) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings and hard surfaced areas hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extension, enlargement, alteration or provision within the curtilage of the dwellings, as provided for within Schedule 2, Part 1, Classes A-E, other than those expressly authorised by this permission, shall be carried out within the curtilage of any dwelling house.
- 6) The development hereby approved shall be carried out in accordance with the conclusions and recommendations set out in the Ecology Report, produced by Applied Ecology and dated 1 September 2015.
- 7) The parking areas shown on the approved plans shall be completed prior to the first occupation of the development and retained for that use for the occupants and visitors of the development thereafter.
- 8) Notwithstanding details on the approved plans, prior to first occupation of the development hereby approved, details of disabled parking, for the occupants and visitors of the development, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented and available for use prior to the first occupation of the development and shall thereafter be retained for that use.
- 9) No development shall commence until a surface water drainage scheme for the site, based on sustainable urban drainage principles and an assessment of the hydrological and hydro-geological context of the development has been submitted to and approved in writing by the Local Planning Authority. Such details

shall include the maintenance and management of such a scheme. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed and thereafter maintained and managed in accordance with it.

- 10) Notwithstanding details on the approved plans, prior to first occupation of the development hereby approved, details of secure cycle parking facilities for the occupants and visitors of the development shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented and available for use prior to the first occupation of the development and shall thereafter be retained for that use.
- 11) All tree work shall be carried out in accordance with the British Standard 3998 (2010) *Recommendations for Tree Work*.
- 12) All the trees and hedges shown on the approved plans as "to be retained" and/or any trees whose canopies overhang the site shall be protected by strong fencing, the location and type to be previously approved in writing by the Local Planning Authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the Local Planning Authority.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]
- 13) The dwellings hereby approved shall be completed in accordance with the Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) prior to the first occupation and shall be retained as such thereafter. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice or Initial Notice to enable building control body to check compliance.
- 14) None of the residential units hereby approved shall be occupied until each residential unit built has achieved an energy efficiency standard of a minimum of 19% CO₂ improvement over Building Regulations requirements Part L 2013 (TER Baseline).
- 15) None of the residential units hereby approved shall be occupied until each residential unit has achieved a water efficiency standard using not more than 11litres per person per day maximum indoor water consumption.
- 16) No development shall take place until detailed drawings of the site's access road and footway to include junction treatment,

dropped kerbs, tactile paving and street lighting, has been submitted to and approved in writing by the Local Planning Authority. The works shall be designed to as near adoptable standards as is possible and be implemented in accordance with the details approved prior to the first occupation of the development and retained as approved thereafter.

- 17) The amended crossover and access shall be constructed prior to the first occupation of the development hereby permitted.
- 18) No development shall commence until full details of existing and proposed ground levels (referenced by Ordinance Datum) with the site and on land and buildings adjoining the site by means of spot heights and cross sections showing the proposed siting and finished floor levels of all buildings and structures, have been submitted to and approved in writing by the Local Planning Authority. The development shall then be implemented in accordance with the approved levels details.
- 19) Prior to the first occupation of the development hereby approved, a detailed plan showing the position, height, design, materials and type of all existing and proposed boundary treatments shall have been submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be provided prior to the first occupation of the development as approved and retained in such a condition thereafter.
- 20) Prior to the first occupation of the dwellings hereby permitted, a soft landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include: planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants (noting numbers, densities and implementation programme and extensive replacement tree planting. It shall also include a scheme to enhance the nature conservation interest of the site, to accord with the standards described in Annex 7 of Supplementary Planning Document 11: *Nature Conservation and Development*.

The landscaping scheme shall be carried out strictly in accordance with the agreed details and shall be carried out within the first planting season after the first occupation of the development. The landscaping shall be maintained to the satisfaction of the Local Planning Authority for a period of 5 years after planting, such maintenance to include the replacement of any trees and shrubs that die or have otherwise become, in the opinion of the Local Planning Authority, seriously damaged or defective. Such replacements to be of a similar species and size as those originally planted.

- 21) Prior to the first occupation of the development hereby permitted, full details of the acoustic fence to be located along the boundary of the access road and 71 Falmer Road, shall be submitted to and approved in writing by the Local Planning

Authority. The fence, as approved, shall be constructed prior to the first occupation of the development and retained as approved thereafter.

- 22) The development hereby approved shall not be first occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully implemented and made available for use. They shall be retained as approved and for that use thereafter.