

Appeal Decision

Site visit made on 27 March 2017

by Nicola Davies BA DipTP MRTPI

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

Decision date: 26th April 2017

Appeal Ref: APP/Q1445/W/16/3165865
107 Boundary Road, Hove BN3 7GB

- 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 Coleman of Castlemist Finance Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/02047, dated 2 June 2016, was refused by notice dated 2 November 2016.
 - The development proposed is demolition of existing house and erection of building to form 7 flats with associated parking.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing house and erection of building to form 7 flats with associated parking at 107 Boundary Road, Hove BN3 7GB in accordance with the terms of the application, Ref BH2016/02047, dated 2 June 2016, subject to the conditions set out in the Schedule to this decision.

Application for costs

2. An application for costs was made by Brighton & Hove City Council against Mr Coleman of Castlemist Finance Ltd. That application is the subject of a separate Decision.

Preliminary Matters

3. I have taken the name of the Appellant's company from the appellant's appeal form as there appears to be a spelling error on the planning application form. However, I have taken the appellant's name from the planning application form, although I note an initial has been provided on the appellant's appeal form.

Main Issues

4. Whether the financial contributions sought in respect of affordable housing and sustainable transport improvements are necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development.

Reasons

5. A completed section 106 agreement, dated 3 March 2017, is before me. It provides for off-site affordable housing and improved sustainable transport
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infrastructure in the form of a pedestrian route in the vicinity of the proposed development. I will deal with each contribution in turn.

Affordable housing

6. The S106 agreement makes provision for an affordable housing contribution, although for a lesser sum than originally sought by the Council following a financial viability assessment having been undertaken. Policy CP20 of the Brighton and Hove City Plan Part One requires affordable housing contributions from all types of residential development where the net gain is over 5 units, as is the case here. A sliding scale is applied which requires a contribution of 20% to be sought on sites between 5 to 9 units.
7. The Appellant argues, in light of the Court of Appeal's decision in May 2016 relating to the Written Ministerial Statement (WMS) of 28 November 2014, that an affordable housing contribution should not be sought by the Council. Government policy as set out in the WMS indicates that for 10 units or less which have a maximum combined gross floor space of no more than 1000 m² no affordable housing or tariff style contributions should be sought. The reinstatement of the WMS post-dates the adoption of Policy CP20 and the appellant contends that the WMS outweighs this adopted policy. There is conflict between the national threshold relating to the provision of affordable housing in the WMS and the local thresholds set out in Policy CP20.
8. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Policy CP20 forms part of the development plan, whilst the WMS and Planning Practice Guidance (PPG) are a material consideration. However, as the WMS and PPG came into effect after the adoption of Policy CP20, it represents the latest expression of national policy and carries significant weight in the balancing exercise.
9. The Council refer me to their 'Objectively Assessed Needs for Housing in Brighton & Hove' and the identified net need for additional affordable housing of 810 units per annum over the plan period to 2030. The Council also refers to its Housing Register that indicates a significant need for affordable housing in the city, of which a high proportion are in a priority housing need band. In addition, the Council indicate that housing prices in the city are higher than other parts of the country. I acknowledge also that significant housing land supply constraints limit the outward expansion of the city and that there is a limited supply of alternative developable sites within the urban area. Furthermore, I note the annual residential monitoring indicates that small development sites (less than 10 units) contribute more than 50% of overall housing delivery.
10. The Appellant has not contested any of these details and has accepted the Council has a five year housing land supply in place. Policy CP20 was drawn up and adopted in the light of strong evidence of the need for affordable housing in Brighton & Hove. The case for affordable housing contributions on sites between 5 and 9 houses in Brighton and Hove is therefore strong, and Policy CP20, as part of the recently adopted City Plan Part One, should therefore also be afforded substantial weight.
11. Policy CP20 allows for site specific circumstances to be taken into consideration and the costs relating to the development and the financial

viability of developing the site to be considered. Subsequent to the Council reaching their decision the contributions sought by the Council have been subject to a viability assessment in which the Council has accepted a reduced contribution figure. The original amount sought of £164,000 has been established to be a disproportionate cost to develop the site in this case and would render the scheme unviable. A substantially reduced figure of £4561 toward off-site affordable housing has been established and the proposed scheme would be viable with this contribution being secured.

12. On the basis of the evidence before me, I consider that the WMS and PPG do not outweigh the development plan in this instance. Consequently, a financial contribution towards affordable housing is required. I have had regard to the fact the appellant has entered into a S106 agreement to secure payment of this reduced contribution and has not contended that the development would be unviable otherwise. I conclude that the contribution is necessary to make the development acceptable, is directly related to the development and is fairly and reasonable related in scale and kind to the development. It would satisfy the tests of Regulation 122 of the Community Infrastructure Regulations 2010 and paragraph 204 of the National Planning Policy Framework (the Framework).
13. The Council have drawn my attention to two appeal decisions in Rottingdean and Ovingdean, and seven appeal decisions in other parts of the country where development plan policy for affordable housing was held to outweigh the WMS/PPG. On the other hand, the appellant has highlighted an appeal decision at Hove Business Centre which prefers the WMS/PPG over local policy. However, on the basis of the evidence in front of me it appears to me that there is a stronger balance in favour of policies in the development plan within the decisions drawn to my attention. Furthermore, there is strong evidence of the need for affordable housing in Brighton & Hove and for this reason, I am satisfied that a need arises from the development for the revised contribution sought by the Council.

Sustainable transport improvements

14. The S106 agreement makes provision for a sustainable transport infrastructure contribution. This is required to improve the pedestrian route between the appeal site and Sainsbury's superstore, Benfield Primary School, public transport, local library, medical facilities and parks including, but not limited to, an uncontrolled pedestrian crossing with dropped kerbs and tactile paving across the Boundary Road traffic signals located at its junction with Old Shoreham Road.
15. The proposed development would create six additional households and the above local services and facilities are within close walking distance of the appeal site. The future occupiers would likely use this pedestrian route thus placing greater pressure upon it and exacerbating the problems of the existing infrastructure. The contribution would help improve this infrastructure. This infrastructure and contributions toward it is supported by Policies CP7 and CP9 of the City Plan Part One that seek to improve accessibility and safety and ensure that the necessary physical infrastructure is appropriately provided in time to serve the development. I consider the contribution to be necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and

kind and would not affect the viability of the scheme and the S106 Legal Agreement contributes to the reason for granting permission.

16. The appellant does not contest this contribution request and has supported its provision by providing a draft Unilateral Undertaking at application stage to secure this contribution. The appellant has also indicated acceptance of its necessity and that it relates to the proposed scheme, as well as considering it to be reasonable.
17. Overall, I conclude that the proposed development would be in line with Policies CP7 and CP9 of the City Plan Part One, which seek through the provision of infrastructure contributions to provide measures that will help to manage and improve mobility and lead to a transfer of people onto sustainable forms of transport to reduce the impact of traffic and congestion and increase physical activity. The proposed development would also be in line with the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 and paragraph 204 of the Framework.

Other Matters

18. The proposal raises a number of other issues which have been carefully considered by the Council, both in the past and as part of this application. Local concern is expressed about the proposed development being an overdevelopment of the appeal site, being too large and of a design out of keeping with the area. The proposed scheme is very similar to a proposal that was allowed at appeal in 2009 (planning ref BH2008/03442 & appeal ref APP/Q1445/A/09/2101398). I consider the size, design, and site coverage of the proposed development to be acceptable. Indeed the Inspector, when considering the earlier proposal, commented that "the block of flats would be of greater size than the existing dwelling and of a more contemporary design, with contrasting materials and finishes. However, this plot is wider than its neighbours; the proposed building would be of a similar scale, with pitched roofs, and would not be significantly higher than its neighbours. There would be sufficient space on either side for it not to appear cramped". Given the similarity of the scheme before me to that of this previous proposal, I have no reason to take a contrary view to that of the previous Inspector.
19. With regard to the future occupiers' living environments I consider the flat and room sizes to be acceptable, as well as outlook and light to the basement flats. In addition, the previous Inspector concluded that the proposed development, incorporating private balconies or courtyard areas, was acceptable. Although the second floor flat would have only a Juliette balcony all occupiers would have access to a communal garden at the rear. The previous Inspector also found these matters to be acceptable.
20. Concern is also raised to potential overlooking resulting in loss of privacy to the adjoining occupiers. The balconies and windows in the rear elevation would increase overlooking of adjoining occupiers properties but this would not, in my opinion, be to the extent that would be harmful to the living conditions of these occupiers and would be of a degree normally found to exist in residential areas such as this.
21. Seven parking spaces are proposed to the rear of the development in a similar layout to that recently proposed in planning ref BH2015/00233 (appeal ref APP/Q1445/W/15/3140296). In that case a Noise Impact report was

submitted by the applicant to inform this application. The Inspector found the acoustic report to be robust and concluded car park noise to be within acceptable levels. Given the similarity of the scheme before me to that of this previous proposal I have no reason to take a different view. Further to this, I accept that some noise and disturbance may be experienced during demolition and construction but this would likely take place over a short period of time and any disturbance to neighbouring occupiers would be limited. Similarly, the noise generated by the occupiers of seven flats would not be out of keeping with that which would take place in residential areas.

22. In reaching my decision, I have also considered the concerns raised in respect of vehicle movements and highway safety in close proximity to the highway junction and railway crossing. I note that the Council did not raise highway safety as an issue, and I do not consider highway safety would be compromised or the more intensive occupation of the appeal site would lead to problems occurring.
23. Concern is also raised about the potential for the proposed semi-basement to undermine the foundations of adjoining properties. Matters relating to the structural impact of adjoining dwellings would be subject to Building Regulations.
24. There would be space to the rear of the building to provide cycle and refuse/recyclable storage provision. I have no reason before me that would suggest that either facility could not be satisfactorily accommodated at the appeal site. These could, in my opinion, be adequately dealt with by appropriate planning condition, as have been set out in the accompanying schedule.
25. I have no reason to conclude that the resulting garden area at the appeal site would negatively impact wildlife.
26. Some residents suggest that it is a shame to lose the existing house and that an alternative scheme of three flats and/or a car free development would be a more suitable development for the site. However, I am required to consider the proposed development that is before me. The proposal can and should be considered on its own merits.
27. None of these matters alter my conclusion that the appeal should be allowed.

Conditions

28. I have considered the planning conditions suggested by the Council in light of paragraph 206 of the Framework and the advice in the PPG. In addition to the standard time limit conditions and in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans. The appellant has indicated that such conditions would be acceptable to him.
29. A condition relating to materials is appropriate in the interests of the character and appearance of the area, as is a condition relating to hard and soft landscaping and boundary treatments which can ensure appropriate surfacing materials are utilised. The existing Beech tree is an attractive feature at the site frontage and its protection by means of a construction specification/method statement and an arboricultural method statement should be secured for similar reasons.

30. A condition relating to parking provision is necessary to prevent inconvenience to road users and to ensure highway safety. A cycle storage facility condition would encourage sustainable travel as an alternative to private vehicle. A refuse and recycling storage facilities condition is necessary to ensure the protection of the character and appearance of the area and the living conditions of adjoining occupiers.
31. The appellant has indicated that conditions relating to the materials as shown on the approved plans and parking provision would be acceptable to him but I consider, in the case of the materials condition, that Council approval of the materials is necessary to ensure the character and appearance of the area is safeguarded.
32. I consider a condition limiting cables, wires, aerials, pipework, meter boxes or flues to the front elevation to be unnecessary as there is no special justification in this area to control these and there is no evidence that such installations would be visually harmful. There is no evidence that the appeal site would be contaminated and other environmental legislation would deal with this in the event that contamination may be found to be present. Similarly, energy and waste efficiency would be a matter for Building Regulations. I also consider a condition relating to access signage to give priority to vehicles entering the site to be unnecessary as there is no evidence that would indicate the use of access would be unsafe or that this is essential to ensure highway safety.

Conclusions

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

Nicola Davies

INSPECTOR

SCHEDULE

CONDITONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed 783 Block Plan Proposed, 788-1, 788-2, 788-3, 788-4, 788-5, 788-6, 788-7 and 788-8.
- 3) No development above ground floor slab level of any part of the development hereby permitted shall take place until the materials to be used in the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) Prior to first occupation of the development hereby permitted, a scheme for landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following:
 - a. details of all hard and soft surfacing;
 - b. details of all boundary treatments;
 - c. details of all proposed planting to all communal areas and/or all areas fronting a street or public area, including numbers and species of plant, and details of size and planting method of any trees.

All hard landscaping and means of enclosure shall be completed in accordance with the approved details prior to first occupation of the development. All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 5) No development or other operations shall commence on site in connection with the development hereby approved, (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and or widening, or any operations involving the use of motorised vehicles or construction machinery) until a detailed Construction Specification/Method Statement for the driveway in the vicinity of the Beech tree to the front of the existing property has been submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in accordance with the approved Construction Specification /Method Statement.
- 6) No development or other operations shall commence on site in connection with the development hereby approved until a detailed Arboricultural Method Statement regarding protection and pruning of the Beech tree has been submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in accordance with the approved Arboricultural Method Statement.

- 7) The vehicle parking area shown on the approved plans shall be laid out for parking and thereafter shall be kept available for parking provision for the lifetime of the development.
- 8) Prior to first occupation of the development hereby permitted, details of the secure cycle parking facility shall be submitted to and approved in writing by the Local Planning Authority. The secure cycle parking facility shall be implemented in accordance with the approved details and made available for use prior to the first occupation of the development and shall thereafter be kept available for such use for the lifetime of the development.
- 9) Prior to first occupation of the development hereby permitted, details of the refuse and recycling storage facility shall be submitted to and approved in writing by the Local Planning Authority. The refuse and recycling storage facility shall be implemented in accordance with the approved details and made available for use prior to the first occupation of the development and shall thereafter be kept available for such use for the lifetime of the development.