

Appeal Decision

Site visit made on 24 April 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 18 May 2017

Appeal Ref: APP/L3815/W/17/3169088
34 Ormonde Avenue, Chichester PO19 7UX.

- 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 Andy Southcott against the decision of Chichester District Council.
 - The application Ref CC/16/02363/FUL, dated 14 July 2016, was refused by notice dated 27 September 2016.
 - The development proposed is the demolition of existing dwelling at 34 Ormonde Avenue and construction of 3 dwellings on land to the rear, with associated access, parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling at 34 Ormonde Avenue and construction of 3 dwellings on land to the rear, with associated access, parking and landscaping at 34 Ormonde Avenue, Chichester PO19 7UX in accordance with the terms of the application, Ref CC/16/02363/FUL, dated 14 July 2016, subject to the conditions set out in the schedule to this decision.

Procedural Matters

2. To mitigate the impact of the development on the Chichester and Langstone Harbours Special Protection Area, the appellant submitted a Unilateral Undertaking. Consequently, the Council confirmed the withdrawal of its third reason for refusal.

Main Issues

3. In light of the above, the main issues are the effect of the development on the character and appearance of the area and its flooding implications.

Reasons

Character and appearance

4. The appeal site is a square plot of ancillary garden land located to the rear of properties fronting Velyn and Ormonde Avenues to the north and east respectively. To the south and west it is bounded by allotments. Save for a small summer house/shed sited close to the eastern boundary, the land is mainly laid to grass. It is therefore an intrinsically green, open space, albeit with a certain degree of visual containment, which contributes to an open aspect to the rear of those aforementioned properties.
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5. The three dwellings would be sited in the centre of the site with parking areas to the front and outdoor amenity space to the rear. The development would be accessed via a new shared driveway between 32 and 36 Ormonde Avenue following the demolition of No 34. The surrounding area is residential in nature and part of a planned estate development. It has a homogenous character with groups of dwellings of similar scale and appearance sharing a common relationship with the street.
6. I accept that the demolition of No 34 would unbalance the pattern of frontage development along Ormonde Avenue. However, the geometry of the access would be fairly modest and the resultant gap between Nos 32 and 36 would not be unduly excessive. The loss of No 34 would not be readily apparent in more distant, oblique views to the north and south where the access would be largely concealed by on-street and frontage parking. Whilst, the loss of No 34 would be apparent in more immediate views, it is not a distinctive building and I am unpersuaded that the effect on the street scene would be so unacceptable as to provide a compelling reason to dismiss the appeal.
7. The site occupies a sustainable location within the Chichester Settlement Boundary. The scheme would make the efficient use of the land delivering a net increase of 2 dwellings. There is no suggestion from the Council that the density of the development, which broadly accords with development plan objectives, would be inappropriate and I see no reason to take a contrary view on this matter.
8. The houses would occupy a back-land location lacking a traditional frontage to Ormonde Avenue. However, there is nothing in the policies referred to by the Council that preclude back-land development per se. Although the plot sizes would be smaller than those to the north and east, there would be ample separation between the dwellings as well as to the appeal site boundaries. Their proportions, detailing and materials would all be broadly consistent with adjacent properties and I can find nothing untoward in that regard particularly as the development would be well screened from public vantages by existing frontage development. Consequently, the dwellings would not appear unduly cramped, intrusive or prominent in the street scene.
9. I have noted the Council's view that the height of the dwellings would be incongruous. However, the submitted plans show that they would be only slightly higher than those to the east. The Council has not adduced any substantial evidence to explain why existing views across the appeal site from the recreation land or the conservation area are worthy of special protection. In my view, the perimeter landscaping would heavily filter views of the development and even in the winter months the dwellings would simply be seen against the general townscape beyond. Consequently, the setting of nearby heritage assets would be preserved.
10. Overall, there would be some change to the character and appearance of the area. However, for the reasons given above, I find that the degree of change would not be at a level to cause unacceptable harm or to bring the proposal into conflict with the development plan. I therefore conclude that the development would not cause unacceptable harm to the character and appearance of the area. There would thus be no conflict with Policies 1, 33, 40 and 47 of the "*Chichester Local Plan: Key Policies 2014-2029*" (the LP). Collectively these seek to promote sustainable, high quality development that

is in keeping with the character of its surroundings. “*The National Planning Policy Framework*” (the Framework) would also be satisfied in terms of the need to ensure that development responds to local character, reflects its surroundings and adds to the overall quality of the area.

Flood Risk

11. Paragraphs 100-104 of the Framework seek to avoid inappropriate development in areas at risk of flooding by directing development away from areas of highest risk. The “*Planning Practice Guidance*”¹ (the PPG) states that in all cases that the proposed development should be safe and not lead to increased flood risk elsewhere. The PPG sets out the main steps to be followed. In effect, if there are better sites in terms of flood risk, or a proposed development cannot be made safe, it should not be permitted. These aims are reflected in Policy 42 of the LP.
12. According to the Flood Risk Assessment (FRA)² submitted with the appeal, most of the site including the proposed access and habitable rooms would be within Flood Zone 1 and at a lower risk from flooding. However, the western edge of the site slopes away towards the allotments and subsequently encroaches into Flood Zones 2 and 3 which are classed as medium /high probability flood zones respectively. Within such areas, the Framework advises that a Sequential Test should be carried out. In the absence of such a test the Council argue that they cannot be sure that there are not more preferable housing sites in the district.
13. However, that part of the site within Flood Zones 2 and 3 would form the gardens to the proposed dwellings. Accordingly there would be no material change in its use. Decisively the access, parking areas and the houses themselves would be within Flood Zone 1 meaning that future occupiers would have safe refuge in the event of a flooding event. Consequently, I am satisfied that a Sequential Test is not required in this instance.
14. The FRA concludes that subject to various resilience measures being incorporated such as setting minimum floor levels for habitable rooms and the provision of sustainable drainage systems, the development would not be at actual risk of flooding nor would it increase flooding risk elsewhere. The Environment Agency has not objected to the application on the basis of the measures in the FRA. Although the FRA was originally submitted with a slightly different application, its recommendations could be secured by way of a planning condition.
15. Based on the very particular circumstances of this case and the evidence before me, I conclude that the development would not be placed at an unacceptable risk of flooding. There would thus be no conflict with Policy 42 of the LP or advice in the Framework regarding flooding. In coming to that view I have noted the appeal decisions provided by the Council. However, in those cases the schemes involved operational development within Flood Zones 2/3. Consequently, for the reasons given above I do not find them to be directly comparable to the scheme before me which I have assessed purely on its own merits.

¹ Ref ID: 7-033-20140306

² Flood Risk Assessment & Government SUDS Guidance (March 2015) Planning Report & Preliminary Drainage Strategy & Calculations 25 January 2017

Other Matters

16. Local residents have expressed a wide range of concerns including, but not limited, to the following; overlooking and a loss of privacy, the effect on local heritage assets, loss of wildlife habitats and trees, inadequate sewerage/drainage infrastructure, noise and disturbance. Whilst I understand the concerns of local residents, it is evident that these matters were considered by the Council at the application stage and there is no compelling evidence before me which would lead me to a different conclusion.
17. Due to the site's open nature, neighbouring occupiers currently experience a largely unrestricted rear aspect over the site. This contributes to standards of privacy and outlook for neighbouring occupiers that are relatively high in the context of a built-up area. Whilst I accept that the dwellings would be visible from a number of neighbouring gardens and rear facing windows, in most cases there would be a good degree of separation as well as intervening tree cover. I have some concern about the potential outlook from the rear garden of No 7 Velyn Avenue given that the plans show the landscaping is to be removed on the site boundary. However, there does appear to be some scope to the north of parking space 6 to retain or replace the existing landscaping or to introduce screen fencing. These matters could be addressed by way of appropriate planning conditions. Based on the foregoing, neighbouring occupiers would not be subjected to unreasonable levels of enclosure or overbearing elements in their rearward views.
18. Although highway safety is clearly a concern for a number of residents, it did not form part of the Council's refusal reasoning. It is pertinent that there has been no formal objection from the Highway Authority. To my mind, the number of traffic movements generated by the development would not be significant and as I saw at the time of my visit traffic speeds are low along Ormonde Avenue. Visibility from the site access, off-street parking and internal turning provision would all be provided to the required standard. As a result, there is no sound basis on which to conclude that the development would pose a threat to highway safety.
19. I have considered the argument that the appeal scheme would set a precedent for similar developments nearby. However the appeal site is something of an anomaly and no directly comparable sites have been put before me. Each application and appeal must be determined on its merits and a generalised concern of this nature does not justify withholding planning permission in this case.
20. Finally, local residents have referred to a restrictive covenant on the land. However, the grant of planning permission does not override a restrictive covenant which is a legal matter requiring separate resolution. As such, this is not a material planning consideration to which I can attach any significant weight.

Conditions

21. I have considered the conditions suggested by the Council against advice in the PPG. In some instances I have amended the conditions provided by the Council in the interests of brevity and to ensure compliance with the PPG.

22. I have imposed a condition specifying the approved plans as this provides certainty. I have imposed a condition relating to external facing materials to ensure the satisfactory appearance of the development. Conditions pertaining to the provision of a surface and foul water drainage systems as well as flood prevention measures set out in the FRA are necessary to ensure satisfactory drainage of the site in the interests of flood prevention. For similar reasons, it is necessary to removed permitted development rights to ensure the buildings cannot be extended rearwards into those areas at higher risk of flooding. Conditions relating to landscaping, boundary treatments, a Construction Method Statement and new window openings are all necessary to protect the living conditions of neighbouring occupiers. I have imposed a parking and access condition to ensure the development does not give rise to overspill parking on the surrounding residential streets. Cycle stores and bin storage areas are shown on the submitted plans and therefore a condition relating to these is unnecessary.

Conclusion

23. I appreciate that there is considerable local opposition to the scheme. However, to carry weight, opposition to a proposal should be founded on valid planning reasons, which are supported by appropriate evidence.
24. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should succeed.

D. M. Young

Inspector

SCHEDULE OF CONDITIONS

- 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 following approved plans: 160005/01, 160005/02, 160005/803, 160005/04 and 160005/05
- 3) No development above slab level shall take place until details of the materials to be used in the construction of the external surfaces of the buildings and the access road hereby permitted 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) No development above slab level shall take place until full details of the proposed surface water drainage scheme and foul water disposal have been submitted to and approved in writing by the Local Planning Authority. The surface water design should follow the hierarchy of preference for different types of surface water disposal systems as set out in Approved Document H of the Building Regulations and the SUDS Manual produced by CIRIA. Winter groundwater monitoring to establish highest annual groundwater levels and Percolation testing to BRE365, or similar approved, will be required to support the design of any Infiltration drainage. The foul water scheme shall include all necessary on site and off site works. No building shall be occupied until the complete surface water drainage system serving the properties and the foul water disposal details have been implemented in full accordance with the agreed details. The responsibility for securing all necessary agreements and permits from the landowner or other party shall rest with the developer.
- 5) Notwithstanding the details shown on the approved plans, no dwelling shall be occupied until a hard and soft landscaping scheme has been submitted to and approved in writing by the local planning authority including planting of trees and areas to be grassed. All work shall be carried out in the first planting season after commencement of the development unless agreed otherwise in writing by the local planning authority, and shall be maintained for a period of 5 years. Any trees that die within 5 years shall be replaced with a like for like species.
- 6) Prior to first occupation of any dwelling, details of screen walls and/or fences have been submitted to and approved by the local planning authority and no dwellings shall be occupied until such screen walls and/or fences associated with them have been erected. Once erected they should be maintained in perpetuity unless otherwise agreed in writing by the local planning authority.
- 7) No part of the development shall first be occupied until such time as the vehicular access serving the development and the parking and turning areas has been constructed in accordance with the approved drawing, including details to be provided regarding the skid cover for the inspection chamber cover. These areas shall be permanently retained thereafter.

- 8) The development shall not commence until a Construction Method Statement has been submitted to and approved, in writing, by the local planning authority. The statement shall include:
 - i) The proposed hours and days of working;
 - ii) Methods and details of dust suppression during construction; and
 - iii) Details of measures to prevent the deposit of mud and/or other debris on the public highway.
 - iv) Details of parking, turning, unloading areas for employees and contractors
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting or amending that Order) no windows or other openings other than those shown on the plans hereby approved shall be formed at first floor level north facing gable wall of Plot 3 without a grant of planning permission from the local planning authority.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting or amending that Order) no additions to, or extensions or enlargements of, or alterations affecting the external appearance of, the buildings hereby approved shall be made or erected without a grant of planning permission from the Local Planning Authority.
- 11) The development permitted by this planning permission shall only be carried out in accordance with the mitigation measures detailed in the ARK Environmental Consultancy Ltd Flood Risk Assessment dated 25 January 2017. The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.