
Appeal Decision

Inquiry held on 13 - 15 June 2017

Site visit made on 15 June 2017

by K H Child BSc (Hons) MA MRTPI

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

Decision date: 14 August 2017

Appeal Ref: APP/Q1445/W/16/3163517

46 - 54 Old London Road, Patcham, Brighton BN1 8XQ

- 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 Yourlife Management Services Ltd. against Brighton & Hove City Council.
 - The application Ref BH2016/01961, is dated 27 May 2016.
 - The development proposed is described as 'erection of 44 Assisted Living apartments for older persons (C2 use) with associated communal facilities, parking and landscaping following the demolition of the existing buildings.'
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Decision

1. The appeal is dismissed and planning permission is refused for the erection of 44 Assisted Living apartments for older persons (C2 use) with associated communal facilities, parking and landscaping following the demolition of the existing buildings at 46 - 54 Old London Road, Patcham, Brighton BN1 8XQ.

Procedural Matters

2. The appeal is against the non-determination of the application within the prescribed period. However, the Council's Planning Committee resolved on 11 January 2017 that, had jurisdiction been retained, they would have refused the application on four grounds, which, in summary, broadly relate to the following matters:
 - i. The effect of the scheme in terms of flood risk, and the provision of an appropriate sustainable drainage system
 - ii. The effect of the proposal on the character and appearance of the street scene and the locality
 - iii. Absence of information to demonstrate that future occupiers of the scheme would be sufficiently protected from noise disturbance
 - iv. Lack of developer contributions towards affordable housing, open space and indoor sport, sustainable transport, an artistic component and the Council's local employment scheme.
3. Prior to the inquiry the Council agreed that its objection in relation to reason iii could be overcome by condition. It was also agreed that the proposal could be

categorised as C2 Use Class (residential institutions), and that consequently planning obligations were not necessary in relation to affordable housing and open space and indoor sport. An executed planning obligation was submitted at the inquiry by the main parties, covering the other types of obligation referenced in reason iv, and the Council has confirmed the withdrawal of its objection under reason iv in light of this document. The executed planning obligation is dealt with below.

4. At the inquiry the appellant tabled three amended plans relating to alterations to the landscaping scheme (SE_2230_03_AC_010 Rev. J, SE_2230_03_AC_011 Rev L and 8944/03 Rev A). These do not alter the form of the proposals, and landscaping details can be dealt with via condition. As such I consider that no prejudice would be caused to any party by the acceptance of these plans. I have therefore considered them as part of the appeal proposals. On this basis Council has confirmed that, although their objection under reason ii is maintained, the landscaping element of their concerns relating to the loss of trees and shrubs and replacement planting, no longer applies.
5. At the inquiry the appellant put forward a number of other revised plans which indicate an amended roof form (SE_2230_03_AC_012 Rev H, SE_2230_03_AC_014 Rev G and SE_2230_03_AC_015 Rev H). However, the plans show a reasonable degree of difference compared to those submitted as part of the application, and the form and appearance of the proposed building is a key issue which local residents have commented on. Overall I am therefore not satisfied that third parties would not be prejudiced by the amended plans. Accordingly I have not taken these revised plans, or the altered roofline as shown on the appellant's amended verified visual montage, into account in my determination of this appeal.
6. The appellant's proof of evidence relating to planning matters was submitted by Ian Hann from The Planning Bureau. Mr. Hann was unable to attend the inquiry and his evidence was given by Alex Child who confirmed that he endorsed the proof of evidence.
7. The inquiry sat for three days, and I held an accompanied site visit on 15 June 2017.

Main Issues

8. Accordingly, I consider the main issues are:
 - The effect of the proposal on the character and appearance of the area.
 - Whether the proposal would be acceptable in terms of flood risk and drainage.

Reasons

9. The appeal site is situated in Patcham village on the northern edge of Brighton. The site is currently occupied by five detached dwellings, and is bounded by other residential development to the sides and rear. As such the immediate area is predominantly residential, albeit there is a school and community hall opposite the appeal site, and a range of shops and services in the village centre situated a short distance away along Old London Road.

10. The proposal would involve the demolition of the current dwellings on the site, and the construction of a building providing 44 apartments for older persons. The apartments would be managed as part of an assisted living facility (C2 Use Class) for persons in need of care and assistance, and generally restricted to those age 70 years or more¹.

Character and appearance

11. Old London Road is an attractive sylvan road which leads from the village centre south towards the main A23 and Brighton. Buildings are mainly detached and set back from the road, and the extensively landscaped and treed front gardens provide the street with a green and suburban appearance. There are also views of trees and vegetation to the rear of the properties, as seen above and between dwellings, which add to the verdant nature of the setting.
12. The dwellings on the appeal site, along with those to the south and east, are predominantly two storey houses and bungalows set in spacious plots with long rear gardens. This form of development is highlighted in the Council's Urban Characterisation Study (2009) which identifies land on the east side of Old London Road as part of a distinct 'Patcham Suburb' character area. There is no physical barrier between the appeal site and the adjoining residential properties to the south, and when travelling along Old London Road the appeal site is seen as part of a contiguous row of detached dwellings on the east side of the road. As such, and notwithstanding some variety in building styles and the presence of nearby community buildings, I consider the appeal site forms part of a residential area to the south of the village centre which is characterised by low density suburban housing development. In this regard I disagree with the appellant's character assessment, as illustrated in Appendix B of Mr. Brown's proof of evidence, which categorises the appeal site as lying within the northern area of mixed character.
13. The proposed building would be mainly three floors in height, albeit with some rooms in the roofspace and elements of 'cut-out' areas in the roof profile which would be lower than the main ridgeline. The small southern section of the building would be two storeys in height. The building would span almost the whole width of the appeal site, and include a three storey wing at the back extending almost to the rear boundary. As such, and notwithstanding the varied roof profile, including a flat roof on rear sections, the building would be substantial in scale, height, massing and width.
14. I note that the current dwellings on the site take up a considerable width of their plots. However, the proposed building would occupy a significantly larger footprint, and have a substantially greater height, bulk and density than the existing dwellings and those to the south and east.
15. The nearby Park Court flats are three storeys in height, and there are substantial school buildings opposite the appeal site. Buildings on these sites also extend at depth from the road frontage. Nonetheless, the Park Court flats are screened by mature landscaping on the road frontage, whilst the main part of the school buildings are positioned further back from the main road. These factors significantly reduce the visibility and bulk of these buildings, as seen from Old London Road. Their width, density and height would also be less than

¹ With spouses whom are at least 55 years old where relevant, as cited in Mr Hann's proof of evidence.

- that of the proposed building, albeit only marginally so in terms of a height comparison with the Park Court flats.
16. I note that the proposed building would not extend any further forward on the site frontage, thereby relating to the building line of adjacent dwellings. Nonetheless, the proposed building would be clearly visible along Old London Road, and a dominant feature in the streetscape. The scale and bulk of the building, along with its continuous long frontage stretching along the main road, would introduce an urbanised appearance to the appeal site. It would also substantially reduce the views of trees that are currently available above and between the dwellings on the site, and detract from the openness of the street scene.
 17. The proposed roof profile incorporates a range of forms, heights and styles, including gable ends, pitched elements and 'cut-out' sections. To a degree this helps to break down the massing of the building. Nevertheless, although pitched roofs are a traditional roof form which are seen elsewhere in the locality, the height of the pitch and the extent of the front roof slope in the appeal scheme is substantial, in order to link the 2.5 storey front section to the three storey flat roof rear section of the building. Furthermore, the cut-out sections are not reflected in changes in the building's elevation or style, and as such appear contrived and would draw the eye. On my site visit I observed that the commercial/residential building at the junction of Old London Road and Ladies Mile Road has lower sections of roof. However, these are not 'cut-outs' in the profile of a pitched roof, as the lower sections have fewer floors and are flanked by hipped roof sections; and as such are not directly comparable.
 18. Overall, taking account of the character of the appeal site and its strong relationship to the low density residential area to the south, I consider that the proposed building would, by virtue of a combination of its scale, density, massing and width, be a dominant and over-bearing feature that would detract from the attractive suburban character of this part of Old London Road. The proposed frontage roof profile would be incongruous in appearance and fail to respect local character, and notwithstanding its varied profile, overall would contribute to the prominence of the building. If I had taken account of the amended roof plans submitted by the appellant I would have reached the same conclusion, as the proposed alterations only relate to one section of the building.
 19. For the reasons given above, I consider that the proposed development would cause significant harm to the character and appearance of the area. Accordingly the proposal would be contrary to Policy QD5 in the Council's Brighton and Hove Local Plan (2005) (the Local Plan) and Policies CP12, CP13 and CP14 in the Council's Brighton and Hove City Plan Part One (2016) (the City Plan Part One), insofar as they seek to secure development which is of high quality design, enhances local distinctiveness and respects the character and appearance of an area. It would also be contrary to the design section in the National Planning Policy Framework (NPPF).
 20. Landscaping is proposed as part of the scheme, and, as set out in the amended plans, incorporates extensive new planting and a number of soft landscaped areas to the front and rear of the site. In this regard I am satisfied that the scheme would accord with Policies QD15 and QD16 in the Local Plan 2005, insofar as they seek the provision of appropriate landscaping plans and

planting schemes. However, nonetheless, by virtue of the bulk and height of the building I consider that although a degree of softening would occur, it would be insufficient to adequately mitigate the harm identified above.

21. The submitted details show that the proposed scheme would incorporate elements of render and contain uPVC windows. On my site visit I observed other examples of render and uPVC in locality. As such I consider these materials would not be at odds with the local area, albeit the proposed pale colours of these features and their extensive use on the building would, to a degree, augment the building's prominence. The use of render would also contrast with the brick and provide visual interest. Nevertheless, I am satisfied that specific colours and details of materials, along with details relating to boundary treatments and the position/form of solar panels, could be dealt with through appropriate conditions, were I minded to allow the appeal.
22. There is some discrepancy between the roof materials as shown in the submitted plans and the materials schedule. Nevertheless, the grey colour proposed in both is present elsewhere in the local area, and I am satisfied that specific details of roof materials could be dealt with via an appropriate condition.
23. The appellant has drawn my attention to other design features of the scheme, including the provision of sufficient parking, retention of the verge, a reduction in vehicular crossovers, inclusion of a range of traditional and modern design features, and provision of an active frontage on Old London Road. Level changes have also been highlighted, whereby the rear wing of the building would appear as two storey from residential properties to the rear of the appeal site. I also note that the appellant has had regard to the questions in the Design Council CABE publication 'Design and Access Statements; how to write, read and use them' (2006). Nonetheless, I consider that these matters do not outweigh or negate the significant harm identified above.
24. A number of local residents raised concerns at the inquiry regarding the accuracy of the appellant's verified visual montages. However, a standard verification process appears to have taken place, and there is no substantive evidence before me that would lead me to determine that the montages are inaccurate or unfit for purpose.

Flood risk and drainage

25. The Environment Agency's (EA) flood map identifies that the appeal site is located in Flood Zone 1, and therefore at low risk of river or sea flooding. At the inquiry the Council confirmed that, accordingly, it was no longer seeking application of the sequential test, in line with the approach outlined in national guidance.
26. Evidence, however, indicates that the area around Old London Road has been subject to periodic groundwater, surface water and sewer flooding, and that the appeal site itself was affected by flood events in 2000/1 and 2013/2014 emanating from rising groundwater. The gardens and a garden cellar appear to have been flooded, and pumping devices used at certain times to discharge water on to Old London Road. At the inquiry I heard from many local residents, including one who previously lived on the appeal site, about the disruption, stress and costs arising from these events. I was also presented with a range of letters and other documents relating to the 2000/1 event.

27. The appeal site therefore has some risks associated with flooding. Nonetheless, overall, the bulk of the evidence before me suggests that the risks are relatively low. The EA's updated Flood Maps for Surface Water show part of the appeal site is at low to medium risk of flooding from this source, whilst the Council's Strategic Flood Risk Assessment (2012) shows the site within an area of low risk of groundwater flooding. Furthermore, the Council's historical flood map is not linked to a list of dated events, and therefore the occurrence and extent of any flooding on the appeal site over a longer period has not been clearly demonstrated. The appellant's Flood Risk Assessment (2016) includes a map which identifies the appeal site as being in an area at high risk of groundwater flooding. However, the document states it is an indicative screening tool only, and concludes overall that flood risk on the appeal site is low to negligible. The appellant's evidence also refers to the Council's Property Level Protection Review carried out after the 2000/1 event, which they state identifies 39 properties in Patcham at potential risk of flooding in the 1 in 1000 year event, but does not include the appeal site. Further, despite the 2000/1 event being the most significant flooding event recorded in Patcham², the evidence before me indicates that the actual dwellings on the appeal site were not flooded.
28. The Council's Surface Water Management Plan (2014) and Local Flood Risk Management Strategy (2015) identify Patcham as a flooding hotspot, but neither document identifies the appeal site specifically, albeit flooding on Old London Road in 2000/1 is referenced.
29. The Council is concerned that underground structures associated with the proposed scheme, including the building's foundations, underground surface water tanks and foul sewage tanks and connections, may cause the displacement of groundwater flows and increase flood risk to third parties. However, I note that the proposed building foundations would be piled. Furthermore, the tanks would occupy a modest proportion of the site and be mainly situated in the upper two metres of the ground. As such they would be within the less permeable head deposit rather than chalk. The borehole testing undertaken by the appellant showed no groundwater at a depth of 3 metres, albeit this represents a snapshot in time. The underground structures would also be negligible in size compared to the extent and depth of the aquifer.
30. Overall, having regard to the evidence before me, and notwithstanding that the head deposit has some water carrying capabilities, I consider that the scheme would have a negligible effect on overall groundwater levels, and that the effects on groundwater flows are unlikely to be significant. Accordingly, I consider it has not been shown that there would be an increase in groundwater flood risk to third parties arising from the scheme.
31. At the inquiry the Council confirmed that, aside from the issue of underground structures, they consider that the surface water drainage scheme and the foul drainage system proposed on the appeal site are appropriately designed and fit for purpose. There is no substantive evidence that would lead me to dispute this position. I also note that Southern Water has confirmed they have no outstanding objection to the scheme, subject to the imposition of appropriate conditions.

² As referenced in the Council's Flood Defence Assessment Report by Binnie Black and Veatch (2001).

32. The ground floor level of the proposed building would exceed the level of the highest recorded groundwater flooding event in 2000/1, and be above the 900 mm level that would arise in a 1 in 1000 year surface water flood event. At the inquiry the Council suggested that a more extreme event could occur in the future, involving a mix of groundwater and surface water. Nonetheless, the Council has not presented any supporting analysis or evidence relating to these increased risks, and furthermore I note that the appellant has sought to plan for flooding above the standard 1 in 100 year design event. On this basis I am satisfied that suitable mitigation has been proposed in respect of floor levels.
33. The appellant has also put forward a foul sewage system which would allow continued use of the foul drainage system in the event of flooding, through the use of an on-line buffer tank that would operate as a temporary cesspit. Tankers would be required to undertake emptying. Old London Road appears to have been closed to regular traffic at certain points during the 2000/1 flood event. Nevertheless, the evidence suggests that flooding on the road has been fairly shallow, with peak periods interspersed with lower levels. Overall there is no evidence before me that access for this essential service could not be managed at appropriate times.
34. The proposed development falls into the same 'more vulnerable' flood risk category in national planning guidance as other residential development. Notwithstanding this, I recognise that the proposed occupiers of the site would be elderly people with a range of care issues and requirements. However, an emergency flood and evacuation plan for the appeal site is proposed, secured via a condition. The plan would be prepared in consultation with the emergency services and agreed with the Council, and in this regard would seek to secure the safety and welfare of the profiled residents. The appeal site is also within an area covered by the EA's flood warning service, linked to monitoring of groundwater levels at the Ladies Mile borehole, and a Multi-Agency Flood Plan.
35. Furthermore, the proposed floor levels and foul sewage drainage could help to support residents remaining in the building during a flood event, albeit access to the building could be restricted along Old London Road and/or across the appeal site. The evidence suggests a lag period of 4-5 days between water levels in the Ladies Mile borehole and flooding being seen in Patcham, that would allow time for emergency plans, including evacuation if necessary, to be carefully managed and executed. Residents would also be supported by 24 hour on-site management presence, providing reassurance and allowing issues to be dealt with in a timely manner in conjunction with other agencies. Not all anxieties would be overcome, as flooding is a stressful event for most people. However, overall, having regard to the risks and proposed mitigation measures, I consider there is no substantive evidence to suggest that the site is inherently unsuitable for elderly people, nor that the proposed numbers would lead to safety or well-being issues.
36. In summary, I recognise that there have been recent flood events in the Patcham area and that this has caused extreme stress and anxiety for local people. The significant number of objections to the scheme on the grounds of flood risk attests to this, and also highlights the on-going concerns of local people regarding future flood risks in the area. Nonetheless, on the basis of the evidence before me I consider that the proposed scheme would not materially increase the risk of flooding on the appeal site or other properties

nearby. The scheme proposes a suitable surface water drainage scheme, and a range of design and operational mitigation measures that seek to deal with residual risks. Furthermore, although I note the age and potential vulnerability of the proposed occupiers, there is no substantive evidence that the site is inherently unsuitable for the profile and number of proposed occupants.

37. Overall, based on the evidence before me, I consider that the proposed development would be acceptable in terms of flood risk and drainage. Accordingly, the proposal is consistent with Policy CP11 in the City Plan Part One (2016), and Policy SU5 in the Local Plan (2005), insofar as they seek to secure development which takes account of flood risk, incorporates mitigation measures and makes appropriate provision for surface water and foul sewage drainage. The proposal is also consistent with Policy SS1 in the City Plan Part One (2016) insofar as it seeks to address flood and drainage matters and ensure sustainability in this regard. The scheme also accords with the flooding section in the NPPF.

Overview

38. To summarise, I determine that the proposal would be acceptable in terms of flood risk and drainage, but there would be material harm to the character and appearance of the area.

Other matters

39. An executed planning obligation has been submitted and includes provision for an artistic component, contributions for sustainable transport and the Council's Local Employment Scheme, and an Employment and Training Strategy. Having regard to the Council's Community Infrastructure Levy (CIL) Justification Statement, the Council's Developer Contributions Technical Guidance (2017) and Policies CP2, CP7, CP9 and CP13 in the City Plan Part One (2016) I am satisfied that this obligation is necessary, and is directly related to, and is fairly and reasonably related in scale and kind to, the development. Accordingly, this obligation meets the tests within CIL Regulation 122 and I have taken it into account in the decision.
40. The appellant indicates that the proposal represents a sustainable form of development, as established in paragraph 7 of the NPPF. I recognise that modest economic benefits would arise in terms of construction jobs, jobs provided through the care home, increased footfall and expenditure on local services arising from residents, and increased income to the Council arising from New Homes Bonus. The Employment and Training Strategy could also help to secure employment for local people and companies associated with both the construction and the operation of the care home, which could assist the local economy as well as helping to reduce travel.
41. The scheme would provide additional older person's accommodation in the city. The Council's Objectively Assessed Need for Housing Report (2015) identifies a shortage of older person's accommodation, and an urgent need for more provision in the context of an ageing population. The provision of extra care housing is highlighted as a particular priority issue in the City Plan Part One (2016), and reiterated in the appellant's Social Needs Report (2016). The Planning Practice Guidance also indicates that the need to provide housing for older people is critical in the context of projected increases in the number of households aged over 65 and over. As established in various reports submitted

- by the appellant, the development could also help to free-up under-occupied homes for other local people, thereby facilitating a chain of moves and helping to tackle identified housing needs and shortages in the city. Furthermore, the scheme would provide elderly people with a safe and secure living environment, and potentially facilitate health benefits. This in turn could help to reduce pressure on healthcare facilities in general, and on the use of hospital beds arising from people being unable to return to unsuitable accommodation. Overall I consider the scheme would provide significant social benefits.
42. The appeal site is in a sustainable location, close to shops and other services in the centre of Patcham, and served by public transport. There is also some evidence to suggest that older person housing schemes typically provide environmental benefits as residents travel less and have reduced energy consumption, whilst vacated family homes can be renovated and gain increased energy efficiency³. The proposal would also make more efficient use of previously developed land in line with objectives in the City Plan Part One (2016) and the Ministerial Housing White Paper (March 2017). The appellant has highlighted a range of other environmental benefits, including the use of solar panels, energy efficient design and the use of local materials, albeit the details of this and their provision would need to be secured via condition.
43. The appellant has highlighted that the appeal site is not within a Conservation Area or other designated area, or subject to a number of other constraints. However, I consider these to be mitigating factors rather than benefits, and accordingly have attached limited weight to them.
44. In summary, I recognise that there are number of benefits arising from the proposed scheme, and that these need to be weighed against any harm arising. As established above, although I am satisfied that the scheme would be acceptable in terms of flood risk and drainage, it would cause significant harm by virtue of its impact on the character and appearance of the area. Overall, having carefully considered all of the evidence before me, I consider that the aforementioned benefits of the scheme, taken as a whole, do not outweigh the significant harm that I have identified in this case.
45. The appellant has highlighted two appeal decisions in the London Borough of Bromley (APP/G5180/W/15/3140733 and APP/G5180/W/16/3155059). These also recognise economic and social benefits arising from older persons housing. Nonetheless, the extent of these benefits and the balance between benefits and any harm arising is an assessment which needs to be undertaken on a case by case basis, and I have taken this approach in my determination of this appeal.
46. Local residents have raised a number of other concerns, including parking, highway safety and the effect of the scheme on the living conditions of adjacent occupiers. Nonetheless, they have not led me to any different overall conclusion regarding the proposed development.
47. I note that the appellant has sought to amend the scheme to respond to representations and concerns raised by the Council. Nonetheless, I have assessed the appeal before me based on its merits, according to the accepted plans and proposals.

³ Housing Markets and independence in old age: expanding the opportunities – Professor Michael Ball (2011).

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Appeal notification letter dated 9th June 2017 – submitted by the Council
- 2 Appeal notification circulation list – submitted by the Council
- 3 Revised landscape masterplan (8944/03 Rev A) – submitted by the appellant
- 4 Revised proposed site plan (SE_2230_03_AC_010 Rev. J) – submitted by the appellant
- 5 Revised proposed ground and first floor plan (SE_2230_03_AC_011 Rev L) – submitted by the appellant
- 6 Planning obligation dated 13th June 2017 – submitted by the main parties
- 7 Flood Defence Assessment Report by Binnie Black and Veatch (BBV) on behalf of BHCC (2001) – submitted by Councillor Geoffrey Theobald
- 8 Letters from KJ Maslin, 54 Old London Road, dated 5th March (to Southern Water), 28th March (to BHCC) and 22nd June 2001 (to BBV) – submitted by Councillor Geoffrey Theobald
- 9 Letter from B.B.Bartlett, 52 Old London Road dated 22nd March 2001 (to BHCC) – submitted by Councillor Geoffrey Theobald
- 10 Letter from Neighbourhood Services Manager BHCC dated 23rd November 2000 (to Councillor Geoffrey Theobald) – submitted by Councillor Geoffrey Theobald
- 11 Extract from The New Encyclopedia of Brighton – submitted by Councillor Geoffrey Theobald
- 12 Flooding Preparedness Update Report to BHCC Overview and Scrutiny Organisation Committee dated 10th March 2008 – submitted by Councillor Geoffrey Theobald
- 13 BHCC Report of the Scrutiny Panel on Flooding in Bevendean, Mile Oak, Patcham and Woodingdean - submitted by Councillor Geoffrey Theobald
- 14 Letter from the Environment Agency dated 20th February 2001 (to Councillor Geoffrey Theobald) – submitted by Councillor Geoffrey Theobald
- 15 Letter from Councillor Geoffrey Theobald to the Environment Agency dated 2nd January 2001, and EA response - submitted by Councillor Geoffrey Theobald
- 16 Level comparison table – submitted by appellant
- 17 Statement by Dorothy McDowell
- 18 Statement by Gary Waller
- 19 Photograph of Patcham bakery – submitted by Ann Taylor
- 20 Letter and statement from Hugh Woodhouse on behalf of Patcham Memorial Hall Committee to BHCC on planning application BH2016/09 – submitted by Hugh Woodhouse
- 21 Updated proposed planning condition relating to retention of parking area – submitted by the Council
- 22 Closing submissions by the Council
- 23 Closing submissions by the appellant