



Appeal Decision

Site visit made on 18 March 2019

by J Slominski BA(Hons) MCD

an Inspector appointed by the Secretary of State

Decision date: 9th July 2019

Appeal Ref: APP/Q1445/W/18/3216874

403 Mile Oak Road, Portslade, BN41 2RD

- 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 Michael White against the decision of Brighton & Hove City Council ("the Council").
 - The application Ref BH2018/02224, dated 28 June 2018, was refused by notice dated 2 November 2018.
 - The development proposed is Erection of one 2no bedroom bungalow (C3).
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Decision

1. The appeal is allowed and planning permission is granted for Erection of one 2no bedroom bungalow (C3) at 403 Mile Oak Road, Portslade, BN41 2RD in accordance with the terms of the application, Ref BH2018/02224, dated 28 June 2018 and the plans submitted with it, subject to the following 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: Drg. No. 01 Rev'n B.
 - 3) No development above ground floor slab level of any part of the development hereby permitted shall take place until details of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority, including:
 - a) details of all external facing materials
 - b) details of all hard surfacing materials
 - c) details of the proposed windows and doors
 - d) details of all other materials to be used externallyThe hereby approved development shall be carried out in accordance with the approved details and maintained as such thereafter.
 - 4) The development hereby approved shall not be occupied until refuse and recycling storage facilities have been installed to the side or rear of the building and made available for use. These facilities shall thereafter be retained for use at all times.
 - 5) No development above ground floor slab level of any part of the development hereby permitted, including the laying of the ground floor

slab, shall take place until full details of existing and proposed ground levels (referenced as Ordnance Datum) within the site and on land and buildings adjoining the site by means of spot heights and cross-sections, proposed siting and finished floor levels of all buildings and structures, have been submitted to and approved by the Local Planning Authority. The development shall then be implemented in accordance with the approved level details.

- 6) No extension, enlargement or other alteration of the dwellinghouse as provided for within Schedule 2, Part 1, Classes A, B, C and E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorized by this permission shall be carried out without planning permission obtained from the Local Planning Authority.
- 7) Prior to the laying of the ground floor slab a surface water drainage scheme for the site shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, and shall subsequently be implemented in accordance with the approved details before the development is completed.
- 8) Prior to first occupation of the development hereby permitted, details of secure cycle parking facilities for the occupants of, and visitors to, the development shall have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.

Preliminary Matters

2. The description of development has changed from the application form. As the appellant adopted the Council's description on their appeal form, and the revised description accurately describes the development I have also used the Council's description.

Main Issue

3. The main issue is the effect of the proposed development on living conditions at 403A Mile Oak Road.

Reasons

4. The site is located on a narrow shared access drive on Mile Oak Road. The proposed new building would be one storey high under a pitched roof, and located to the west of no. 403A Mile Oak Road. It would be set further back from the shared drive than the front elevation of no. 403A, and the rear elevation would be approximately aligned with that of no.403A. The distance between the two buildings would be approximately 5.5m of which approximately 2m is the side garden at 403A Mile Oak Road, and 3.5m would be on the application site.
5. No.403A is a chalet bungalow, with a dormer window facing the site at first floor, and living room windows on the front (side) and side (west) elevations.

The living room at no.403A is a long deep room which benefits from a large window on the front elevation providing daylight and direct south facing sunlight. The proposed development would not affect the outlook or light available to that window. The rear part of the room has a side elevation window facing the site which is partially obscured by the boundary fence and shrubbery. That window provides very little outlook and experiences a sense of enclosure from the existing fence, but it provides daylight and evening sunlight to the rear part of the living room. Following the development, that window would face the new bungalow. Due to the generous separation distance (approximately 5.5m) and the limited height of the proposed bungalow (approximately 2.8-5.8m), the proposal would not result in a significant sense of enclosure to the living room window at no.403A. Although that window would experience a minor reduction of sunlight and daylight, it would still be afforded some access to sunlight and daylight following the development. The living room at no.403A would not be unacceptably harmed by the limited impact on sunlight and daylight.

6. At first floor there is a bedroom at 403A with its window facing the site. Again, due to the limited height of the proposal and the separation distance between the buildings, the effect on sunlight and daylight would be limited. The views from the first floor window at 403A would be partially obscured by the new bungalow, however those views are not protected by planning policy. There would be a clear distance of over 5.5m between that window and the proposed roof opposite, and the window would not suffer from a significant sense of enclosure.
7. I acknowledge that the proposed development would have an impact on no.403A, and in particular I have taken account of the particular circumstances of 403A which has a small plot in relation to its size owing to its very small rear garden and is relatively reliant on the windows on all sides of the building. I have also taken account of the slope of the land. However, the effect of the proposal on light and sense of enclosure to the occupants of 403A would not be significant, and in that respect the proposal would comply with Policy QD27 of the Brighton & Hove Local Plan which seeks to protect adjacent residents from nuisance and loss of amenity.

Other Matters

8. The site is accessed via a narrow drive with no space for on-street parking and limited access for larger vehicles. The proposed development is a two-bedroom house, and its impacts on the local highway network will be limited accordingly, however there is potential for obstruction and harm to highway safety arising from delivery vehicles or visitors. The bungalow would be set back behind a front garden which would be over 7m deep and 9-11m wide. The potential harm can be mitigated through the design of the development's front garden, requiring space for vehicles to park and turn around on site. I have therefore imposed a condition requiring details of spaces for parking and turning.
9. Given the site's relatively narrow access, it is likely that construction vehicles will need to reverse into the road. However, there is space on the site for construction vehicles to stop without obstructing the road. Although any construction impacts will be temporary, the site's construction impacts clearly need to be well managed given the site's constraints and I have imposed a

condition requiring a construction management plan to limit the impacts on neighbours.

10. The Council have requested that dropped kerbs and tactile paving are installed on either side of Mile Oak Road, to make it easier for people to cross the road. No details of such an arrangement have been provided, and if a crossing was provided it would be in close proximity to a road junction (with Graham Road) and the bus stop opposite. Although I agree that improved crossing facilities would be beneficial to the development, I am not convinced that the suggested arrangement could be carried out safely, nor that it would be beneficial for mobility scooters as the Council advise. Given the slope of Mile Oak Road and the surrounding constraints (the junction, bus stop, grass verge and surrounding dropped kerbs) it is not clear how to see whether or not the Council's request could be achieved in a manner which is proportionate to the development's scale and impacts. The Council's recommended condition is not sufficiently precise and it has not been demonstrated that it would be reasonable. Therefore, it would not comply with the tests set out in the National Planning Policy Framework and I have not been able to apply it.
11. Representations were received from neighbours, raising the drainage capacity of the street and its sewer network as a constraint. Any connection to the sewer requires separate consent from the utility provider and if a separate connection is required that is a separate matter to the grant of planning permission. In order to avoid surface water drainage adding to the potential for flooding, the Council have recommended a condition which requires sustainable drainage measures. I consider that such a condition would adequately mitigate the impact on surface water run-off and its contribution to flood risk.
12. The site's planning history does not reveal any particular concerns relating to contaminated land which may pose a risk to human health.
13. The site is currently a residential garden, with a number of small trees and shrubs. The Council have identified that there are no trees worthy of protection, and I agree that the loss of existing planting would not result in unacceptable harm to the visual amenities of the area.

Conclusion and Conditions

14. The proposed development complies with the Local Plan and there are no material considerations which significantly outweigh the provisions of the development plan. Having had regard to all other matters raised, including those within the neighbour consultation responses, I conclude that the appeal should be allowed and planning permission should be granted subject to the conditions on this notice.
15. I have imposed planning conditions requiring commencement within three years to comply with section 91 of the Town and Country Planning Act 1990, and compliance with the submitted plans, in the interests of clarity.
16. In order to ensure a high standard of design, I have imposed the Council's recommended condition requiring details of external materials and details, amended so that it is relevant to the proposed development.
17. Given that my decision has been heavily influenced by the separation distance and height of the proposed building, in order to ensure that the impact on

living conditions is acceptable I have imposed the Council's recommended condition requiring details of the existing and proposed ground slab levels. However, as some works (including the digging of foundations and laying of services) could be carried out without those details being confirmed, I have omitted the requirement for it to be a "pre-commencement" condition.

18. I have imposed a condition requiring waste storage provisions in order to ensure the provision of satisfactory facilities for the storage of refuse and recycling and to avoid obstructing the highway.
19. I have imposed a condition requiring cycle parking in order to promote sustainable transport.
20. As the limited scale of the proposed development is necessary to ensure sufficient amenity space, to limit the impacts on neighbouring living conditions, and to ensure sufficient space for parking, I agree with the Council that it is necessary to remove permitted development rights and bring any future alterations under planning controls and I have imposed the Council's suggested condition restricting permitted development.
21. I have also imposed a condition requiring sustainable drainage in order to minimise the risk of flooding, however due to the retention of a significant amount of garden space and the limited scale of the development, I have omitted the need for this to be a "pre-commencement" condition, as some works (for example laying of foundations and sewer connection) could take place prior to the surface water drainage system being installed.

Jan Slominski

INSPECTOR