



Appeal Decision

Site visit made on 16 August 2019

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd October 2019

Appeal Ref: APP/Q1445/W/19/3228816

33 St Helens, Mile Oak Road, Portslade BN41 2PF

- 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 Mr Russell Pinsent against Brighton & Hove City Council.
 - The application Ref BH2018/03319, is dated 26 October 2018.
 - The development proposed is described as 'Conversion and extension of existing building and construction of new to create: 2 one bedroom flats, 1 two bedroom flat and 4 three bedroom houses'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The National Planning Policy Framework was revised in February 2019 (the Framework). I have taken the Framework into account as part of the determination of this appeal.

Background

3. It is not disputed that the Council cannot demonstrate a five-year supply of deliverable housing sites. As such, the presumption in favour of sustainable development contained in Paragraph 11(d) of the Framework is engaged. Permission should therefore be granted unless any adverse effects associated with the proposal significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Main Issues

4. The main issues are:
 - whether it is necessary for the proposal to include (i) a financial contribution towards sustainable transport provision and (ii) a travel plan to encourage more sustainable transport modes, and, if so, whether there are mechanisms in place to ensure that any such requirements are properly controlled and achieved.
 - the effect of the development on the character and appearance of the area; and
 - whether satisfactory living conditions would be provided for future occupiers of the proposed development, with particular regard to outlook;

Reasons

5. The appeal property is a part one and part two storey detached dwelling situated on the northern side of Mile Oak Road near the junction with High Street. The property occupies a spacious plot, which is noticeably larger than the neighbouring properties when viewed from the street. The dwelling is set back from the highway behind a tall flint wall.
6. The surrounding area has a suburban residential character and there are a variety of property types along Mile Oak Road, which are predominately semi-detached and detached dwellings with simple hipped or gable roof forms. To the south of the appeal site there is a large school complex. The residential properties to the west of the appeal site on Mile Oak Road, are set back from the highway behind large front gardens and laid out in a linear pattern, with the properties consistently spaced and following a clear building line.
7. It is proposed to redevelop the site for residential use. The development would provide a total of seven units, which would be laid out over three blocks. A detached dwelling (Unit 1) would be constructed on the western side of the site and a block of three flats (Units 2-4) would be constructed near the centre of the site. The existing dwelling would be altered and extended to provide a terrace of three dwellings (Units 5-7).

Sustainable transport

8. Policy CP9 of the Brighton and Hove City Plan Part One (2016) (the BHCPP) seeks to encourage the use of sustainable forms of transport to reduce identified issues relating to traffic congestion and air quality throughout the city.
9. The supporting text to Policy CP7 of the BHCPP explains that where necessary, planning obligations will be sought to mitigate site specific circumstances, which includes the delivery of sustainable transport measures that will encourage the use of public transport, walking and cycling, in accordance with Policy CP9 of the BHCPP.
10. Where sustainable transport contributions are sought, they will be calculated as per the approved formula for trip generations as set out within the Council's Developer Contributions Technical Guidance (2017) (the DCTG).
11. In this instance, the Council have sought a planning obligation of £8,000 towards the improvement of sustainable transport provision within the vicinity of the site. The contribution would be allocated towards accessibility improvements at the Mile Oak Gardens city centre bound bus stop. The work would entail installing 'Kassell kerbs' and raising the footway to allow users with restricted mobility and visual impairments to move directly from the footway onto the bus.
12. Given that the planning obligation is necessary to mitigate the development's impact upon traffic congestion and air quality; it is directly related to the development; and that it has been calculated using an approved formula from the Council's DCTG and thus it is fairly and reasonably related in scale and kind to the development, I consider that it meets the tests set out within Paragraph 56 of the Framework.

13. In addition to the planning obligation, the Council argue that the proposal should provide a travel plan, which would enable occupiers of the proposed development to make more informed and active sustainable transport choices.
14. The requirement to provide a planning obligation and travel plan has not been disputed by the appellant. However, there is no mechanism in place to ensure that these requirements are properly controlled and achieved as part of this appeal.
15. In the absence of a planning obligation and travel plan, it is reasonable to conclude that future occupiers of the proposed dwellings, especially those with restricted mobility and visual impairments, would be mostly reliant on private motor vehicles to meet the majority of their daily needs. Consequently, the development would exacerbate identified issues relating to traffic congestion and air quality, which would conflict with Policies CP7 and CP9 of the BHCPP.

Character and appearance

16. The layout of the proposal with three distinctive blocks of built form, which seeks to continue the established building line of the neighbouring properties to the west, is an appropriate response to the existing pattern of development within the immediate area. Whilst the individual plots would have an irregular layout, the proposed layout is logical, and it is clear that the development has been informed by the triangular shape of the appeal site. In addition, the layout of Unit 1 is broadly consistent with the rectangular plots of the neighbouring properties to the west, which provides a transition between the neighbouring properties and the proposed development.
17. Whilst I acknowledge that there would be a large area of hardstanding situated to the rear of the site for communal parking and turning, due to its rearward position and the significant degree of screening provided by the proposed central flatted block and the terrace of three dwellings, views of the hardstanding from Mile Oak Road would be very limited. Consequently, this element of the proposal would have no discernible impact upon the local distinctiveness of the area.
18. Overall, the proposal would successfully assimilate into the streetscene and safeguard the character and appearance of the area, whilst optimising the site's potential for residential use. This approach is consistent with Paragraph 123 of the Framework, which makes clear that where there is an existing shortage of land for meeting identified housing needs, planning decisions should avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site.
19. In conclusion, the proposed development would accord with Policy CP12 of the BHCPP, which, amongst other things, requires new development to raise the standard of architecture and design in the city and establish a strong sense of place by respecting the diverse character and urban grain of the city's identified neighbourhoods. Furthermore, the proposal would be consistent with Paragraph 127(c) of the Framework, which requires development to be sympathetic to the local character.

Living conditions for future occupiers

20. The side elevation of the central flatted block would be located about 5 metres from the front elevation of Unit 5. The ridge level of the flatted block would be about 1.5 metres higher than Unit 5 and the side elevation would feature upper floor windows which would have clear unobstructed views into the front garden and front elevation of Unit 5. The Council argue that this layout would create oppressive living conditions for the future occupiers of Unit 5.
21. The windows on the front elevation of Unit 5 do not provide the sole means of outlook for any of the primary habitable rooms within the proposed dwelling. On the ground floor, in addition to the outlook provided by the patio doors on the front elevation, occupiers of the living room would have views over the side and rear garden areas of Unit 5. On the first floor, the front facing windows would serve a hallway and bathroom. On the second floor, the rooflights would serve a bedroom, which also benefits from a side window and two rearward facing dormer windows. To prevent mutual overlooking, a condition could be imposed to require the installation of obscure glazing on the front facing windows of Unit 5.
22. In terms of the front garden of Unit 5, whilst I acknowledge that this area would be overlooked by the flatted block, such a relationship is common within urban areas. Indeed, I note that the front garden areas of several of the other dwellings within the proposed development would be overlooked by neighbouring properties and from the communal areas. As such, this would not be sufficient grounds to dismiss the appeal.
23. Consequently, for the reasons outlined above, I conclude that the future occupiers of Unit 5 would have an acceptable outlook and that the layout of the proposed development would not lead to an oppressive sense of enclosure when viewed from the aforementioned habitable rooms or the front garden. As such, the proposal would accord with Policy QD27 of the Brighton and Hove Local Plan (retained policies March 2016) which requires new development to protect the amenity of proposed residents.

Other Matters

24. I note that representations were made by local residents, some of whom raise additional concerns about the proposed development. However, given my decision to dismiss this appeal, it is not necessary to consider these matters in detail.

Planning Balance

25. The provision of six additional dwellings would make a positive contribution to the Council's housing land supply which weighs in favour of the proposal, albeit that the contribution would be modest due to the quantum of development proposed. There would also be some limited benefits to the construction industry and from the spend of future occupiers, as such the proposal would have social and economic benefits.
26. However, the absence of a planning obligation and travel plan to secure the improvement of sustainable forms of transport as part of the development, would exacerbate identified issues relating to traffic congestion and air quality, which would conflict with the environmental objectives of sustainable development, as set out within the Framework. This would be an adverse

impact of the development at odds with the development plan and the Framework and would significantly and demonstrably outweigh the limited benefits of the development, when assessed against the policies in the Framework taken as a whole. Accordingly, this is not a point that suggests the appeal should be determined other than in accordance with the development plan.

Conclusion

27. The proposed development would preserve the character and appearance of the area and provide acceptable living conditions for future occupiers, but this would be outweighed by the conflict with the Council's strategy to encourage the use of sustainable forms of transport throughout the city. Therefore, the proposal would not accord with the development plan taken as a whole. There are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Christopher Miell

INSPECTOR