
Appeal Decision

Site visit made on 9 September 2019

by Rajeevan Satheesan BSc PGCert MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2019

Appeal Ref: APP/Q1445/W/19/3232044

Land to the rear of 9 Hayes Close, Portslade BN41 2BQ

- 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 Packham Construction Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/02626, dated 17 August 2018, was refused by notice dated 12 April 2019.
 - The development proposed is the construction of two new-build houses.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal was amended following submission to the Council but prior to the determination of the application. The revised drawings include the drawing Nos 0317A 4, 12, 13, 14, 15, and 16 (all Rev C), and 10 Rev E. These drawings numbers are referred to in the Council's decision notice and I am satisfied that the amendments do not materially change the proposal and that no party would be prejudiced were I to take them into account. As such, I have determined the appeal on the basis of these amended drawings which were before the Council when they made their decision.
3. Further revised drawings (0317A 10F, 12D, 13D, 15D) which are not referred to in the Council's decision notice, have also been submitted as part of this appeal. However, there is no accompanying description of what these revisions show. As such, in the absence of any explanatory text, I cannot be certain that no party would be prejudiced were I to take them into account. I have therefore considered the appeal on the basis of the plans submitted to and determined by the Council, as set out above.

Main Issues

4. The main issues are the effect of the proposal on:
 - the character and appearance of the area; and
 - the living conditions of the existing occupiers of 7 and 9 Hayes Close, with particular regard to outlook, privacy and overshadowing.

Reasons

Character and appearance

5. The appeal site is within the residential area, with a mix of detached and semi-detached two storey houses and bungalows. The area exhibits a range of roof forms with the most common being either hipped roofs or roof having a gable end. The appeal site is situated within a service road which provides access to the garages and rear gardens to properties on Old Shoreham Road and in Hayes Close. The site is currently being used to store building materials. The rear boundary of the site comprises the retaining wall for the rear gardens of the bungalows on Hayes Close, which are built on higher land than the appeal site. The appellant states that the difference in the levels of the land is 1.5m¹.
6. Existing buildings within the service yard comprise single storey garages, such that the existing service yard together with the rear gardens of neighbouring properties contribute to the overall sense of openness to the area between properties on Hayes Close and Old Shoreham Road. The existing low density suburban development of the area contributes to a positive sense of place. As such it is important for any new development on this site to also contribute to this sense of place.
7. The location of the proposed dwellings, along with its height, scale and bulk, would be visible through the access point on Foredown Drive and from Hayes Close. Although the scale and size of the properties would be in keeping with the larger dwellings along Old Shoreham Road and Foredown Drive, they would fail to sit comfortably to the rear of the more modest sized bungalows on Hayes Close. In particular, the skyline from Hayes Close would be dominated by the proposed two storey dwellings together with the part hip, part gable roofs proposed, which adds to the overall height, scale and bulk of the development close to these neighbouring bungalows. Such a change in scale would result in an incongruous and uncomfortable relationship, which would significantly erode the sense of openness that the site currently provides between properties on Hayes Close and Old Foredown Drive.
8. In my view, despite the difference in levels between the appeal site and properties on Hayes Close, the height, scale and bulk of the proposed dwellings and the subsequent relationship of the site with the neighbouring properties on Hayes Close, would fail to integrate with the character of the area in a sensitive and coherent way.
9. Therefore, I conclude that the proposal would have a harmful effect on the character and appearance of the area, contrary to policies CP12 and CP14 of the Brighton and Hove City Plan Part One, 2016 (City Plan). Amongst other things, these seeks to raise the standard of architecture and design in the city, and that development will be permitted at higher densities than those typically found in the locality where it can be adequately demonstrated that the proposal would respect, reinforce or repair the character of the neighbourhood and contribute positively to its sense of place.

¹ Taken from paragraph 4.21 of the appellant's statement of case.

Living conditions of existing occupiers of 7 and 9 Hayes Close – Outlook, Privacy, Overshadowing

10. At present, occupiers of Nos 7 and 9 Hayes Close have a relatively open outlook across their rear gardens and over the existing service yard. The proximity and increase in massing of the proposal over and above the existing rear boundary fence would appear oppressive and overbearing from these gardens with resulting harm to the outlook from the gardens currently enjoyed by the existing occupiers of Nos 7 and 9. The proposed height and bulk of the dwellings would dominate this immediate scene and make occupiers of these properties feel a greater and uncomfortable sense of encroachment.
11. This would be exacerbated by the location of the proposed dormer windows in the rear elevation of these properties. Whilst it is acknowledged that this window would be designed to be obscure glazed and fixed shut, I consider that the position and size of these windows, coupled with its proximity to the boundary with these neighbouring properties, would result in perceived overlooking of the gardens of Nos 7 and 9. The perception of overlooking, along with the experience of the overbearing development, would cause significant harm to the living conditions of those occupiers. I do not consider that the setback of the building away from the boundary nor its sloping roof would lessen this impact. Therefore, the proposal would be harmful to the living conditions of these neighbouring occupiers.
12. The Council have also raised concerns that the development would result in overshadowing to Nos 7 and 9. As part of this appeal, the appellant has submitted overshadowing diagrams in support of the appeal. Whilst the diagrams show that there would be minimal overshadowing during June, March and September, the diagram also demonstrates that a significant part of these neighbouring gardens would be overshadowed in December. However, the drawings do not provide a clear comparison of the existing situation and therefore I am unable to reach any firm conclusions on the extent of proposed overshadowing and whether this would be acceptable. However, even if I were to accept that the development would not result in any harmful overshadowing of neighbouring gardens, this is just one matter in the overall assessment of the proposal and does not alter my judgement on outlook and privacy set out above.
13. For the above reasons, I am unable to conclude that the proposed dwellings would not harm the living conditions of the existing occupiers of Nos 7 and 9, with regard to overshadowing. However, the above harm to living conditions of existing occupiers of Nos 7 and 9 with regards to outlook and perceived privacy would conflict with policy QD27 of the Brighton and Hove Local Plan, 2005, which requires that planning permission will not normally be granted for new development where it would cause material nuisance and loss of amenity to proposed, existing and / or adjacent users, residents, occupiers. Whilst this policy is of some age, it is consistent with the National Planning Policy Framework (Framework) which requires all development to protect the amenity of existing and future users.

Planning Balance and Conclusions

14. There is no dispute that the Council cannot demonstrate a 5 years housing land supply (HLS) and both parties agree that there is a shortfall of 576 net dwellings (4.5 years HLS). Irrespective of the extent of the shortfall, the

proposed development would provide a net gain of only two additional dwellings. As such, its contribution to the HLS would be modest and therefore I consider that it would only be of small benefit in this regard. The appellant also contends that the proposal would make more efficient and effective use of an underused site. I also note that the site is in an existing residential location with access to local shops, services, and public transport. However, the adverse impacts of the proposed development in terms of the harm to the character and appearance of the area and the living conditions of neighbouring occupiers would significantly and demonstrably outweigh the limited social and economic benefits associated with two additional dwellings.

15. Overall, I find that the development would be contrary to the development plan and the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.
16. I note that the appellant highlights that the Case Officer was initially minded to approve the application. However, this is not a matter for me to consider under this s78 appeal. I also acknowledge that the appellant has amended the scheme since the earlier refused application by reducing the number of dwellings together with a reduction in the scale, bulk and height of the development. However, for the reasons outlined above they would not overcome the harms.
17. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be dismissed.

R Satheesan

INSPECTOR