



Appeal Decision

Site visit made on 23 September 2019

by Rajeevan Satheesan BSc PGCert MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th October 2019

Appeal Ref: APP/Q1445/W/19/3231412 28A Crescent Road, Brighton BN2 3RP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr D Frizzell against the decision of Brighton & Hove City Council.
 - The application Ref BH2019/00072, dated 2 January 2019, was refused by notice dated 29 March 2019.
 - The application sought planning permission for the variation of condition 1 of application BH2016/00862 (Part demolition and conversion of existing commercial buildings and erection of two new buildings to provide 4no two bedroom houses (C3) with associated landscaping) to allow amendments to approved drawings (part retrospective) without complying with conditions 7 and 12 attached to planning permission Ref BH2018/00433, dated 12 November 2018.
 - The conditions in dispute are Nos 7 and 12 which states that:
(7) The development hereby permitted shall not be occupied until details of a scheme of works to change the redundant double yellow lines on Crescent Road to CPZ bays has been submitted and approved by the Local Planning Authority.
(12) The development shall be implemented in accordance with the scheme for the restriction of resident's parking permits in accordance with the approved application BH2017/03844.
 - The reasons given for the conditions are:
(7) To ensure that the development provides for the demand for travel it creates and to comply with policy CP9 of the Brighton & Hove City Plan Part One.
(12) This condition is imposed to ensure that the development does not result in overspill parking and to comply with policies TR7 & QD27 of the Brighton & Hove Local Plan and CP9 of the Brighton & Hove City Plan Part One.
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Decisions

1. The appeal is allowed, and planning permission is granted insofar as it relates to the variation of condition 1 of application BH2016/00862 (Part demolition and conversion of existing commercial buildings and erection of two new buildings to provide 4no two bedroom houses (C3) with associated landscaping) to allow amendments to approved drawings (part retrospective), without complying with condition 7 attached to planning permission Ref BH2018/00433, dated 12 November 2018, and subject conditions set out in the attached Schedule.

2. The appeal is dismissed, insofar as it relates to the removal of condition 12 attached to planning permission Ref BH2018/00433, dated 12 November 2018.

Procedural Matters

3. Reference has been made to the Brighton & Hove City Council's Supplementary Planning Document, Parking Standards, 2016 (SPD 14). I have afforded some weight to this document due to its role in supporting the relevant development plan policies.
4. For the reasons that follow, I find the proposal to remove condition 7 to be acceptable and it is clearly separate from condition 12. Therefore, I intend to issue a split decision in this case.

Main Issues

5. The main issues are:
 - the effect that removing condition 7 (replacement of the double yellow lines with controlled parking zones (CPZ)) would have on safe access to the site and highways safety in the vicinity of the site.
 - the effect that removing condition 12 (*car permit free restriction*) would have on parking stress in the area having regard to the effectiveness of the highways network and amenities of surrounding residents.

Reasons

6. The site is located to the rear of existing residential properties on Crescent Road and Belton Road. The site comprises a former commercial property which has planning permission for four two bedroom dwellings. The site is accessed off the residential street of Crescent Road, and is within parking zone J.

Condition 7: Replacement of the double yellow lines with CPZ

7. This part of the appeal is seeking the removal of condition 7, which requires a scheme to be submitted to and approved in writing by the Council, for the replacement of the existing double yellow lines outside the site on Crescent Road to Controlled Parking Zone (CPZ) bays.
8. The submitted Technical Note (TN)¹ and the Appeal Statement², explains that the double yellow lines are not redundant and are required to protect the safe access to the site and maintain highways safety. In particular, whilst there is no vehicular access to the approved scheme, the appellant states that the existing double yellow lines would be of benefit to future occupiers of the development and occupiers of neighbouring properties, since it provides a convenient and safe space for loading and unloading for delivery vehicles and waste collection vehicles. It is also stated that access to the site from cycles and cargo cycles would also be blocked by parked cars if the double yellow lines are removed. This is particularly important, given that the approved scheme is car permit free and therefore would be more reliant on other more sustainable forms of transport such as cycling.

¹ Prepared by Reeves Transport Planning dated December 2018.

² Prepared by Reeves Transport Planning dated January 2018.

9. The reason for the condition states "To ensure that the development provides for the demand for travel it creates". Since the approved scheme is car permit free, and future occupiers would be prevented from obtaining on-street parking permits, the development is unlikely to result in any significant increase in parking pressure in the vicinity of the site.
10. As such, and in the absence of any substantive evidence to the contrary, I conclude that the removal of condition 7 would maintain safe access to the site and avoid creating unnecessary conflicts on the highway, in accordance with policy CP9 of the Brighton & Hove City Plan Part, 2016 (City Plan), which states the Council will work with partners, stakeholders and communities to provide an integrated, safe and sustainable transport system that will accommodate new development; support the City's role as a sub retail service and employment hub; and improve accessibility.
11. It would also accord with Policies TR7 and QD27 of the Brighton & Hove Local Plan, 2005 (LP). Amongst other things, these states that planning permission will be granted for developments that do not increase the danger to users of adjacent pavements, cycle routes and roads, and that permission will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and / or adjacent occupiers.

Condition 12: Car permit free

12. Policy CP9 of the Brighton & Hove City Plan Part One, 2016 (City Plan) seeks to deliver sustainable transport and the benefits that this brings in terms of reduced congestion, improved health, safety and quality of life by providing measures to transfer people onto sustainable forms of transport. Amongst other measures, this includes establishing clear criteria for car-free housing.
13. SPD 14 states when considering applications for car free housing, the impact of potential overspill parking needs to be considered. These impacts may include localised increases in demand for on-street parking which can cause highway safety risks and can have a negative impact upon the amenity of existing residents in the vicinity of the site, as competition for on-street spaces in a particular area may increase. SPD14 further states that car free housing will be approved having regard to a number of factors which includes the scale of development, sustainability of location and the capacity for on-street parking in the surrounding area, and that this should be demonstrated by the applicant through an on-street parking survey.
14. To consider whether the proposal to remove the car permit free restriction is acceptable, with no off-street parking spaces, it is necessary to review the current on-street parking stress in the area. Incidences of parking stress may lead to increased competition for scarce spaces resulting in unnecessary travel with drivers searching for available spaces, with attention diverted to somewhere to park rather than on road conditions. Parking stress may also lead to obstructive parking to the detriment of the free flow of traffic. Neighbouring residents may, for example, have to park further away from their house and there may be the potential for increased noise and disturbance arising from cars driving around searching for spaces and manoeuvring into spaces. Consequently, it is necessary to assess whether any increased demand for on-street parking arising from the current appeal could be safely accommodated without detriment to the living conditions of neighbouring occupiers or highway safety.

15. In support of the appeal, the appellant has submitted a TN and a Parking Beat Survey, based on the Lambeth Methodology, which relates to the number of vehicles parked and the number of empty parking spaces within a reasonable walking distance of the site. This survey was taken on Wednesday 12 December 2018 between the hours of 01:30 and 03:00, when most residents would be expected to be at home. The Parking Beat Survey data indicates that on average, the parking stress of the surveyed streets is very high at 95%. The TN predicts that the approved new dwellings would be likely to result in an increase in parking demand by four spaces. Based on this, the TN states that the approved development would further increase parking stress in the surveyed area to 97%.
16. Furthermore, the Parking Standards within SPD 14 states that the maximum level of parking for the proposal is one space per dwelling plus one space per two dwellings for visitors, which equates to a maximum of six spaces for this development. Based on this, the parking stress figure would be further increased above the 97% stated in the TN.
17. I also observed during my site visit, which included a walk around the area on a Sunday evening when most residents would be expected to be at home, that there was a very high occupancy of parked vehicles on Crescent Road and the surrounding street, with few spaces available. The proposal would be likely to generate additional on-street parking demand in the vicinity of the site, in an area which already suffers from on-street car parking stress, to the further detriment of the living conditions of neighbouring occupiers by making parking more difficult. Furthermore, the resulting combination of circulating traffic and overspill parking would be likely to increase vehicle movements in the area and obstructive parking, to the detriment of the free flow of traffic and highway safety.
18. Notwithstanding the appellant's comments that the condition would not prevent car ownership and that there is currently no waiting list for parking permits in zone J, the high level of parking stress in the area indicates that the CPZ is very close to full capacity. I also note that the site is in an area with relatively good accessibility to public transport, shops and services. Together with my findings in respect of the availability of on-street parking in the vicinity, this provides further support for requiring this development to be car permit free. Nor am I convinced that the additional income generated from permits, which could be spent on sustainable transport projects, overcomes the harm identified above.
19. I therefore find on the basis of the evidence before me, and having regard to the criteria of SPD 14, the car permit free restriction is relevant to planning, necessary and a reasonable requirement for this development in the interests of the living conditions of neighbouring occupiers and highway safety.
20. The appellant has referred to another Appeal Decision³, where it was considered that limiting the benefits of planning permission to certain groups of people (Blue Badge holders) would not accord with the Planning Practice Guidance (PPG)⁴. Condition 12 does limit the benefit of planning permission in respect of residents parking permits to disabled person badge holders. However, given the mobility needs of this group of people, such a restriction is

³ Appeal Ref: APP/Q1445/W/16/3149109.

⁴ Paragraph: 015 Reference ID: 21a-015-20140306

appropriate. If the provision of car free housing in the appeal before me could not be secured by condition then the harm that would occur to the provision of a sustainable transport system, highway safety and the living conditions of neighbouring occupiers could not be controlled, and the delivery of the scheme would be put at risk. I find therefore, having regard to the relevant paragraphs of PPG, therefore that circumstances exist in this case that justify condition 12 to ensure that the development is car free.

21. For the above reasons, the removal the condition 12 would be likely to unacceptably impact upon parking stress in the area having regard to the effectiveness of the highways network and amenities of surrounding residents. As such, it would conflict with Policies TR7 and QD27 of the LP. It would also harm the provision of a sustainable transport system and would be contrary to policy CP9 of the City Plan.

Other Matters

22. In support of the appeal, my attention has been drawn to a number of other decisions made by the Council and on appeal. However, these decisions emphasise the need for each case to be considered on its own merits with regard to the specific circumstances of each site. Furthermore, I do not have sufficient information before me for each of these decisions to be certain that those cases are directly comparable to the current proposal. This Appeal has therefore been determined on its own merits.

Conditions

23. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those conditions that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. Other than condition 7 contested under this appeal, which I have removed, I consider all remaining conditions are reasonable and necessary. As such the majority of conditions are therefore unaltered from the previous planning permission.

Conclusions

24. For the above reasons, I conclude that the appeal should be dismissed in relation to the removal of condition 12 attached to planning permission Ref BH2018/00433, dated 12 November 2018.
25. However, in relation to condition 7 attached to planning permission Ref BH2018/00433, dated 12 November 2018, for the above reasons, I conclude that the appeal should be allowed. I will therefore vary the planning permission by deleting condition 7.

R Satheesan

INSPECTOR

Schedule of condition

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

Block Plan D.009 - 5 July 2018

Floor Plans Proposed D.001 A;

Floor Plans Proposed D.002 A;

Floor Plans Proposed D.003 A;

Floor Plans Proposed D.004 A;

Elevations Proposed D.008 A;

Elevations Proposed AL06

2. The refuse and recycling storage facilities, as approved under application BH2016/00862, shall be fully implemented and available for use prior to the first occupation of the development and shall thereafter be retained for that use.

3. The cycle parking facilities, as approved under application BH2016/00862, shall be fully implemented and available for use prior to the first occupation of the development and shall thereafter be retained for that use.

4. The two new build residential units hereby approved shall not be occupied until it has achieved an energy efficiency standard of a minimum of 19% CO₂ improvement over Building Regulations requirements Part L 2013 (TER Baseline).

5. The two new build residential units hereby approved shall not be occupied until it has achieved a water efficiency standard using not more than 110 litres per person per day maximum indoor water consumption.

6. The development shall be implemented in accordance with the material samples approved by the Local Planning Authority under application BH2017/03844.

7. The development shall be implemented in accordance with the hard landscaping drawing C.01 Rev - approved by the Local Planning Authority under application BH2017/03844.

8. No extension, enlargement, alteration or provision within the curtilage of the dwellinghouse(s) as provided for within Schedule 2, Part 1, Classes A-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 authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.

9. Access to all flat roofs over the residential development hereby approved shall be for maintenance or emergency purposes only and the flat roofs shall not be used as a roof garden, terrace, patio or similar amenity area.

10. All hard surfaces hereby approved shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.

11. The development shall be implemented in accordance with the scheme for the

restriction of resident's parking permits in accordance with the approved application BH2017/03844.

12. The development shall be implemented in accordance with the Timber Access Gates Plan and Elevation Dwg C.004 Rev - ; Timber Access Gate Vertical Section detail Dwg C.006 Rev - ; Vehicular Access as Proposed Dwg C.1401 Rev - approved by the Local Planning Authority under application BH2017/03844.

13. The development shall be implemented in accordance with the External Lighting Plan drawing .C.003 Rev - approved by the Local Planning Authority under application BH2017/03844.

14. (i): The development hereby approved shall be carried out in accordance with the Contaminated Land Risk Assessment Phase 2 Environmental Site Investigation Report (Ref: PH2-2017-1133) prepared by STM Environmental Consultants Ltd dated 04th January 2018 as approved by application BH2017/03844.

(ii): The development hereby permitted shall not be occupied or brought into use until there has been submitted to the Local Planning Authority verification by the competent person approved under the provisions of (i) (c) above that any remediation scheme required and approved under the provisions of (i) (c) above has been implemented fully in accordance with the approved details (unless varied with the written agreement of the Local Planning Authority in advance of implementation). Unless otherwise agreed in writing by the Local Planning Authority such verification shall comprise:

- a) as built drawings of the implemented scheme;
- b) photographs of the remediation works in progress; and
- c) certificates demonstrating that imported and/or material left in situ is free from contamination.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under (i) (c).

15. If during construction, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing by the Local Planning Authority), shall be carried out until a method statement identifying, assessing the risk and proposing remediation measures, together with a programme, shall be submitted to and approved in writing by the Local Planning Authority. The remediation measures shall be carried out as approved and in accordance with the approved programme.