



Appeal Decision

Site visit made on 15 October 2019

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2019

Appeal Ref: APP/M3835/W/19/3233248
32 First Avenue, Worthing BN14 9NJ

- 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 & Mrs D Miller against the decision of Worthing Borough Council.
 - The application Ref AWDM/1903/18, dated 17 December 2018, was refused by notice dated 14 March 2019.
 - The development proposed is construction of new detached family dwelling together with associated crossover.
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Decision

1. The appeal is allowed and planning permission is granted for construction of new detached family dwelling together with associated crossover at 32 First Avenue, Worthing BN14 9NJ in accordance with the terms of the application, Ref AWDM/1903/18, dated 17 December 2018, subject to the conditions set out in the attached schedule.

Main Issues

2. The main issues are (i) the effect of the proposed development on the character and appearance of the area; (ii) the effect of the proposed development on the living conditions of the occupiers of No 32 First Avenue, with particular regard to the functioning of the garden; and (iii) whether the proposed development provides adequate details of drainage and ecological mitigation.

Reasons

Character and appearance

3. First Avenue is an established residential area, which predominantly consists of large detached houses that occupy spacious plots. The appeal property has a larger plot size than average due to its corner plot location, and it maintains a large gap to No 28 First Avenue. The area has a verdant feel due to the set back of the houses from the road and the trees and hedging that are visible in the street scene. The properties are varied in design and appearance, however they generally have hipped roofs and 2 storey front projections are a common feature.
4. The subdivision of the appeal site would provide a plot width for the proposed dwelling of around 15m, which would be commensurate with the range of plot widths of properties in the area. Whilst the depth of the plot would be less than

- the row of properties to the south, the proposed dwelling would maintain a sizeable separation to neighbouring buildings and therefore this would not be harmful to the spacious character of the area.
5. The proposed dwelling would sit comfortably in the street scene between Nos 28 and 32 First Avenue and would address the street. The distances maintained to these neighbouring buildings, together with the hipped design of the roof, would ensure that the proposed dwelling would provide sufficient gaps to maintain the spacious character of the street scene.
 6. The main bulk of the proposed dwelling would be roughly level with No 28, which would ensure that the proposed dwelling would be set back an appropriate distance from the road. Trees and hedging would be retained to the front of the proposed dwelling, which would preserve the verdant feel of the area. Whilst the proposed dwelling would be positioned slightly forward of No 32, there is some stepping of the building line in the street and the gap that the proposed dwelling would maintain to No 32 would ensure that this relationship would not appear jarring.
 7. The proposed development would reflect the height and scale of neighbouring dwellings. Furthermore, its design would respond to the context of the street scene, which includes hipped roofs and two storey front gables with timber detailing.
 8. The Council is concerned that the proposed development would be likely to lead to pressure on the removal of mature trees and hedging on the site. However, the proposed dwelling would be outside the root protection areas of the retained trees and there is no substantive evidence before me to suggest that it would be likely that there would be pressure for their removal.
 9. For the above reasons, I conclude that the proposed development would not be harmful to the character and appearance of the area. The proposal would therefore comply with Policies 13 and 16 of the Worthing Core Strategy 2011 ('WCS'), the Guide to Residential development Supplementary Planning Document 2013 ('SPD') and Chapter 12 of the National Planning Policy Framework ('Framework'), which, amongst other things, state that all new development will be expected to demonstrate good quality architectural and landscape design and use of materials that take account of local physical, historical and environmental characteristics of the area.

Living conditions

10. The proposed subdivision of the appeal site would result in a smaller garden for No 32 First Avenue. However, the size of the garden would exceed the minimum size standards set out in the SPD and would provide a useable outdoor amenity space for the occupiers of the dwelling. I am satisfied that the garden would not be significantly overshadowed.
11. I therefore conclude that the proposed development would not be harmful to the living conditions of the occupiers of No 32 First Avenue. The proposal would therefore comply with saved Policy H18 of the Worthing Local Plan 2003 and guidance in the SPD, which states that development that would result in an unacceptable reduction in amenity for local residents will not be permitted.

Drainage and ecological mitigation

12. The Council's appeal statement comments that a condition to require the undertaking of infiltration tests and the submission of a surface water drainage scheme would be appropriate. I am satisfied that the imposition a suitably worded condition would ensure that the proposed development would not cause a net increase in surface water runoff.
13. The appellant has submitted an ecological survey¹ with the appeal, which shows that the proposed development is unlikely to negatively impact designated sites and protected species. The report recommends that clearance of vegetation should be carried out outside the nesting bird season (March to August inclusive). The Council has stated that appropriate conditions for clearing vegetation would be acceptable. I am satisfied that the imposition of a condition to prevent the removal of vegetation during nesting bird season would protect nesting birds.
14. For the above reasons, I conclude that the drainage and ecological effects of the proposed development could be addressed through the imposition of planning conditions. The proposal would therefore comply with Policies 13 and 16 of the WCS, which, amongst other things, state that all new development will respect the biodiversity and natural environment that surrounds the development and will contribute to the protection and, where applicable, the enhancement of the area.
15. The Council has referenced Policy H13 (conversions to flats and HMOs) of the Worthing Local Plan 2003 in the reason for refusal, however this Policy was superseded by the WCS and is not relevant to the appeal. Furthermore, saved Policy H18 (residential amenity) of the Worthing Local Plan 2003 is not relevant to drainage and ecological matters.

Other Matters

16. I have had regard to the representations from interested parties, which, in addition to the above main issues, raise concerns including: Planning Policy Statement 3 restricts garden grabbing; overlooking into Nos 4 and 6 Fourth Avenue; loss of light and overshadowing of the garden of No 4 Fourth Avenue; loss of light to conservatory of No 32 Fourth Avenue; and inadequate parking.
17. The Framework replaced Planning Policy Statement 3 in 2012. The glossary in the NPPF does not include residential gardens in the definition of 'previously developed land', however for the purposes of decision-making the NPPF does not specifically prevent development within residential gardens. Planning applications for new development in residential gardens must be determined in accordance with the policies in the development plan, unless material considerations indicate otherwise. Given that the proposed development would respect the spacious character of the suburban area and would consist of only one family-sized dwelling, it would accord with Policy 8 of the WCS, which seeks to deliver a wide choice of high quality homes, including limited infilling of family houses in suburban areas.
18. The appeal site is located in an established residential area where a degree of overlooking of gardens is to be expected. The upper floor rear windows of No 32 already afford views towards the rear garden of No 4. The upper floor

¹ Ecological Walkover Survey prepared by Astute Ecology Report Ref AE19.151 dated June 2019

windows of the proposed dwelling would maintain a distance of approximately 10 metres to the rear boundary, which would provide sufficient separation to protect the privacy of the occupiers of Nos 4 and 6. Furthermore, the proposed development would not cause a significant loss of light or overshadowing of the garden of No 4 due to the distance that the proposed dwelling would be positioned from the boundary.

19. The proposed development would not cause a significant loss of light to the conservatory of No 32 Fourth Avenue. The Highway Authority has raised no objection in respect of the on-site parking provision for the proposed development. There is no substantive evidence before me to indicate that the proposed development would cause a significant increase in pressure for on-street parking.
20. The Council cannot currently demonstrate a 5 year housing land supply. Nevertheless, I have found that the proposed development would accord with the development plan and therefore in this case it is not necessary to engage paragraph 11(d) of the Framework.

Conditions

21. The Council has suggested 13 conditions which I have considered against the Framework and the advice in Planning Practice Guidance, amending where necessary in the interests of precision. I am satisfied that all of my conditions set out in the attached Schedule are necessary, relevant and reasonable to make the approved development acceptable.
22. In addition to the standard time limit condition, I have imposed a condition requiring the development to be carried out in accordance with the approved plans as this provides certainty.
23. Conditions dealing with the further approval and implementation of external materials, and hard and soft landscaping are necessary to maintain the character and appearance of the area.
24. A condition requiring tree protection measures and arboricultural works to be carried out in accordance with the submitted arboricultural report is necessary to protect trees and the character and appearance of the area. Furthermore, it is necessary to impose a condition to prevent vegetation removal during the bird breeding season in order to protect nesting birds.
25. A condition to require the submission of a surface water drainage strategy is necessary to ensure that the proposed development would not cause a net increase in surface water runoff.
26. A condition to require the submission of details of cycle storage for approval is necessary to provide alternative travel options to the use of the car in accordance with sustainable transport objectives. A condition to require the new vehicular access and on-site parking to be completed in accordance with the approved plans is necessary so that appropriate parking facilities would be provided.
27. Conditions restricting the hours of construction and requiring the submission and implementation of a Construction Method Statement ('CMS') are necessary to protect the living conditions of the occupiers of neighbouring properties during construction works. Furthermore, the condition requiring the submission

and implementation of a CMS is necessary in the interests of highway safety. This is a pre-commencement condition because the carrying out of construction works without a prior agreed CMS may have an adverse impact on highway safety and the living conditions of the occupiers of neighbouring properties. I have received confirmation from the appellant that they are agreeable to the pre-commencement condition.

28. The Council has suggested a condition to remove permitted development rights under the Town and Country Planning (General Permitted Development) Order 2015. Paragraph 53 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. I have been presented with no such clear justification for the removal of permitted development rights in this case.

Conclusion

29. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be allowed.

C Osgathorp

INSPECTOR

Schedule of Conditions

1. The development to which this permission relates shall be begun within a period of three years commencing on the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved drawings:-

Drawing 1 Proposed Floor Plans & Elevations; Drawing 2 Location & Block Plan; and Drawing 3 Proposed Site Plan.

3. No development shall progress beyond slab level until details and samples of the materials to be used in the construction of the external walls, roof, windows and doors of the dwelling hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall only be carried out in accordance with the approved details.
4. No part of the development hereby permitted shall be occupied until full details of a hard and soft landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The hard landscaping scheme shall include details of all site boundary treatments, surfacing materials, fences or walls within the site. The hard landscaping works shall be completed in accordance with the approved details prior to the first occupation of the development. The soft landscaping scheme shall show any existing trees, hedges and blocks of landscaping on and immediately adjacent to the site and indicate whether they are to be retained or removed. It shall fully detail all new planting, and shall include a planting specification and a programme of implementation. The soft landscaping scheme shall be implemented in accordance with the approved details.

Any tree/hedge planted in accordance with this condition or any existing tree/hedge shown on the approved soft landscaping scheme as being retained, which within a period of five years from the date of the planting is removed, uprooted, destroyed, dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, shall, in the same location, be replaced during the next planting season (October to February) by another tree/hedge of the same species and size.

5. Tree protection measures and arboricultural works shall be carried out in accordance with the details set out in the Arboricultural Report – Implications Assessment & Method Statement (Ref RWG-TPD-18-29, dated September 2019) prepared by R W Green Limited. The tree protection measures shall be implemented for the duration of the construction work.
6. No vegetation removal shall be undertaken during the bird breeding season (1st March to 31st August inclusive).
7. No development shall progress beyond slab level until a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of on-site infiltration testing to confirm the viability of the scheme. The dwelling

hereby permitted shall not be occupied until surface water drainage has been completed in accordance with the approved details.

8. No part of the development hereby permitted shall be occupied until details of covered and secure cycle storage have been submitted to and approved in writing by the Local Planning Authority and the storage facility has been provided in accordance with the approved details. The covered and secure cycle storage shall be retained at all times thereafter.
9. No part of the development hereby permitted shall be occupied until the new vehicular access and on-site car parking space has been laid out and constructed in accordance with the approved plans. The vehicular access and on-site parking space shall be retained at all times thereafter.
10. No development shall commence, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be fully adhered to throughout the construction period of the development. The Statement shall provide, amongst other things, for:
 - (i) The method of access and routing of vehicles during construction;
 - (ii) Parking of vehicles of site operatives and visitors;
 - (iii) Loading and unloading of plant and materials;
 - (iv) Storage of plant and materials used in constructing the development;
 - (v) The erection and maintenance of security hoarding;
 - (vi) Wheel-washing facilities;
 - (vii) Measures to control the emission of dust and dirt during construction.
11. Demolition or construction works associated with this permission shall not take place outside 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays and at no time on Sundays or Bank Holidays.