



Appeal Decision

Site visit made on 22 October 2019

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th December 2019

Appeal Ref: APP/D3830/W/19/3234175

273 London Road, Burgess Hill RH15 9QU

- 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 Momentum Homes Ltd against the decision of Mid Sussex District Council.
 - The application Ref DM/19/1724, dated 15 April 2019, was refused by notice dated 5 July 2019.
 - The development proposed is 6 No. 1 bed flats over 3 floors including 2 storey extension to east elevation to form access.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (i) the effect of the proposed development on the character and appearance of the area and (ii) the effect of the development on the demand for and provision of local infrastructure.

Reasons

Character and Appearance

3. The appeal site is in a prominent location at the roundabout junction of London Road with Victoria Way. Near to the appeal site, London Road comprises a mix of residential and commercial uses. There is no coherent architectural style or strong building line, although individual buildings are generally set close to their front site boundaries addressing the street. Buildings are of a range of scales which adds further to the diverse character of the area and this variation extends to their height, floor levels and roof forms. The commercial buildings on Victoria Way are predominantly two-storeys in height and have larger footprints than the buildings on London Road, although there is still significant variation in their overall scale.
4. The main part of the building on the appeal site is two-storey in height and has a flat roof form which is set below the unusual crenelated parapet of the neighbouring building at 275 London Road. It is also set back from the forward part of the stepped front elevation of this neighbour. To the rear of the appeal site is Lynnem House. This large two-storey commercial building is set at a lower ground level to the appeal site, although the ridge of its shallow pitched roof projects higher than the main part of the appeal building.

5. The proposal includes a two-storey front extension and addition of a third floor. Policy DP26 of the Mid Sussex District Plan 2018 (MSDP) broadly seeks high quality development and includes, amongst other things, requirements for development that responds to local character and the scale of surrounding buildings to create a sense of place. It also includes support for proposals that optimise the potential of a site to accommodate development.
6. The proposed three-storey building would be higher than the main rooflines to the neighbours at Lynnem House and No.275 which are two-storey in height, and this would be evident in views from London Road and Victoria Way. However, there is no uniformity in the scale or height of buildings along this part of London Road. The surrounding built form includes very large commercial buildings visible to the opposite sides of the roundabout at the front of the appeal site, and I saw three-storey buildings sitting alongside two-storey neighbours on London Road already such as at the junction of Norman Road with London Road and at Beaconsfield Court near to the appeal site.
7. Given the lack of consistency in the scale and height of buildings and overall diversity in the appearance of development on London Road and Victoria Way, the projection of the proposed development above neighbouring buildings would have very little impact or significance in the street scene and would not appear out of place in relation to the host and neighbouring buildings. The proposed roof would also be in line with the adjacent large chimney of No. 275 and this would provide for a visual connection between the two structures in the street scene. Furthermore, the set back of the development from the main frontage of No. 275 and from Lynnem House as it faces Victoria Way would reduce its prominence in views along both London Road and Victoria Way.
8. With regard to the design of the extensions, the proposed flat roof forms would be sympathetic to the design of the existing building and while the set in of the proposed roof level from the outer walls of the building would be small, this would nevertheless be sufficient to distinguish the additional storey. The relatively simple design of the proposed roof level would complement the existing rather plain building. However, the contrasting materials and detailing together with its set in would also give this element the appearance of a more light-weight structure sitting comfortably above the building's lower levels and reducing the impression of bulk while adding visual interest. Further interest would be added by the front extension, and although the proposed oval-shaped window would be unusual, there is no distinctive pattern in the scale or design of fenestration nearby so that this would be overly conspicuous.
9. As a consequence, and taking account of the varied character of the surrounding area, the development would provide additional focus on the building appropriate to its prominent location on the roundabout but without being too dominant or imposing. It would make effective use of the site and I see no reason that the additional height and bulk of the building would be an unsympathetic or harmful addition to the site or street scene.
10. For the above reasons, I conclude that the proposed development would not result in harm to the character and appearance of the area and I find no conflict with MSDP Policy DP26. For similar reasons, it would accord with requirements within the National Planning Policy Framework (the Framework) for the effective use of land and the creation of well-designed places.

Provision for Infrastructure

11. Policy DP20 of the MSDP advises that development will be required to contribute towards infrastructure and mitigation measures made necessary by development. The Council advise that the proposal would generate a requirement for financial contributions towards formal sport, community buildings, local community infrastructure, libraries and transport in accordance with the Development Infrastructure and Contributions Supplementary Planning Document 2018 and a planning obligation would be necessary to secure these. However, the appellant has challenged the justification for some of these contributions given the past employment use of the site and that staff may have utilised local services such as libraries as well as transport infrastructure.
12. Tests set out at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (the relevant tests) which are reflected at paragraph 56 of the Framework require that any planning obligation must be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
13. Up to date evidence has been provided by the Council and by West Sussex County Council (WSCC) to support contributions requested towards formal sport, community buildings and libraries. This indicates that the contributions are necessary for the improvement of sport and community facilities at St John's Park and the library within Burgess Hill to cope with demand arising from future occupiers and a formula-based approach reflecting occupancy of the dwellings is adopted. While employees based on the appeal site may conceivably have made use of local services, future residents would be likely to spend more leisure time in the area with a resulting increased demand on services than would arise from staff visiting the site. The provision of sport and community facilities including libraries is consistent with principles within the Framework of supporting healthy lifestyles and meeting social needs to enhance the sustainability of communities and I am satisfied that these requirements would be necessary to address the effects of the development and that they would meet the relevant tests.
14. However, I have found no evidence to indicate a need for the contribution requested by the Council towards local community infrastructure at Burnside, Victoria Road or to show how this would address any specific problems arising from the development. It has not therefore been demonstrated that a contribution to local community infrastructure would meet the relevant tests.
15. WSCC request a contribution towards transport in order to support sustainable transport opportunities in the area through cycling. The request is founded on a formula-based approach with an 'infrastructure contribution' element reflecting the number of parking spaces provided, and a 'sustainable transport contribution' element in respect of each occupant or employee not provided with a parking space. The promotion of cycling opportunities is consistent with the principles expounded in the Framework supporting sustainable travel. However, no details of the calculation applied have been provided. There would be no change to the number of parking spaces provided on the appeal site, and while there would be additional floorspace provided and a change of use to residential, it is not clear from the evidence before me that the projected increase in occupancy takes account of the existing employment use of the

site. I cannot be sure that the level of contribution requested is therefore necessary, and it has not been demonstrated that this requirement would meet the relevant tests.

16. While I am unable to conclude that the requested contributions towards local community infrastructure and sustainable transport would meet the relevant tests, I am satisfied that contributions towards formal sport, community buildings and libraries would meet the tests and are necessary to mitigate the impact of additional demand on these services arising from the development. The appellant has provided a copy of a Planning Obligation Instruction Form. However, there is no signed and completed legal agreement before me which would secure the contributions which I have found to be necessary.
17. Accordingly, I find on this main issue that the proposal would fail to make suitable provision to mitigate the effect of the development on the demand for local infrastructure and it would conflict with Policy DP20 of the MSDP.

Other Matters

18. I acknowledge the support given at paragraph 118 of the Framework to opportunities for use of airspace above existing residential and commercial premises for new homes subject to consideration for the design. The proposal would provide additional dwellings towards local housing supply on this previously developed site, and I note that future occupiers would also benefit from access to nearby services and facilities. The appellant also suggests that the proposal would improve the overall efficiency of the building with regard to heat loss and that it would contribute to provision of housing on a mix of sites within the area. However, while these are benefits in favour of the development, these factors do not outweigh the failure to make suitable provision for local infrastructure and the conflict with the development plan.
19. The Council's report on the planning application advised that there would not be a concern in relation to potential impacts of the development on the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC) and refers to a Habitats Regulation Assessment screening report. I am mindful of the judgement of the Court of Justice of the European Union which held that the decision maker must consider mitigation measures intended to avoid or reduce the harmful effects on a protected site within the framework of an Appropriate Assessment (AA), rather than at the screening stage. This responsibility now falls to me as the competent authority and it would typically be necessary for me to seek additional information from the parties to enable me to undertake the AA. However, as I am dismissing the appeal for other reasons it has not been necessary for me to consider this matter further.

Conclusion

20. While I have found no harm would be caused to the character and appearance of the area, the proposal would fail to make suitable provision to mitigate the effect of the development on infrastructure locally and for the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR