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## Appeal Decision

Site visit made on 7 January 2020

**by Andrew Bremford BSc (Hons) MRICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 January 2020**

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**Appeal Ref: APP/Q1445/W/19/3239562**

**5 Chalfont Drive, Hove BN3 6QR**

- 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 Robert Warr against the decision of Brighton & Hove City Council.
  - The application Ref BH2019/01611, dated 30 May 2019, was refused by notice dated 2 August 2019.
  - The development proposed is the erection of 1 no. single storey (plus basement level) three-bedroom dwelling (C3) to the rear of 5 Chalfont Drive. Proposal also incorporates: vehicle crossover; parking; and associated works.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The description of the development as given on the application form is different from that provided on both the appeal form and the Council's decision notice. I have used the latter description in the banner heading above as it is more precise.

### Background and Main Issues

3. There is no dispute between the main parties that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. The Council states that its most up-to-date figures show a housing land supply of 4.5 years. Therefore, the presumption in favour of sustainable development contained in Paragraph 11 d) of the National Planning Policy Framework (the Framework) is engaged. Permission should therefore be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
4. In the context of the above, the main issues are:
  - (i) the effect of the development on the character and appearance of the area including the setting of the Tongdean Conservation Area and on existing trees; and
  - (ii) the effect of the proposal on the living conditions of the occupiers of the proposed dwelling in respect of outside amenity space provision and outlook.

## Reasons

### *Character and appearance*

5. The appeal site is the rear garden of 5 Chalfont Drive, a large two-storey dwelling set within a substantial plot that backs onto Dyke Road Avenue. The site lies just outside the Tongdean Conservation Area (CA).
6. The area is characterised by predominantly substantial detached dwellings, set within mainly generous plots with mature trees and extensive garden and boundary planting. The CA Character Statement advises that the special interest of the CA derives from the grouping of individually-designed large houses dating mainly from the early 20<sup>th</sup> century on generous plots, with mature trees and dense garden and boundary planting. Along Dyke Road Avenue there is a reasonably standardised building line with properties mostly set well back from the road frontage.
7. The appeal site contains a large Beech tree which is protected by a Tree Preservation Order<sup>1</sup> and identified as T2 in the appellant's Arboricultural Impact Assessment (AIA) and Tree Protection Plan<sup>2</sup>, and a group of trees identified as G11 along the boundary with Dyke Road Avenue. By virtue of its substantial plot, large Beech tree and trees along its rear boundary, the appeal site positively contributes to the verdant and spacious character and appearance of the area.
8. There is also a row of large trees, identified as T3 to T9 inclusive in the AIA, in the gardens of neighbouring properties along the north-west boundary of the appeal site. Except T3 all these trees lie outside the CA. I also saw on my site visit the Eucalyptus and Magnolia trees, identified as T1 and T10 respectively in the AIA, located in the rear garden of the neighbouring property, 3 Chalford Drive. I saw that T10 was positioned at a similar distance from the boundary fence with the appeal site as T1 and thus not as depicted on the appellant's Tree Protection Plan which shows T10 positioned significantly further away from the boundary fence. Consequently, the root protection area (RPA) of T10, stated as having the same circle radius as T1 in the AIA, encroaches into the appeal site.
9. The proposed development would sub-divide the plot and erect a dwelling within the rear garden of No 5; a new access would be formed off Dyke Road Avenue. As a result of its position significantly forward of the somewhat consistent building line along this section of Dyke Road Avenue, the proposed dwelling would be at odds and, hence, out of character with the general established pattern of development in the area. Considering the overall scale of development, including the proposed area of hardstanding, in combination with the resultant smaller size of the plot following its sub-division, the proposal would result in a denser and cramped form of development.
10. Although the proposed dwelling would be single-storey with basement accommodation, taking into account its position towards Dyke Road Avenue and its visibility within the street scene, the sub-division of the plot and the loss of spaciousness would be evident. This would not be satisfactorily addressed by the orientation of the proposed dwelling being consistent with other properties in Dyke Road Avenue or by that the plot dimensions and

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<sup>1</sup> Tree Preservation Order No. 4 1993 Hove Borough Council – T25

<sup>2</sup> Drawing No: TPP-5CD-REF449-V1, dated 20 May 2019

orientation would not be easily visible. Overall, the proposal would not respect the surrounding prevailing pattern of development and, therefore, would be at odds with the urban grain and character of the area.

11. Although the AIA identifies that G11 is of low quality with a life expectancy of 10-20 years they would nonetheless be felled as a result of the development. The AIA states that the loss of the trees can be mitigated by a strong planting scheme which would identify the location of where trees are to be planted and such a location would be considered a Construction Exclusion Zone. However, I have no compelling evidence before me indicating the location within the site of any proposed strong planting scheme or indeed whether there would be enough space on the plot to satisfactorily compensate for the loss of G11.
12. To allow construction of the proposed basement accommodation part of the site would need to be excavated. The area to be excavated as shown on the Tree Protection Plan is in proximity to the RPA of T2. The AIA identifies T2 to be of high quality with a life expectancy of at least 40 years. In coming to an informed assessment of the potential impact from the proposed development on trees, reference has been made by both the Council and the appellant's AIA to the relevant British Standard<sup>3</sup>. It includes guidance on the requirement to take account of the future growth of trees; the effect of retained trees on the living conditions of occupiers of dwellings, and a consequential potential pressure for pruning or removal. It also defines the RPA as a layout design tool indicating the minimum area around a tree deemed to contain sufficient roots and rooting volume to maintain the tree's viability, and where the protection of the roots and soil structure is treated as a priority.
13. The evidence before me indicates that it is possible for damage to occur within the RPA from activities occurring outside it, such as where the mineral composition or hydrology of the adjacent soil is altered. Taking into account that Beech is a sensitive tree species with a relatively poor tolerance to development impacts and T2 is of high quality and expected to last a long time, there is no compelling evidence to demonstrate that the excavation in proximity to the RPA of T2 would not cause damage to the rooting environment, which could adversely affect its health and viability potentially leading to its loss.
14. The crown of T2 would not extend over the proposed dwelling. However, taking into account the proximity of T2 and its westerly position relative to the proposed garden area, ground level terrace and lightwell serving the basement terrace and accommodation, by virtue of its size and heavy shade cast beneath its canopy when in full leaf there would potentially be pressure from future occupiers of the dwelling to prune or remove the protected tree.
15. Taking into account the position of the development tight to the boundary fence with No 3, for the reason outlined above in paragraph 8, the area to be excavated would extend into the RPA of T10. The AIA identifies T10 as a tree of moderate quality with a life expectancy of 20-40 years. The development, therefore, would have the potential to cause damage to the roots of T10, a tree which is expected to last many years, which could adversely affect its health and viability potentially leading to its loss.

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<sup>3</sup> British Standard 5837:2012 Trees in Relation to Design, Demolition, and Construction – Recommendations (BS 5837)

16. Even if I were to accept that there would be no significant harm to the health of trees T1 to T9 as a result of the construction of the dwelling due to the protective measures shown on the Tree Protection Plan, I am satisfied, based on the evidence before me, that the proximity of the area to be excavated to protected T2 and the excavations within the RPA of T10, for the reasons outlined above, could potentially lead to the loss of these two trees. Furthermore, I am satisfied that the proximity of the proposed dwelling, which would include basement accommodation, would not be consistent with the constraints of the British Standard summarised in paragraph 12 above.
17. I find that the development would not respect the surrounding prevailing pattern of development and, therefore, would be at odds with the urban grain and character of the area. In addition, the combined effect of the group of trees (G11) to be removed in any event as part of the proposal and the potential threat to the health and retention of the protected Beech (T2) within the site, would be such as to at some point in the future change the appearance of the site and its positive contribution to the character and appearance of the area. Moreover, the potential threat to the health and retention of the Magnolia (T10) at No 3 would also at some point in the future be detrimental to the verdant character and appearance of the area.
18. For the collective reasons outlined above, I conclude that the proposed development would be significantly harmful to the character and appearance of the area. Consequently, in this regard, it would not accord with Policy CP12 of the Brighton & Hove City Plan Part One 2016 (BHCP); Policies QD15 and QD16 of the Brighton & Hove Local Plan 2005 (LP) and chapter 12 of the Framework. These policies, amongst other things, set out to ensure that proposals respect the diverse character and urban grain of the area in terms of general layout, pattern and footprint of buildings as viewed overhead in plan form and seek to retain existing trees and resist development which would damage or destroy a preserved tree.
19. The Council has referred to Policy QD27 of the LP in their refusal notice in regard to this main issue. However, this policy is not directly relevant to character and appearance issues.
20. The Council's third reason for refusal also refers to the harm caused by the development to the CA as the trees make a positive contribution to its intrinsic character and appearance.
21. I have no compelling evidence before me to indicate that the proposal would have a significant adverse effect on T3 to T9 in the gardens of neighbouring properties along the north-west boundary of the appeal site. Taking into account the location of the site just outside the CA and the presence of T3 to T9, notwithstanding the harm that I have found as a result of the development to T2 and T10, views into and out of the CA along Dyke Road Avenue would remain largely unaffected by the development. Thus, the proposal would not be harmful to the setting of the CA.
22. I therefore conclude that proposed development would not have a harmful effect on the setting of the CA. Consequently, in this regard, it would accord with Policy CP15 of the BHCP; Policy HE6 of the LP and chapter 16 of the Framework in so far as they seek to ensure proposals do not have an adverse impact on the setting of heritage assets.

### *Living conditions*

23. Policy HO5 of the LP states that the planning authority will require the provision of private useable amenity space in new residential development where appropriate to the scale and character of the development. The policy does not specify the minimum size of amenity space for a new residential development. However, the supporting text to the policy states that the policy requires an element of usable private amenity space (excluding parking and turning areas) is provided for occupants and goes on to state that this is particularly important for those likely to spend a large part of their day in the home environment.
24. The development would be a three-bedroom dwelling, therefore of a size suitable for a family where future occupiers would likely spend a large part of their day at home, located in an area characterised by substantial detached dwellings set within mainly generous plots.
25. Excluding the hardstanding area for parking and turning of motor vehicles the private amenity space available for the future occupiers would be the basement and ground level terraces and the garden area to the north of the dwelling.
26. It is a point of disagreement between the appellant and Council as to the total area of private amenity space provision. However, it is clear from the submitted plans and evidence before me that the total area of the amenity space provision would be appreciably less than that of the remaining garden area of No 5. Moreover, it would not be comparable in size to existing development in the Chalfont Drive area and, therefore, not commensurate with the scale of the proposed development.
27. Furthermore, taking into account the position of the outside amenity space much of it would be heavily overshadowed by trees to the north and west as shown in the aerial view of the site on page 1 of the appellant's Design and Access Statement.
28. The proposal would, therefore, not provide an appropriate amount of useable private amenity space sufficient for a family dwelling within the context of the scale and character of the development and the surrounding area.
29. The lightwell serving bedroom three would be surrounded by high retaining walls and therefore the outlook from the openings in the room would be severely restricted. Furthermore, notwithstanding the terraced planting area which would soften the appearance of the retaining wall directly in front of bedrooms one and two and to the side of the kitchen/diner, the outlook from these basement level rooms would be restricted. Overall, the retaining walls of the proposed development would have an overbearing effect upon the outlook from the basement level accommodation that would result in an unduly oppressive living environment for future occupiers.
30. For the reasons outlined above, I conclude that adequate living conditions for future occupiers of the proposed dwelling would not be provided for in respect of useable private amenity space provision. Furthermore, the development would have a significantly harmful effect upon the living conditions of future occupiers in respect of outlook. Consequently, in this regard, the proposal would not accord with Policies HO5 and QD27 of the LP and paragraph 127 (f) of the Framework which, amongst other things, set out to ensure proposals

provide appropriate provision of private amenity space and avoid harmful effects upon the living conditions of the occupiers of proposed development.

### **Other Considerations**

31. I have taken into account the appellant's wish to use the space in his garden to erect a dwelling for his parents, so that he can provide on-hand support and care for them. These personal circumstances are weighed in the planning balance below.
32. The proposal would seek to boost the supply of housing in the context that the Council cannot currently demonstrate a deliverable five-year supply of housing land. However, the proposal is only for one new dwelling and therefore its contribution to future housing provision would be modest.
33. I have no doubt that the occupiers of the dwelling would help to support local facilities and services, although the economic contribution from the occupiers of one dwelling would not in itself be a very significant benefit. Furthermore, the proposal would lead to some employment through the construction of the dwelling, although this would be a short-term benefit.
34. I have taken into account the appellant's point that wall and floor insulation would be improved as a result of the proposal incorporating basement accommodation; and that it is estimated that the dwelling would be up to 10% more thermally efficient as a result.
35. I weigh the aforementioned considerations in the overall planning balance below.

### **Planning Balance and Conclusion**

36. I have found that the proposed development would cause significant harm to the character and appearance of the area. It would also not provide adequate living conditions for future occupiers in respect of outside amenity space provision and would have a significantly harmful effect upon the living conditions of future occupiers in respect of outlook. I afford substantial weight to these matters as part of the determination of this appeal noting conflict with both development plan and Framework policies.
37. Although I have found no harm to arise from the proposed development in terms of the setting of a heritage asset, this is a matter of neutral consequence in the overall planning balance.
38. In conclusion, I find that the identified adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Consequently, the proposal would not amount to a sustainable form of development and therefore the appeal should be dismissed.

*Andrew Bremford*

INSPECTOR