
Appeal Decision

Site visit made on 7 January 2020

by David Troy BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2020

Appeal Ref: APP/Q1445/W/19/3238429
70 Greenways, Brighton BN2 7BL

- 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 Paul Nicholson against the decision of Brighton & Hove City Council.
 - The application Ref BH2019/00282, dated 31 January 2019, was refused by notice dated 18 April 2019.
 - The development proposed is demolition of existing bungalow to be replaced with 2 no five bedroom dwelling houses.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on
 - (i) the character and appearance of the area having particular regard to the site's location within the setting of the South Downs National Park;
 - (ii) the living conditions of the occupants of No. 72 Greenways with particular regard to overlooking, privacy and noise and disturbance associated with the new vehicular access way; and
 - (iii) the protected species interest on the site.

Reasons

Character and appearance

3. The appeal site comprises of a detached bungalow setback from the road within a relatively spacious plot on the north-eastern side of Greenways. The appeal site forms part of linear form of residential properties with open fields on the opposite side of the road and residential properties to the north, south and east. There are a range of two storey properties and bungalows primarily fronting onto the highway but with some backland style development, that provide a diverse mix of house types and create some variety in the design, density and appearance of the dwellings and the built form in the area.
4. The proposal would involve the demolition of the existing bungalow on the site and the construction of 2 no. detached two storey dwellings and the formation of a new vehicular accessway. The proposed backland style development would

be set back from the road and stepped down to utilise the natural sloping topography of the site that gently slopes up from the existing bungalow and Greenways.

5. The existing character of the site would change significantly as a result of the redevelopment of the existing bungalow and the backland style development on the open undeveloped area at the rear of the site. However, the Council has not raised concerns in relation to the principle of development in this location. Rather, it considers the specifics of the scheme to be inappropriate. It is noted that several other properties on Greenways have been subdivided including the adjacent properties at Nos. 68 and 68a Greenways and the recently constructed modern contemporary development to the rear of Nos. 74 and 76 Greenways. These are likely to have been built on garden land with new access arrangements and such this type of development would not be unduly harmful to the mixed residential character of this area. An additional example would not necessarily be harmful in principle as a result.
6. Variety does not necessarily lead to harm. Although the proposed dwellings would not appear overlarge relative to the overall plot size and, visually, the design of the dwellings would not be significantly out of keeping with the varied building styles and design in the area, the scale and two storey form of the proposed dwelling on the rear of the site would nevertheless be substantial in this location. The position of the proposed rear dwelling immediately adjacent to the two storey property at No. 68 and in close proximity to the side boundaries, would provide limited opportunity to soften the impact of development through a comprehensive landscaping scheme.
7. As such, although it would be set back and stepped down, the proposed rear dwelling, by virtue of its scale, massing and layout would appear visually cramped, compromising the sense of space and openness in the area. These shortcomings would be exacerbated by the appeal site's elevated position above the road where the proposal would be visible over short distances in limited glimpses between the buildings along Greenways and along the accessway into the site.
8. I have considered the appellant's arguments that the site layout and the design of the dwellings have been carefully considered in order to minimise any impacts on adjacent dwellings and would be in keeping with the other properties in the area. Whilst I recognise there is some variation in housing styles in the area and the use of matching materials, fenestrations, landscaping and boundary treatment would assist with integrating the proposal with the area, these aspects do not overcome the adverse effects outlined above. As such, I consider the development would adversely harm rather than positively contribute to the character and appearance of the area and would fail to preserve or enhance the setting of the South Downs National Park.
9. Consequently, I conclude that the proposed development would have a harmful effect on the character and appearance of the area and the landscape and scenic beauty of the National Park. The development conflicts with Policy CP12 of the Brighton and Hove City Plan Part One 2016 (the City Plan). This policy seeks, amongst other things, to ensure developments are of a high quality design that respects the existing character of the area and have regard to the landscape and scenic beauty of the National Park, where within the setting of South Downs National Park.

Living conditions of the occupiers of the neighbouring property

10. The front elevation of the proposed rear dwelling would be set back a short distance from the common shared boundary with the adjacent two storey property at No. 72 Greenways (No. 72). The rear garden of No. 72 would be separated from the appeal site by a high close boarded fence running along the common shared boundary.
11. Whilst the proposal would be located some distance from the rear elevation of the adjacent property, the nearest bedroom window at first floor level on the front elevation of the proposed rear dwelling would be situated in close proximity to the common shared boundary with the rear garden of No. 72. The occupiers of the property would use the garden area to carry out leisure activities where they would be observed at close quarters by the future occupants of the proposed dwelling when relaxing and sitting out, particularly during the summer months.
12. I have considered the appellant's arguments regarding the design and layout of the proposed rear dwelling and the surrounding properties, including the newly constructed dwellings to the rear of Nos. 74 and 76 Greenways. Whilst the use of fixed and obscured windows at first floor level on the side elevation of the rear dwelling and the proposed boundary treatment would reduce the impact of the proposal to some degree, given the siting and design of the proposed dwelling, site levels and the separation distance between the properties, I consider the proposal would result in an unacceptable level of overlooking and loss of privacy to the rear garden of No. 72 and result in a significant change in the living conditions for the occupiers of the neighbouring property.
13. The creation of a new access driveway alongside No. 72 would clearly lead to an increase in vehicular movements passing by the side of the existing dwelling. This is likely to lead to some increase in noise levels. However, my daytime site visit indicated that the area experienced a certain level of noise and disturbance from the busy road located close to the front of No. 72 and the surrounding uses. The occupiers of No. 72 would therefore be used to a certain degree of noise and disturbance in this location.
14. In addition, as noted above, there are a number of accessways leading to backland development along Greenways already. Some of these have a similar relationship with neighbouring dwellings as would be created here. The Council have not provided any evidence which demonstrates the proposed access would generate a more harmful level of noise or disturbance compared to those already in place. The proposed scheme would incorporate a new acoustic fence between the proposed access way and No. 72. If I had been minded to allow the appeal, then this would have been an appropriate measure to further protect the existing occupants from unacceptable levels of noise and disturbance and as such I am satisfied that there would be no undue harm to the living conditions of No. 72 in this respect.
15. Taking all of these factors into account, I conclude that the proposal would result in unacceptable harm to the living conditions of the occupiers of the neighbouring property at No. 72 with particular regard to overlooking and privacy. The development conflicts with Saved Policy QD27 of the Brighton and Hove Local Plan 2015 (BHLP) which seeks, amongst other things, to ensure development does not cause material nuisance and loss of amenity to the existing and adjacent occupiers.

Protected Species interest

16. Given the nature of the site and its surroundings, the Council recommend that a badger survey should have been submitted with the application.
17. Whilst I note the appellant's comments regarding the absence of badger activity on the site, based on the evidence before me, the proposed development may have potential impacts on protected species interests on the site. The appellant acknowledges that this would require further consideration and indicated that he would be happy for a condition to be imposed to commission the required work if this appeal were to be allowed.
18. Whilst this maybe so, I note the Council's approach in accordance with local and national guidance makes it clear that the impact of a development on protected species should be considered as part of the planning application, otherwise all relevant material considerations may not have been addressed in making the decision. In the absence of the badger survey work and any convincing evidence to the contrary, there is a potential that the proposal could impact on protected species interest on the site.
19. Consequently, I conclude that the proposal would be contrary to Saved Policy QD18 of the BHLP, Policy CP10 of the City Plan and Supplementary Planning Document: Natural Conservation and Development 2010 (SPD11). These policies and guidance, amongst other things, seek to ensure that development proposals protect and conserve biodiversity, do not directly or indirectly affect a species or its habitat protected under National legislation and incorporate measures to avoid any harmful impact on such species and their habitats.

Overall Planning Balance and Conclusion

20. The Council accepts that it cannot demonstrate a five year supply of deliverable housing sites. In these circumstances, the Framework states that relevant policies for the supply of housing cannot be considered up to date if the local planning authority cannot demonstrate such a supply. Paragraph 11 of the Framework sets out the presumption in favour of sustainable development. For decision making this means that where the relevant policies are out of date, planning permission will be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
21. I have considered the various benefits put forward by the appellant that the proposal would bring arising from the scheme's design and the additional housing opportunities in an accessible location. While I have given them some weight in favour of the appeal, these modest benefits would not be sufficient to outweigh the harm I have identified. I have found above that taken overall the development would harm the area's character and appearance, the setting of the South Downs National Park, the living conditions of the neighbouring property at No. 72 and the protected species interest to which I attach significant weight. In addition, I found that the provision of the dwellings in this location would conflict with Saved Policies QD18 and QD27 of the BHLP and Policies CP10 and CP12 of the City Plan relating to design, amenity and protected species.
22. The harm set out above would conflict with the environmental objective of sustainable development and, in my view, would be sufficient to significantly and demonstrably outweigh the scheme's benefits when assessed against the

Framework read as a whole. The proposal would not therefore amount to sustainable development in the terms of the Framework. The Framework is a material consideration. However, in the circumstances of this appeal, the other material considerations do not justify making a decision other than in accordance with the development plan.

23. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Troy

INSPECTOR