



Appeal Decision

Site visit made on 17 December 2019

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th February 2020

Appeal Ref: APP/Q1445/W/19/3236829

Land at Varndean College, Surrenden Road, Brighton, BN1 6WQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Varndean College against the decision of Brighton & Hove City Council.
 - The application Ref: BH2017/03676 dated 3 November 2017, was refused by notice dated 8 April 2019.
 - The development proposed is the erection of 10 residential units comprising 1 x two-bed, 6 x three-bed and 3 x four-bed properties, new access from Surrenden Road and associated car and cycle parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline form, with only matters of access and layout for determination at this stage. Appearance, landscaping and scale are matters reserved for future approval. The Design and Access Statement includes appearance and landscaping drawings, but these are only indicative, and I have determined this appeal on this basis.
3. A signed and dated Agreement under Section 106 of the Town and Country Planning Act 1990 (S106) was submitted by the appellant. The intention of the S106 is to ensure the provision of three of the proposed dwellings as affordable housing; the payment of financial contributions to education, the Council's local employment scheme and recreation; and the submission of an Employment and Training Strategy. I return to these matters below.

Main Issues

4. The main issues are the effect of the proposed development on i) the character and appearance of the area, with particular regard the provision of open space and any effect on views and ii) biodiversity.

Reasons

Character and appearance

5. The appeal site comprises a strip of land along the northern edge of the grounds of Varndean College. Between the northern boundary of the College grounds and Surrenden Road is a wide grass verge with trees and a surfaced footpath running parallel and close to the boundary.

6. The Brighton and Hove Urban Characterisation Study (2009) (UCS) sets out that the Surrenden neighbourhood, in which the appeal site lies, can be characterised by “*wooded slopes giving way to the large open spaces of the educational uses*” and specifically mentions the school playing fields and substantial grass verges. I observed during my site visit that these open areas contribute to and help define the attractive character and appearance of the area.
7. Both the College grounds and the verge are identified as open space on the Brighton and Hove Policies Map (the Policies Map). The open space designation of the verge along Surrenden Road extends to Ditchling Road, on the other side of which is a large area of identified open space including Hollingbury Park and Woods, with the South Downs National Park beyond. The appeal site therefore forms part of an extensive area of open space extending from the outskirts of the city into the suburban area and culminating in the expansive sweep of the College grounds.
8. Although the northern boundary of the College grounds is delineated by railings and a partial hedge, there are views through and over the railings from the footpath just to the north of the site such that the verge and grounds appear as part of a broad sweep of open space. The character and appearance of the verge is enhanced by its relationship with the College grounds, particularly the view over them, a matter to which I return below. The value to the local community of this area is demonstrated by the appeal site, the playing fields to the south and the verge and footpath to the north, having been listed as an ‘Asset of Community Value’ (ACV) under the name of ‘Varndean Green’ since November 2018.
9. The proposed development would extend across practically the full width of the northern boundary of the College grounds, from a small copse at the western end to the steps that provide access for students and staff from Surrenden Road at the eastern end. It would, therefore, substantially visually and physically sever the open space of the playing fields to the south of the appeal site from the open space of the verge and footpath to the north, harmfully diminishing the contribution of the open space of the College grounds to the character and appearance of the area. It is clear from the representations of third parties that the site’s open nature is valued.
10. Policy CP16 of the Brighton and Hove City Plan Part 1 (2016) (CPP1) sets out the Council’s requirement for the retention of all open space, as shown on the Policies Map, and restricts the loss of open space to four alternative specified circumstances. It is clear that from paragraph 4.175 of the supporting text to Policy CP16 that ‘open space’ in terms of the policy is not limited to formal sports facilities. The loss of the open space of the appeal site would not satisfy any of the first three circumstances in which a loss of open space would be permitted as it would not result from a development allocation in a development plan; it is not necessary to bring about significant and demonstrable long-term enhancements to the city’s public open space offer as a whole; and it is not ancillary to the use of the open space.
11. The fourth circumstance in which the loss of open space would be permitted, clause d), has three requirements; that the site is physically incapable of meeting the city’s wider open space needs; that it is not part of the beach or a playing field, and that it is of poor quality without potential for improvement,

- there is an identified surplus (current and future) in all types of open space in the locality and the site has been actively marketed for a year with no success.
12. I acknowledge that the site itself does not form part of a playing field and the steep bank between the site and the existing playing fields to the south precludes any function as a run-off area. I note that Sport England raised no objection to the proposed development on the basis that the proposal met the Sport England Policy exception E3. However, this is with regard to the use of the site as formal sports facilities, not as open space. Nevertheless, the second requirement of clause d) of Policy CP16 would be met.
 13. However, the proposed development would fail the first of the requirements of clause d) of Policy CP16 as the appeal site is capable of continuing to contribute to the character and appearance of the area as open space. It would also fail the third of these requirements as, from the comments of the Council's Planning Policy team of 11 January 2019, the Council's Open Space, Sport and Recreation Study 2008 found that the city did not have a surplus of open space and that with the increased demand from an increasing population an additional amount in excess of 160 ha would be required by 2030.
 14. The Planning Policy team notes that the Study was updated in March 2011, which indicated that outdoor sports facilities and parks and gardens in Withdean ward, in which the appeal site is located, would be in surplus by 2030, but that there would be a shortfall of other forms of green space. Whilst the appellant contends that the site is surplus to the sport, recreational and/or educational needs of the College I have no evidence that any further assessment has been undertaken which clearly shows that the open space is currently surplus to requirements for open space, rather than outdoor sports facilities.
 15. As regards the requirement for marketing, from the appellant's Marketing Report the site was marketed for a period of 17 months prior to the submission of the application. I note that 7 responses / inquiries were received to the marketing exercise but that none of the respondents / inquirers were interested in the site as open space. I consider the marketing exercise indicated in the Marketing Report to have been very limited and to not represent 'active' marketing of the site.
 16. However, I note that the Council's Planning Policy team eventually concluded that a marketing exercise was not required and that the Council did not refuse the application on this basis. Accordingly, and as I have found that other requirements of clause d) of Policy CP16 would not be satisfied by the proposed development, the adequacy of the marketing exercise is not determinative in this appeal.
 17. The National Planning Policy Framework (the Framework) recognises the importance of open space, which is also not limited to sports facilities. Paragraph 97 of the Framework restricts building on existing open space to three circumstances. The first of these is where an assessment has been undertaken which clearly shows that the open space is currently surplus to requirements.
 18. As noted above, I have no evidence that this has been done and, accordingly, it has not been demonstrated that the first circumstance in paragraph 97 of the Framework applies. The proposed development would not accord with either of

the other two circumstances as the loss resulting from the proposed development would not be replaced by equivalent or better provision in terms of the positive contribution of the appeal site to the spacious character and appearance of the area and the development is not for alternative sports and recreational provision.

19. The land in the area in which the appeal site is located falls away to the south so that the site sits at a slightly lower level than the existing dwellings on the north side of Surrenden Road and is separated by a steep bank from the playing fields to the south. From the footway to the north of the appeal site there are extensive views to the south over the educational campus towards the city centre and the sea as I observed during my site visit.
20. The UCS recognises that the steep slopes in the Surrenden neighbourhood *"frequently afford impressive views"* and identifies a 'vista' from the corner of Surrenden Road and Friar Road over Varndean College. Although the viewpoint itself would be outside the area proposed for development, the proposed development would impinge on the vista as shown on the open space map for the Surrenden neighbourhood in the UCS. From the evidence before me, the view over the campus is not a designed view, but it still makes a substantial contribution to the character and appearance of the area and is locally valued.
21. The proposed development would not completely block the view from the properties on the north side of Surrenden Road or from the public footpath. Views would still be available between some of the proposed dwellings, particularly at the centre of the site. The indicative drawings demonstrate that the proposed development could be set down so as to allow views to be maintained over each dwelling from the existing dwellings on the north side of Surrenden Road, which are at a slightly higher elevation, or over part of each dwelling, from the footpath.
22. However, the pleasure derived from the view is due in no small part to it being a panorama. The proposed development would result in an expansive view becoming more focused and reduced to limited glimpses of the long-distance view through the proposed buildings. The proposed development would therefore be harmful to the character and appearance of the area due to the disruption to and partial loss of the view from the footpath. The experience of using the footpath would also be adversely affected by the presence and use of the proposed access road, which would be closer to the path than Surrenden Road and which would cross the path at two points.
23. From the evidence before me, the Council is preparing an Urban Design Framework (UDF) for the city to be adopted as a Supplementary Planning Document, to support Policy CP12 Urban Design, Policy CP13 Public Streets and Spaces and a number of the Development Area policies of the CPP1. I note that it is intended that the UDF will identify strategic views into, out of and within the city but, from the evidence before me, it has yet to be adopted.
24. Notwithstanding the confidence of some of the third parties that made representations on the proposed development that the UDF will identify the view from Surrenden Road across the appeal site as a strategic view I do not have any evidence from the Council to confirm this. Indeed, the Council states that it considers 'strategic views' to be of city-wide importance and that the view from Surrenden Road is not considered to be of such importance. Consequently, this view is not included in the list of strategic viewpoints

identified in the Brighton and Hove Tall Buildings Study (2003), which is largely repeated in the UCS. The Council currently relies on these studies in the absence of a formally adopted list or map of strategic views within a policy document. Nevertheless, the view does contribute substantially to the character and appearance of the local area.

25. Therefore, for the reasons above, I conclude that the proposed development would result in the unjustified loss of open space and would therefore conflict with Policy CP16 of the CPP1 and paragraph 97 of the Framework in this respect. It would also be substantially harmful to the character and appearance of the area due to the effect on the current panoramic view and thus also conflict with paragraph 127 c) of the Framework, which requires planning decisions to ensure that developments are sympathetic to local character, given that I find the proposed development not to represent appropriate innovation or change for the reasons given above.
26. Policy QD27 of the Brighton and Hove Local Plan 2005 (BHLP) sets out that planning permission will not be granted where it would cause "material nuisance and loss of amenity" to existing users. Although the proposed development would be harmful to the character and appearance of the area, I am not persuaded that it would cause a 'material nuisance'. I therefore find no conflict with Policy QD27.
27. Policy CP12 of the CPP1 protects only 'strategic views' and, as noted above, I have no evidence that the view from Surrenden Road is currently identified as a strategic view or will be identified as a strategic view in the UDF. Therefore, I find no conflict with Policy CP12 of the CPP1. However, the lack of conflict with Policy QD27 and CP12 does not alter my view on the conflict with Policy CP16 of the CPP1.

Biodiversity

28. Both the appellant's Preliminary Ecological Appraisal prepared by Calumma Ecological Services and the Council's Statement of Case prepared by David Kavanagh-Spall essentially agree that the appeal site comprises a mosaic of habitats including rough and short grass sward, scrub, hedgerow and an area of chalk banks created by Varndean College in conjunction with the organisation Butterfly Conservation specifically for butterflies.
29. Although the Council is concerned over the adequacy of the baseline surveys undertaken, I am satisfied from the evidence in the appellant's Rebuttal in respect of Ecology and Nature Conservation prepared by Ecology Solutions that the surveys undertaken by the appellant provide a sufficient basis on which to adequately assess the potential effects of the proposed development on the biodiversity of the site and adjacent areas and to identify appropriate mitigation measures.
30. The site is recognised by both parties as having biodiversity interest, principally butterflies, including the White-letter hairstreak, a species of Principal Importance under S.41 of the Natural Environment and Rural Communities Act 2006. The site forms part of the South Downs Way Ahead Nature Improvement Area as identified on the Policies Map, which employs a strategic approach to nature conservation enhancement.

31. The appellant acknowledges that the proposed development would result in the loss of habitats of recognised value to invertebrates, including the butterfly banks. However, the appellant proposes the establishment of a replacement biodiversity area within the College grounds, for which planning permission has been granted, the provision of bat and bird boxes and the use of green / brown roofs using a chalk substrate, as mitigation and enhancement measures.
32. Although the replacement biodiversity area would take some time to achieve the same level of biodiversity interest as the existing area, I see no reason why it should not eventually do so. It may possibly provide greater biodiversity interest in due course through the addition of deadwood log piles habitat and future management, notwithstanding that it might be subject to greater disturbance by students of the College. I am persuaded that this would be an adequate replacement for the existing biodiversity area, and it could be secured through a planning condition were permission to be granted.
33. From the evidence before me, the elm hedge that forms part of the northern boundary of the appeal site and the land immediately to the north, including the verge, is identified as Local Wildlife Site BH82 "Surrenden Crescent and Surrenden Road" (the LWS). The Council's evidence refers to the LWS as being proposed, and I have no evidence that this is not still the case. However, both parties accept that the proposed LWS does have existing biodiversity value.
34. According to the description of the LWS provided by the Council, the principal interest of the LWS lies in its fungi which benefit from the low level of trampling on the verge. Notable species include the Rooting Bolete and Iodine Bolete, both considered rare in the UK. The Council's Ecological Statement refers to the fungi being a protected species but do not identify under what statute or other provision and the appellant contends that the fungi are not a statutorily protected species. Even if the fungi are so protected, the Council has not provided any evidence to demonstrate that the fungi would be significantly harmed by the proposed development, notwithstanding that an area of habitat would be lost to the proposed access road ingress and egress.
35. I note that a number of third parties raised concerns about the effect of the proposed development on the biodiversity of the site and area. However, I also note that East Sussex County Council's County Ecologist raised no objection to the proposed development, subject to the planning permission, if granted, being subject to an Ecological Design Strategy and a Landscape and Ecological Management Plan being required by a planning condition were planning permission to be granted.
36. Having regard to this position and the other evidence put before me, I conclude that the proposed development would, with the mitigation measures proposed, not result in unacceptable harm to biodiversity either on the appeal site or on adjacent land and would be likely to result in a net gain for biodiversity overall.
37. Accordingly, from the evidence before me, I find no conflict with Policy CP10 of the CPP1, which requires development proposals to conserve existing biodiversity and provide net gains for biodiversity wherever possible, nor with Policy QD18 of the BHLP, which provides protection for species and habitats that are identified in the 'Red Data books' as being "endangered, extinct, rare or vulnerable".

Other Matters

38. A signed and dated S106 was submitted by the appellant which sets out planning obligations in respect of the provision of affordable housing; the payment of financial contributions to education, the Council's local employment scheme and recreation; and the submission of an Employment and Training Strategy. The Community Infrastructure Levy (CIL) Regulation 122(2) provides that a planning obligation may only constitute a reason for granting planning permission if it is necessary to make the development acceptable in planning terms; is directly related to the development; and in scale and kind to the development. Paragraph 56 of the Framework requires that planning obligations must only be sought where they meet these tests.
39. The proposal would provide affordable housing in accordance with Policy CP20 of the CPP1 which requires 30% onsite affordable housing provision on sites of between 10 and 14 (net) dwellings. There is a clearly identified need for affordable housing within Brighton and Hove and the proposed dwellings would assist with meeting that need. I am therefore satisfied that this proposed obligation meets the relevant tests and I give its provisions significant weight.
40. However, as regards the obligations relating to the financial contributions, although the amount of each contribution is set out in the Committee Report, the S106 before me does not itself specify the amount of each contribution. I am therefore unable to conclude that the contributions set out in the S106 meet the test of being fairly and reasonably related in scale and kind to the proposed development and I am unable to take these obligations into account.
41. The obligation in relation to the Employment and Training Strategy requires the submission of a strategy to encourage the employment of local construction workers with a target of at least 20% of the job opportunities being taken by the Brighton & Hove workforce, to provide for the monitoring thereof and to promote education and training opportunities in construction. Although the Council has not specifically explained the basis for this obligation, the Committee Report indicates that it is to comply with Policy CP7 of the CPP1 and the City Council's Developer Contributions Technical Guidance.
42. I note that the supporting text to Policy CP7 identifies employment and regeneration initiatives but the policy itself does not specifically require the submission of an Employment and Training Strategy. The Council has not drawn my attention to any other policy specifically requiring the submission of such a Strategy. Therefore, from the evidence that is before me, I am not persuaded that the submission of an Employment and Training Strategy is necessary to make the development acceptable in planning terms and that the obligation therefore complies with the first of the tests of Regulation 122. I am therefore unable to take this obligation into account.
43. The appellant explains that the intention is to use the proceeds from the sale of the appeal site to provide enhanced sporting and education facilities at the College. These would be an undoubted benefit to the students of the College and possibly the local community. However, as I have no mechanism before me to ensure that these facilities would be provided following the sale of the appeal site, I am only able to give this stated intention very limited weight.

44. I acknowledge that support for the proposed development was expressed by a number of third parties. However, this support does not alter my conclusions on the main issues.

Planning Balance

45. It is common ground between the main parties that the Council cannot demonstrate a 5-year supply of deliverable housing sites. The Planning Officer's Report indicates that the Council can only demonstrate a supply of 4.5 years, which is not contested by the appellant.
46. Consequently, in accordance with footnote 7 of the Framework the policies which are most important for determining the application are out-of-date and so clause d) of paragraph 11 of the Framework is engaged. Paragraph 11 sets out the presumption in favour of sustainable development and, under clause d), the presumption requires planning permission to be granted unless any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
47. The Framework recognises the Government's objective of significantly boosting the supply of land for housing. Local planning authorities are required to support the development of windfall sites and to give great weight to the benefits of using suitable sites within existing settlements for homes. Planning decisions should support development that makes efficient use of land.
48. The proposed development would contribute to the achievement of the economic and social objectives for sustainable development as set out in paragraph 8 of the Framework, the former through employment in the construction of the dwellings and the contribution of future occupiers to the local economy and the latter through the provision of additional dwellings, including 3 affordable dwellings. It could also lead to the improvement of sports and general education facilities at Varndean College.
49. However, the Framework also requires the retention of existing open space as I have noted above and that account be taken of the desirability of maintaining an area's prevailing character. Planning decisions should ensure that developments will add to the overall quality of an area and are sympathetic to local character and create places with a high standard of amenity for existing and future users.
50. On balance, I consider that the harm I have identified through the loss of an area of open space and a view that contributes substantially to the character and appearance of the area, when assessed against the policies in the Framework as a whole, significantly and demonstrably outweighs the benefit of the provision of 10 additional dwellings notwithstanding the acknowledged need for housing in the city. Accordingly, the presumption in favour of granting permission under paragraph 11 d) of the Framework does not apply in this instance.
51. I have found that the development would result in the loss of open space that performs a valuable function due to its openness and the extensive view it allows and would thus cause substantial harm to the character and appearance of the area. Although I have found no conflict with Policies CP10 and CP12 of the CPP1 nor Policies QD18 and QD27 of the BHLP, the proposal would conflict

with Policy CP16 of the CPP1. Even if I had been able to take into account the provisions of the S106 in addition to that relating to affordable housing, these would not have outweighed the harm I have identified and consequent conflict with policy.

52. The conflict with the development plan in this respect would not be outweighed by the benefits of the proposed development.

Conclusion

53. For the reasons given above, and having regard to other matters raised, the appeal is dismissed.

Martin Small

INSPECTOR