

Appeal Decision

Site visit made on 26 February 2020

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th March 2020

Appeal Ref: APP/C3810/W/19/3229025

99 Victoria Drive, Bognor Regis, West Sussex PO21 2DZ

- 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 Sam Quinn against the decision of Arun District Council.
 - The application, Ref. BR/281/18/PL dated 5 November 2018 was refused by notice dated 28 February 2019.
 - The development proposed is the erection of a three storey building to provide 9 no. flats, comprising 6 no. 1-bed and 3 no. 2-bed units with associated amenity areas, access and car parking following the demolition of the existing building.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a three storey building to provide 9 no. flats, comprising 6 no. 1-bed and 3 no. 2-bed units with associated amenity areas, access and car parking following the demolition of the existing building at 99 Victoria Drive, Bognor Regis in accordance with the terms of the application, Ref. BR/281/18/PL, dated 5 November 2018, subject to the conditions in the attached Schedule.

Preliminary and Procedural Matters

2. In correspondence with the Planning Inspectorate (PINS) during the appeal process, the appellant's agent confirmed that revised drawings were submitted to the Council on 29 January 2019. I have made my decision having regard to these amended plans.
3. The appellant has submitted a Planning Obligation by way of Unilateral Undertaking (UU) under section 106 of the Town and Country Planning Act 1990. This provides for a financial contribution towards the provision of accessible natural open green spaces to offset the impact of the development on the Pagham Harbour Special Protection Area. Although both appeal parties incorrectly refer to this as a 's106 Agreement' I am satisfied that the UU achieves the Council's objectives under the relevant policies.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of nearby occupiers, in particular any effect of overlooking from the future residents of the flats and any noise and disturbance from their comings and goings. There is also the related matter of whether, as suggested by the Council, the development would have an 'overbearing' impact on the occupiers of No. 97.
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Reasons

5. The Council's officer's report on the application reviews in some detail all relevant aspects of the proposed development, most of which are regarded as being acceptable and include the key consideration of the building appearing in keeping with the character and the appearance of the area. However, there is concern as regards the effect of the scheme on the living conditions for existing nearby residents, both to the side and rear of the proposed block of flats.
6. Turning firstly to the effect on residents to the side of the site, I saw on my visit that No. 97 is a detached dwelling with no windows in the nearest flank wall. The property has a fairly short rear garden that terminates in a large outbuilding within the garden of No. 95 which wraps around No. 97. Currently the low boundary fence (about 1m high) between the appeal site and No. 97 permits full views into and out of No. 97's rear garden.
7. The Council accepts that because amended plans show the first and second floor windows in the flank wall of the proposed building will be both obscure glazed and of a non-openable design below 1.7m above the internal floor areas, there will be no direct overlooking of the gardens of Nos. 97 and 95. The proposed 1.7m high obscure glazed side screens of the rear balconies will also preclude future occupiers of the flats looking sideways towards these gardens. However, it is argued that there would remain a 'perceived fear of overlooking' that would prevent the occupiers of Nos. 97 and 95 from enjoying their private gardens.
8. Whilst I acknowledge that a perception of being overlooked rather than it actually occurring is a valid planning consideration, any objection on these grounds is much more subjective. In this context I note that the Notice of Refusal states that 'The proposed building due to its height and depth will have a harmful *overbearing* impact on the amenity of the occupiers of No.97' (my emphasis).
9. However, the term 'overbearing' is not a matter of loss of privacy but of loss of outlook and usually applies when the combination of a development's scale and siting is such that a substantial part of the sky is obstructed in the outlook from a window or garden. In such cases the upper floor windows are often perceived as also overlooking the neighbour, with that perception heightened because of the offending building's proximity and dominance.
10. I do not consider this to be the case here. Quite apart from the fact that there would be a minimum gap between the development and the boundary of about 6m, no windows in No. 97 would be affected and the garden mainly looks out on to the flank of Flats 3, 6 & 9. These are set further back into the site and between them would only have two full sized windows in the south west elevation.
11. The nearest part of the garden of No.95 is located behind its outbuilding and is too far away from any part of the proposed building to be harmfully affected. In both cases the occupiers of Nos. 95 and 97 have the opportunity to introduce planting on their side of the boundary if in fact there is any perception of being overlooked. (As there would be no actual overlooking I do not regard it as incumbent on the appellant to provide total screening in the context of this particular issue). In the case of the gardens of the houses in Hillsboro Road, the

Council acknowledges that these are well above the separation distance necessary to prevent unacceptable overlooking from the proposed flats.

12. Turning to the issue of noise and disturbance from cars on the driveway and the car park to the rear of the building, my attention has been drawn in the grounds of appeal to other sites in the locality with parking areas to the rear of frontage flatted buildings with access drives running between the buildings. In rebuttal of the appellant's evidence, the Council says that without the details of parking layouts, gaps to boundaries and landscaping this evidence is of limited value and in any event there would be an adverse effect on the character of the area.
13. My own view is that this is a locality where flats are an appropriate feature of the development pattern and that it would be wrong in principle to preclude the potential for rearward parking, not least because the alternative of frontage parking would in itself have a cumulatively adverse impact on the street scene. With that said, it remains important in all cases to safeguard the character of the area and prevent noise and disturbance for existing residents and future occupiers.
14. As presently submitted the appeal scheme does not do this adequately. For example, on the Proposed Site Plan the boundary with Nos. 97 & 95 is simply labelled 'acoustic fencing' and the rear boundary with the pair of semi-detached houses in Hillsboro Road shows the retention of the existing concrete block wall and the planting of a hedge. I do not consider that enough thought has been given to the safeguarding of neighbours from the effects of car parking, including noise and headlights, and this deficiency if it remained would warrant dismissal of the appeal.
15. However, advice in the Government's Planning Practice Guidance is that by mitigating the adverse effects, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission. In this instance a condition can be imposed that would have the effect of requiring the developer to erect more substantial and tailor-made boundary treatment including supplemental planting that would significantly mitigate potential outcomes such as noise and headlight disturbance. I acknowledge that there is limited space, but high quality design and materials for the boundary in the vertical rather than horizontal plane can nonetheless provide the safeguarding effect required. This is provided that in discharging the condition, the Council is diligent in securing satisfactory details. I anticipate that this would require consideration of noise and headlight attenuation for both the flank and the rear boundaries and its implementation as necessary.
16. Overall on the main issue, I consider that the proposed flats would not have an unacceptably adverse effect on the living conditions for nearby residents as regards outlook, overlooking and noise and disturbance. Accordingly, there would be no conflict with Policies D DM1 & QE SP1 of the Arun Local Plan 2011-2031 adopted in 2018 and paragraph 127f) of the National Planning Policy Framework 2019.

Other Matters

17. The appeal application was the subject of a substantial number (29) of objections from nearby residents of the area and I have given these careful

consideration. The comments made were summarised in the Officer's report on the planning application and this also included a comment from the case officer on each of the 17 matters raised. Other than as explained in this Decision, I agree with the Council's observations and my appraisal of all other matters does not affect my overall judgement of the appeal scheme.

Conclusion and Conditions

18. For the reasons explained I conclude that I should allow the appeal. The grant of permission is subject to conditions, most of which were suggested by the Council, including three pre-commencement conditions that are acceptable to the appellant. The Council also requested the inclusion of 'Informatives' in the event of the appeal being allowed, but it is not the practice of PINS to do this. I have slightly amended the wording of some of the Council's draft conditions and also made some additions, in both cases to improve their appropriateness, clarity and coverage.
19. A condition requiring the development to be carried out in accordance with the approved plans is needed for certainty and is in the interests of proper planning. Conditions relating to the approval of external materials, landscaping, arboriculture, the construction of boundary fences and walls and the provision of facilities for refuse storage & collection will safeguard the amenity of the area and the amenities of residents. A boundary details condition additionally safeguards existing residents' living conditions, whilst that issue is also addressed by conditions relating to opaque glazing of some windows and the balcony side panels, the scheme's hours of construction and a construction management plan. This plan also has highway safety benefits, as will an on-site parking condition that will reduce the reliance on on-street parking.
20. A condition requiring cycle parking is needed to encourage travel options other than the private car, whilst the provision of electric charging points and low carbon energy supply systems embrace Government's policy to combat climate change.

Martin Andrews

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this Decision;
- 2) The development shall be carried out in accordance with the following approved plans: Location Plan dated 09/10/2018; Existing Site Plan (dated 07/09/2018); Proposed Site Plan Rev. F (dated 09/10/2018); Existing Ground Floor Plan (dated 28/08/2018); Existing First Floor Plan (dated 28/08/2018); Proposed Ground Floor Plan Rev. A (dated 09/10/2018); Proposed First Floor Plan Rev. A dated 09/10/2018); Proposed Second Floor Plan Rev. A (dated 09/10/2018); Existing Elevations (dated 28 August 2018); Proposed South East Elevation Rev. A (dated 28/01/2019); Proposed South West Elevation Rev. A dated 28/01/2018); Proposed North West Elevation Rev. A (dated 28/01/2019); Proposed North East Elevation Rev. A (dated 28/01/2019); Existing Street Scene Elevation Rev. A (dated 29/08/2018); Proposed Street Scene Elevation (dated 29/08/2018);
- 3) All activity at the site shall be carried out in strict accordance with the Arboricultural Impact Assessment and Method Statement, Report Ref: jwmb/rpt1/99victoriadrive/ AIAAMS, dated 15th January 2019 and prepared by Arbortrack Systems Ltd. Before the site is occupied or any machinery is introduced to the site or demolition work or construction work or alterations to existing ground levels take place a pre-commencement Site Meeting shall take place between the Arun DC Tree Officer and the Arboricultural Expert representing the site owners. At this meeting all protective fencing will be inspected and assessed to verify that it is 'Fit for Purpose' as required under British Standard 5837:2012 and has been erected and positioned exactly as shown on the Tree Protection Plan, AIA Appendix: A, dated January 2019. If there is deemed to be a need for any Utility Service Route connections to bisect retained tree Root Protection Areas/Zones, then prior to their installation a Method Statement prepared by an Arboricultural Expert shall be submitted that stipulates how this can be achieved without adverse impact on tree roots. Written approval and confirmation of acceptance of this Methodology shall be issued before any works are commenced out on site
- 4) No construction activities associated with the development of the new building shall take place, other than between the hours of 0800 - 1800 hours Monday to Friday, 0800 - 1300 hours Saturday and not at any time on Sundays, Bank and public holidays;
- 5) Development shall not commence until full details of the proposed surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The design should follow the hierarchy of preference for different types of surface water drainage disposal systems as set out in Approved Document H of the Building Regulations, the recommendations of the SUDS Manual produced by CIRIA. Winter groundwater monitoring to establish highest annual ground water levels and Percolation testing to BRE 365, or similar approved, shall be required to support the design of any Infiltration drainage. No part of the development shall be occupied until the complete surface water drainage system serving the property has been implemented in accordance with the agreed details and the details so agreed shall be maintained in good working order in perpetuity;

- 6) No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters: (i) the anticipated number, frequency and types of vehicles used during construction; (ii) the method of access and routing of vehicles during construction; (iii) the parking of vehicles by site operatives and visitors; (iv) the loading and unloading of plant, materials and waste; (v) the storage of plant and materials used in construction of the development; (vi) the erection and maintenance of security hoarding; (vii) the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders); (viii) details of public engagement both prior to and during construction works;
- 7) No development above damp-proof course (DPC) level shall take place until there has been submitted to and approved in writing by the Local Planning Authority, a landscaping scheme including details of hard and soft landscaping and details of existing trees and hedgerows to be retained. The approved hard landscaping shall be carried out prior to occupation of any of the dwellings and the soft landscaping shall be carried out in the first planting and seeding season, following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which, within a period of five years from the completion of development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation;
- 8) No development above damp-proof course (DPC) level shall take place unless and until a colour schedule of materials and / or finishes to be used for external walls and roofs of the proposed building and external hard surfaces have been submitted to and approved in writing by the Local Planning Authority and the materials so approved shall be used in the construction of the building and its access and parking areas;
- 9) No development above damp-proof course (DPC) level shall take place until details of any new screen walls and/or fences (including the acoustic fence to be erected along the boundary with Nos. 95 & 97 as shown on the proposed site plan and as may also be required for other boundaries) have been submitted to and approved in writing by the Local Planning Authority and no part of the development shall be occupied until such agreed screen walls and/or fences have been erected in accordance with the approved details;
- 10) No part of the development shall be first occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details first submitted to and approved in writing by the Local Planning Authority. The approved cycle storage shall be permanently retained thereafter;
- 11) No part of the development shall be first occupied until the vehicle parking and turning spaces have been constructed in accordance with the approved plan. These spaces shall thereafter be retained for their designated use;

- 12) Before the buildings hereby permitted are occupied, dustbin enclosures shall be provided as part of the development in accordance with detailed drawings first submitted to and approved in writing by the Local Planning Authority, such drawings to show the siting and design thereof. The approved bin storage spaces shall thereafter be permanently retained in good working order;
- 13) Prior to occupation of any of the dwellings, a scheme for the provision of facilities to enable the charging of electric vehicles to serve the approved dwellings shall be submitted to the local planning authority for approval and thereafter implemented in accordance with the approved details and the charge points shall thereafter be permanently retained and maintained in good working condition;
- 14) No part of the development shall be first occupied unless and until the applicant has submitted a scheme for approval by the Local Planning Authority to demonstrate that the development will incorporate decentralised, renewable and low carbon energy supply systems. The approved scheme shall thereafter be implemented prior to occupation of any part of the development and any approved renewable energy supply systems shall be permanently retained & maintained in good working order thereafter;
- 15) The obscure glazed windows with no openings below 1.7m from floor level as indicated on drawing "Proposed South West Elevation" Rev A (28/01/19) shall be installed as part of the development and shall thereafter permanently retained;
- 16) The balconies to flats 5, 6 & 9 hereby approved shall not be used until the 1.7m high obscure glazed glass side screens have been installed in accordance with drawings "Proposed North West Elevation" Rev A (28/01/19) and "Proposed South West Elevation" Rev A (28/01/19). The screens thereafter shall be permanently retained;