
Appeal Decision

Site visit made on 24 August 2020

by Robin Buchanan BA (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2020

Appeal Ref: APP/C3810/W/20/3253787
19-21 Nyewood Lane, Aldwick PO21 2QB

- 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 Mr Breskal and Mr Richards against the decision of Arun District Council.
 - The application Ref AW/232/19/OUT, dated 12 August 2019, was refused by notice dated 13 January 2020.
 - The development proposed is the demolition of 19 and 21 Nyewood Lane and erection of 20 one bed and 3 two bed flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application seeks outline planning permission with all matters reserved for future consideration. The appellant has clarified that the proposed development is for 'up to' 23 flats. The submitted plans are illustrative, intended to show how the development could be undertaken. I have dealt with the appeal on this basis.
3. The appellant has submitted a planning obligation¹ in the form of a unilateral undertaking (UU). It relates to provision for on-site affordable housing, a financial contribution to access mitigation measures in respect of the Pagham Harbour Special Protection Area and a financial contribution towards the provision of equipment at Yapton Primary School. I note that the Council's decision does not include a reason for refusal in respect of these issues. I deal with these considerations in 'other matters' below.

Main Issues

4. The main issues are the effect of the proposed development on:
 - The character and appearance of the area;
 - The living conditions of the occupiers of nearby residential properties in Wessex Avenue, having particular regard to privacy and outlook; and
 - Highway safety, having particular regard to access and parking.

¹ Section 106, Town and Country Planning Act 1990.

Reasons

Character and Appearance

5. The appeal site contains two detached houses and their gardens in a mainly residential area near the coast. It is rectangular in shape and approximately 0.1 hectares in area. Most of the surrounding houses, including along Nyewood Lane, are detached or semi-detached and are broadly similar in scale and massing to those on the appeal site. At some nearby corner plots, including with the B2166 Aldwick Road and facing the seafront, there are some taller buildings including flats. Some of these have a terraced appearance, with increased scale and massing than the generally more subservient corridors of houses along both sides of the narrower inter-connecting roads, such as Nyewood Lane. This pattern and sequence of built form is noticeable in public views and is locally distinctive.
6. The illustrative plans show how the appeal site might be developed with a single building for up to 23 flats, at part two-storey and part three-storey height. In principle, a step-down in the number of storeys across the appeal site could result in a building comparable in height on one side with the taller Aldwick Road corner building, and on the other side with the lower house at No 17 Nyewood Lane. However, and despite that it is only a short row of houses, the most important transition in built form is not on or across the appeal site, but is along the appeal site side of Nyewood Lane, between the taller Aldwick Road corner building and the taller blocks of flats beyond No 17 which extend to the corner with King's Parade.
7. Extending the general form of the Aldwick Road corner building further along this side of Nyewood Lane on the appeal site, would likely be at odds with the height, scale, massing, footprint and layout of the existing houses and also reduce space and gaps around, over and between the houses. I would therefore expect this to seriously erode the existing form of development on the appeal site and unduly increase the overall quantum and presence of built form, such that the house at No 17 would become an incongruous solitary remnant of this row of houses. It would also consolidate a form of development that for similar reasons would likely be manifestly out of keeping with the appearance of the houses along the opposite side of Nyewood Lane. I would therefore expect this to be an unduly dominant form of development and detract from the combined significance and balance of the houses in the street scene along both sides of Nyewood Lane.
8. The appeal site is close to the road edge and has a relatively open frontage, such that it is apparent in public views in both directions along Nyewood Lane. Such a fundamental change to the form of development on the appeal site would therefore likely be unduly prominent and intrusive, would not contribute positively to the street scene and would be a clear departure from local distinctiveness. Notwithstanding that the details shown are illustrative, these nevertheless demonstrate that the likely extent and bulk of a proposal to provide up to 23 flats on the appeal site would be incompatible with existing development and an overdevelopment of the appeal site.
9. In principle, the appeal proposal would therefore likely cause significant harm to the character and appearance of the area. Consequently, it would not accord with Policy D SP1 and Policy D DM1 of the Arun Local Plan, July 2018 (the LP). These policies include that development should reflect the characteristics of the

site and the surrounding local area having regard to layout, scale, massing and character. It would also conflict with the National Planning Policy Framework (the Framework) paragraphs 124, 127(a), (c) and (d) and 130, and with the relevant parts of the National Design Guide, which include that development should ensure high quality places, add to the overall quality of the area, be sympathetic to local character and maintain a distinctive sense of place having regard to the arrangement of streets, spaces, and buildings.

Living Conditions

10. The illustrative plans show how a single building for up to 23 flats might occupy a larger footprint on the appeal site than the existing houses and reduce the distance to the opposing houses and rear gardens in Wessex Avenue. There is a tall fence and some reasonably tall trees along this boundary and some houses and gardens in Wessex Avenue already face towards the residential upper floors of the taller Aldwick Road corner building or some of the flats at the corner of Nyewood Lane with King's Parade.
11. However, A block of flats more than two storeys high would likely not accord with the Council's draft design guidance which refers to separation distances between opposing two storey buildings, whereas to achieve up to 23 flats would likely require more than two storeys and a taller building. This would be liable to result in direct overlooking from more elevated upper floor windows and balconies (whether projecting or recessed) at three storey or more height towards rear windows and the gardens of the opposing houses in Wessex Avenue. Furthermore, the relatively close proximity of a building of such height, scale and massing would be expected to have a tangible overbearing effect on the occupiers of these houses in views from windows and gardens. Notwithstanding that the details shown are illustrative, these nevertheless demonstrate that outlook from rooms is likely to be incompatible with this existing development.
12. In principle, the appeal proposal would therefore likely cause significant harm to the living conditions of occupiers of houses in Wessex Avenue, with respect to privacy and outlook. It would not accord with LP Policy QE SP1 and LP Policy D DM1 of the Arun Local Plan, July 2018 (the LP). These policies include that development should not have a significant negative impact on residential amenity and have minimal impact on occupiers of nearby property having regard to privacy and outlook. It would also conflict with Framework paragraph 127(f) which includes that development should create places that have a high standard of amenity for existing occupiers.

Highway Safety

13. The illustrative plans show how parking for 10 cars to serve up to 23 flats could be provided within the appeal site in a line along most of the roadside frontage, close to the back edge of the pavement. This form of means of access would require cars to reverse into these spaces from the road or drive in forward and reverse out into the road — either way, across the pavement. The appeal site has partly open front gardens already used to park some cars, as do many other sites in the vicinity, including some with the entire front boundary removed for this purpose.

14. The Highway Authority² did not object to these 10 car parking spaces and noted the absence of any evidence that the existing arrangement of parking and access at the appeal site was unsafe. Nyewood Lane is a straight road with street lighting and is subject to a 30mph speed limit. Nonetheless, I saw that it is a well-used route to the coast for cars, cyclists and pedestrians. There are some on-street parking spaces in front of part of the appeal site and to either side, which when occupied narrow the available carriageway width. The appeal site is also relatively close to the junction with Stocker Road. There is therefore already a reasonably high complexity of vehicular, cycle and pedestrian movements in the vicinity of the appeal site.
15. The existing on-street parking would cause some obstruction to visibility in both directions for drivers of cars exiting the appeal site, as well as obstruct visibility for drivers of approaching vehicles and cyclists on Nyewood Lane. Furthermore, notwithstanding that the pavement along Nyewood Lane is reasonably wide, and that any cars parked on the appeal site might have reversing sensors to warn of obstructions, on-site parking for 10 spaces arranged in this way to serve up to 23 flats is likely to result in a significant increase in traffic generation and so vehicle movements to and from the appeal site across the pavement and over a greater length of the pavement. Notwithstanding that the details shown are illustrative, these nevertheless demonstrate a likelihood of unacceptable increased risk of pedestrian, cyclist and vehicular conflict.
16. In principle, the appeal proposal would therefore likely result in significant harm to highway safety, having regard to the proposed means of access and parking layout. It would not accord with LP Policy T SP1. This policy includes that development should make provision for safe access to the highway. It would also conflict with the Framework paragraphs 108(b), 109, 110, 127(a) and (f) which include that development should have safe and suitable access for all users that minimises conflict, function well, have good layout and not have an unacceptable impact on highway safety.

Other Matters

17. The illustrative plans show that it would appear to be possible to make satisfactory provision for shared communal amenity space and for bin and cycle storage, and I have no reason to doubt that it would not be possible to achieve high quality design. There would also be no adverse effect on ecology, including protected species, and no adverse impact on the living conditions of the occupiers of existing properties with regard to sunlight. I also appreciate that the houses on the appeal site are not listed and are not heritage assets, and that the appeal site is not in a Conservation Area or any other designated area of 'special character'. However, the absence of harm in these matters is a neutral factor in my decision and does not lead me to conclude differently in terms of the harm that I have identified in the main issues above.
18. The unilateral undertaking (UU) aims to secure financial contributions sought by the Council to mitigate the impact of up to 23 flats on the provision of primary education and on the Pagham Harbour Special Protection Area (SPA). It also aims to provide 30% of the flats on-site as affordable housing. The Council agrees that a financial contribution would provide satisfactory mitigation for access management to offset additional recreational impacts on

² West Sussex County Council.

the SPA and so not adversely affect the integrity of the SPA. On the evidence before me in this appeal I have no reason to reach a different view in this regard. The Council has also requested financial contributions in respect of secondary and sixth form education and for library and fire/rescue services. However, the UU does not include any obligations in these regards.

19. I have been provided with the Council's detailed calculation methodology and written justification for its requirements.³ I am therefore satisfied that these obligations are necessary, related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and the tests for planning obligations set out in Framework paragraph 56. I appreciate that the appellant considers that at least some of these financial contributions could instead be delivered by making payments under the Council's CIL charging schedule, but there is no evidence before me in this regard. The appellant also considers that a planning obligation could be provided at approval of reserved matters stage, and that some of the Council's requirements could instead be dealt with by a planning condition.
20. However, a planning obligation would be necessary to mitigate the impact of otherwise unacceptable development and make it acceptable in planning terms.⁴ It should therefore be present when outline planning permission is granted. Furthermore, no payment of money or other consideration can be positively required by a condition when granting planning permission⁵ and there is no evidence before me that the delivery of the development would otherwise be at serious risk to justify the use of a negatively worded condition.⁶
21. Notwithstanding the above, the UU before me is incomplete, for example, it is not dated or signed and refers to 'the plan' but no plan is attached. Consequently, the Council could not rely on it to secure the financial contributions or affordable housing obligations therein and these would not therefore be benefits of the appeal proposal. In these circumstances the proposed development would adversely affect the integrity of the SPA and there would therefore be significant harm to the SPA. However, in light of my findings on the main issues, I do not need to consider the UU any further.
22. Aldwick Parish Council and some local residents are concerned that the appeal proposal would have inadequate on-site visitor parking. The appellant refers to a parking survey to determine the availability of on-street parking spaces but it is not before me in evidence. I saw that there are some on-street parking spaces available in Nyewood Lane and in roads elsewhere in the vicinity of the appeal site. Although some spaces are subject to waiting time restrictions during the day, those would not prevent any parking and in the early morning and evening times parking would not be restricted and I note that the Highway Authority did not object to the prospect of some on-street parking. In the absence of any compelling objective evidence to the contrary, I do not therefore consider that visitor parking off-site would cause undue harm to highway safety or inconvenience to existing occupiers of nearby residential properties.

³ Written CIL Justification by West Sussex County Council, 6 August 2020, and LP Policies AH SP2 and ENV DM2.

⁴ Framework paragraph 54 and Planning Practice Guidance (PPG) Paragraph: 002 Reference ID: 23b-002-20190901.

⁵ PPG Paragraph: 005 Reference ID: 21a-005-20190723.

⁶ PPG Paragraph: 010 Reference ID: 21a-010-20190723.

23. The appellant contends that permitted development rights⁷ allow the houses on the appeal site, the house at No 17, the flats at King's Parade and the Aldwick Road corner building to be extended vertically by up to two stories, and that on the appeal site this would result in a similar impact to the appeal proposal. However, the appellant has provided no details to describe the nature or appearance of such development to allow a comparison to be made, nor on the likelihood of it being carried out. On the evidence before me, there is therefore no real prospect that such development might take place and I give this consideration limited weight.
24. It is common ground between the main parties that the Council is unable to demonstrate a 5-year housing land supply. The Council accepts that it has only a 2.9-year supply and the appellant agrees that supply is less than 3 years. On the evidence before me I have no reason to reach a different view in this regard. As a consequence, Framework paragraph 11(d) and footnote 7 is engaged such that the policies which are most important for determining the application are out-of-date.
25. Accordingly, the presumption in favour of sustainable development as set out in Framework paragraph 11 requires planning permission to be granted unless either of two circumstances apply. The first of these is where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. These policies are set out in footnote 6 to paragraph 11 and include habitats sites which, by virtue of Framework paragraph 176, include Special Protection Areas. Given my findings above on the matter of the effect of the proposed development on the SPA, Framework paragraphs 170(a), 176 and 177 provide a clear reason for refusing the development proposed. Therefore, in accordance with Framework paragraph 11(d)(i), the presumption in favour of sustainable development does not apply in this case.

Planning Balance and Conclusion

26. As explained in the main issues above, the appeal proposal for up to 23 flats would likely cause significant harm to the character and appearance of the area, to the living conditions of occupiers of existing dwellings and to highway safety. I attach substantial weight to this harm. The proposed development would not therefore accord with the development plan overall.
27. The appeal proposal is likely to deliver a net increase in the number of new homes on the appeal site and make a more efficient use of land, mindful of the extent of the housing land supply shortfall. It would also be within convenient walking and cycle distance to local facilities and services, including public transport. These would be modest benefits of the appeal proposal.
28. Consequently, there are no material considerations which indicate that my decision should not be taken otherwise in accordance with the development plan. For the reasons given, the appeal does not succeed and outline planning permission is not granted.

Robin Buchanan

INSPECTOR

⁷ The Town and Country Planning (General Permitted Development)(England) Order 2015, as amended.