



Appeal Decision

Site visit made on 5 October 2020

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2020

Appeal Ref: APP/C3810/W/20/3245777

77 Aldwick Road, Bognor Regis PO21 2NW

- 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 Simon Royall against the decision of Arun District Council.
 - The application Ref BR/233/19/PL, dated 8 August 2019, was refused by notice dated 19 December 2019.
 - The development proposed is part change of use of ground floor and formation of a first floor rear extension to create 2 No. self-contained studio flats with associated refuse/recycling & cycle store.
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Decision

1. The appeal is allowed and planning permission is granted for part change of use of ground floor and formation of a first floor rear extension to create 2 No. self-contained studio flats with associated refuse/recycling & cycle store at 77 Aldwick Road, Bognor, PO21 2NW in accordance with the terms of the application, Ref BR/233/19/PL, dated 12 August 2019, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr Simon Royall against Arun District Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is the effect on the living conditions of the occupiers of neighbouring properties with particular regard to the outlook from, and daylight to Nos. 75-79 Aldwick Road, and the privacy of Nos.10 and 14/16 Stocker Road.

Reasons

4. The proposal seeks to extend upwards an existing single storey section to the rear of No.77 Aldwick Road. Nos.75, 77 and 79 have flats at first floor level. The rear first floor flat at No.77 has a small outdoor terrace with views across the existing single storey section. The terrace, being the only outdoor space available to the occupants, is likely to be well used.
5. The proposal would be built in close proximity to the terrace and would impede outward views from it. However, there would remain some outlook alongside the new building. The height of the proposal would be such that its roof would

- be below the tops of the windows leading out onto the terrace. Therefore, it would not be overbearing upon the terrace or internal spaces opening onto it.
6. The low height relative to the existing flat would also allow sufficient light to penetrate the windows and balcony area. Although a formal assessment by a qualified BRE sunlight/daylight assessor has not been provided, there is no substantive evidence that the proposal conflicts with BRE guidance. Moreover, the Council's officer report indicates that it is common ground between the Council and appellant that the development would be unlikely to impact upon access to sunlight.
 7. I, therefore, find that there would be no harm to the living conditions of the occupiers of the flats at No.77. The internal rooms and any external terraces at Nos.75 and 79 would be further away from the proposal and so their occupiers would also retain appropriate living conditions.
 8. Nos.14/16 sit directly behind the appeal site. A large first floor window, providing the only outlook from the proposal, would face directly towards it at close range. The building has been divided into flats and land to the rear, running up to the appeal site, has been surfaced and given over to parking. Although this land could be used as outdoor space for the occupiers of Nos. 14/16 its shared nature as a parking area means that it would not be private to the individual occupiers. Therefore, overlooking of this area would not harm the living conditions of the occupiers of Nos.14/16.
 9. The short distance to the boundary with No.10 from the proposal is similar to Nos.14/16, but the majority of the plot is set to the side of the appeal site. Although the whole garden, including the closest part, is likely to be used by its occupiers, the views would not be direct and so only a minimal effect on privacy would arise. Whether or not there was additional planting at the appeal site, therefore, I find that any loss of privacy would not harm the living conditions of the occupiers of No.10.
 10. Amongst other things, Policies D SP1, D DM1, D DM4 or QE SP1 of the Arun Local Plan 2018 seek to promote wellbeing, safeguarding against significantly negative effects upon the amenity of neighbouring residents. In light of the foregoing, I conclude that this policy test would be met and that the effect on the living conditions of neighbouring residents would be acceptable.

Other Matters

11. There is considerable concern locally about the loss of retail floor space and the effect on local businesses. However, the Council has confirmed that LP Policy RET DM1 does not prevent the part change of use of retail premises. While effects on individual businesses are regrettable, the proposal would allow the retention of retail space, albeit smaller, at the site. These concerns are, therefore, of limited weight.
12. The proposal may place additional parking demand upon local streets. However, given parking restrictions in force on Aldwick Road, the Local Highway Authority is satisfied that the effects would not be severe and there would be no harm to highway safety. While local residents may sometimes struggle to find parking places and the area can become congested, there is no substantive evidence to lead me away from this position.

13. The proposal would be sited away from public views and would not harm the character and appearance of the area. Although it may come within 1m of the neighbouring boundary, there is no substantive evidence that this would result in harm to the street scene, or local development pattern.

Appropriate assessment

14. The proposal, in combination with other development, may give rise to adverse effects on the integrity of the Pagham Harbour Special Protection Area (SPA). Pagham Harbour is an estuarine site that includes intertidal mudflats, saltmarshes, lagoons, shingle, open water, reed, swamp and grassland. It supports important populations of rare birds for a large proportion of the year including dark bellied Brent Goose and Black-tailed Godwit. The conservation objectives are to avoid the deterioration of the habitats of the qualifying features and the significant disturbance of the qualifying features, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving the aims of the Birds Directive.
15. Additional residents in the area, living within the proposed accommodation could, in combination with other development, give rise to increased disturbance to wintering and breeding birds by people and their dogs. Adverse effects can be mitigated via an access management strategy that is set out in the LP, funded by contributions from developers.
16. The appellant has provided a unilateral undertaking (UU) planning obligation that would make an appropriate contribution towards the implementation of the access management strategy. Such would mitigate the adverse effects that may arise from this development, in combination with other development. However, the UU is defective in that it would only come into effect on the grant of planning permission by the Council. Although planning permission is a widely understood term, defined in statute, the UU makes its own definition in this regard. As I am not the Council, I cannot be certain that any permission granted by me would result in the obligation being secured and so I attach no weight to it.
17. As an alternative, the appellant has suggested that I could use a negatively worded condition to require a new obligation. The Planning Practice Guidance (PPG) advises that this approach to planning obligations is unlikely to be appropriate in the majority of cases. It is particularly problematic in conducting an appropriate assessment as the precise terms of the mitigation must be known if there is to be certainty that adverse effects can be mitigated.
18. However, in this case, the precise terms of the obligation are known. The required contributions are small and the obligation is not complex. The UU is only defective on a minor technical point that can be easily corrected without affecting the terms of the obligations and the appellant has confirmed a willingness to make the required payment. The particular circumstances of this case, then, allow me to attach a condition to secure a fresh obligation and still be satisfied that adverse effects will be avoided.
19. PPG advises that this approach should be limited to exceptional circumstances where there is clear evidence that the delivery of development would otherwise be at serious risk. That is not the case here. Nevertheless, as there is also advice elsewhere in the PPG that such an approach may be possible in some

circumstances, it would be a pragmatic solution to enable the delivery of development in this case.

20. Having consulted with Natural England as Statutory Nature Conservation Body, and following appropriate assessment I, therefore, conclude that the proposal would not give rise to adverse effects on the integrity of the SPA alone, or in combination with other development.

Conditions

21. A plans condition is required in the interests of certainty. To ensure that there are no adverse effects on the SPA, a condition is required to secure a new planning obligation making appropriate contributions.
22. To promote travel by non-car means, a condition is necessary to secure cycle parking facilities and, as required by LP Policy ECC SP2, a condition is necessary to require submission of a scheme of energy efficiency and renewable energy supply. To protect the living conditions of nearby residents the first floor landing and hall windows should be obscure glazed and construction working hours should be restricted.
23. The Council has suggested a condition relating to construction management. However, the site is on a highway capable of accommodating large vehicles, in an area where there are parking restrictions, but no realistic alternatives for deliveries. Contractors and delivery vehicles will, therefore, have to comply with the necessary restrictions and additional control by planning conditions would not result in further benefit to highway safety or other interests. I, therefore, conclude that such a condition is not necessary in this instance.

Conclusion

For the reasons given, I conclude that the appeal should be allowed.

M Bale

INSPECTOR

Schedule

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1357/P07; 1357/P02 Rev C; 1357/P03 Rev C; 1357/P04 Rev A; CBL-0719-194-G101.
- 3) No development shall take place until a planning obligation securing contributions towards the cost of avoiding or mitigating potential adverse effects on the Pagham Harbour Special Protection Area has been submitted to and approved in writing by the Local Planning Authority.
- 4) The new flats shall not be first occupied unless and until a scheme to demonstrate that the development will achieve energy efficiency measures that reflect the current standards applicable at the time of submission and includes the use of renewable energy supply systems has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall thereafter be implemented prior to the occupation of the development and any approved renewable energy supply systems shall be permanently retained & maintained in good working order thereafter.
- 5) No part of the development shall be first occupied until the covered and secure cycle parking spaces shown on the plans hereby permitted have been constructed and made available for use by the occupiers of the development. The facilities so approved shall thereafter be retained in perpetuity.
- 6) No construction / demolition activities shall take place, other than between 08:00 to 18:00 hours (Monday to Friday) and 08:00 to 13:00 hours (Saturday) with no works taking place on Sunday or Bank Holidays unless they are not audible outside of the application site.
- 7) The proposed first floor windows (landing and hall) on the side elevation shall at all times be glazed with obscured glass.