
Appeal Decision

Site visit made on 12 January 2021

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2021

Appeal Ref: APP/Q1445/W/20/3258083

12 Sussex Place, Brighton BN2 9QN

- 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 Brightstay (Sussex) LLP against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/00679, dated 28 February 2020, was refused by notice dated 12 May 2020.
 - The development proposed is erection of nine homes.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was in outline form with approval sought for access. All other matters are reserved for subsequent consideration. I have consequently treated the submitted drawings showing a site plan, floor plans and elevations for the proposed dwellings as being for indicative purposes only.
3. The appellant has submitted a transport statement¹ with the appeal, which includes swept path analysis for cars, delivery and refuse vehicles. This would not alter the proposal and the Council has had the opportunity to provide comments. I have taken the information into consideration as there would be no prejudice caused to any party.

Main Issues

4. The main issues are:
 - Whether the proposed development would represent the efficient use of land; and,
 - Whether the proposed development would provide safe and satisfactory access for vehicles and pedestrians.

Reasons

Efficient use of land

5. The appeal site consists of an area of previously developed land, which is currently used for informal car parking. It is served by an existing vehicular access from Richmond Parade and it is enclosed by neighbouring development,

¹ Prepared by Reeves Transport Planning Ltd DATED June 2020 ref. AS/SGR/SPB/160520 V2

including residential properties to the east and west, and commercial buildings to the south and north. The appeal site adjoins, but is outside, the Valley Gardens Conservation Area (the CA) and several of the terraced houses in Grand Parade that back onto the site are Grade II listed buildings, the closest including Nos 9-10, 12-13, 14, 17, 18-19, and 20-22. Given the enclosed nature of the appeal site to the rear of the properties in Grand Parade, there are minimal public views of the appeal site from the CA. The buildings in the area are of varied design and they range in height. A large mixed-use development is currently being constructed to the south of the appeal site adjacent to Circus Street. The site is in an accessible location close to passenger transport facilities and shops and services in the city centre.

6. Policy CP1 of the Brighton & Hove City Plan Part One (the City Plan) seeks to focus new development in accessible areas in the city and those with the most capacity to accommodate new homes; and promote the efficient use and development of land across the city including higher densities in appropriate locations. Policy CP14 of the City Plan states that residential development should be of a density that is appropriate to the identified positive character of the neighbourhood and be determined on a case by case basis. Development will be permitted at higher densities than those typically found in the locality, subject to specific criteria. To make efficient and sustainable use of the land available, new residential development in Brighton & Hove will be expected to achieve a minimum density of 50 dwellings per hectare, provided it contributes positively to creating or maintaining sustainable neighbourhoods and that specific criteria are met.
7. Paragraph 122 of the National Planning Policy Framework (the Framework) sets out that planning decisions should support development that makes efficient use of land. Furthermore, paragraph 123 states that where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site. Furthermore, paragraph 123 states that local planning authorities should refuse applications which they consider fail to make efficient use of land taking into account the policies in the Framework.
8. The information before me shows that the Council has a housing land supply of 4.0 years, therefore it cannot demonstrate a 5-year housing land supply. The most important policies for determining the appeal, including Policies CP1 and CP14 of the City Plan and saved Policy HO1 of the Brighton Local Plan 2005, are therefore out-of-date. In the context of the significant shortfall in housing land supply, it is especially important that development makes optimal use of the site, particularly given that the land is previously developed and in an accessible location. I am also mindful of the physical constraints of Brighton & Hove, which is located between South Downs National Park and the sea.
9. Planning permission has previously been granted in 2011 for the construction of 49 dwellings, including 20 affordable units, at the appeal site². However, the approved development has not been constructed. The appellant states that it has not been possible to viably deliver a larger scale development, and the appeal proposal provides a deliverable solution to the site. Nevertheless, there

² Council reference: BH2010/03791

is no substantive evidence before me to show that a higher density development could not be deliverable.

10. I appreciate that layout is a matter reserved for subsequent approval, however the indicative floor plans show large houses comprising 8no 4-bed and 1no 3-bed units, which clearly influences the number of dwellings proposed in the outline planning application. The mix of accommodation consisting solely of large houses restricts the density of the development and there is no substantive evidence before me to show that there is a greater need for this type of accommodation above smaller households or flatted development.
11. A greater mix of smaller households and larger dwellings, as well as a mixture of houses and flats, or simply a development of flats would be likely to significantly boost the density of the development. I see no reason to suggest that a higher density development could not maintain the character and appearance of the area or preserve the setting of heritage assets. In this regard, the previous planning permission demonstrates that a higher density of development would be possible. I note the advice provided by the Design South East design panel³, however this related to a different scheme for a mixed-use redevelopment incorporating retail units, offices and 84 studio apartments within a seven-storey building. Drawings of that proposal are not before me. Nevertheless, this would not alter my view that the proposal could make more efficient use of the land.
12. Despite that the density of the proposal would be similar to development in the area and that it would be above the minimum density set out in Policy CP14 of the City Plan, given the accessible location of the appeal site I attach significant weight to the need to optimise the use of the site in order to accommodate the area's housing needs.
13. For these reasons, I conclude that the proposed development would not make efficient use of this previously developed and accessible site. The proposal would therefore be contrary to Policies CP1 and CP14 of the City Plan and saved Policy HO1 of the Local Plan. These policies seek to focus new development in accessible areas of the city and those with the most capacity to accommodate new homes; and promote the efficient use and development of land across the city. The proposal would also conflict with the Framework, which seeks to significantly boost the supply of housing and make the efficient use of land.

Highway safety

14. The proposed development would be served by an existing road at Sussex Place. The road is around 6 metres wide and includes double yellow lines around the corners and along the western side. Cars are parked adjacent to buildings along the eastern side of the road, which reduces the width of the carriageway.
15. The appellant's transport assessment includes swept path analysis, which shows that cars, delivery and refuse vehicles could turn within the site. Consequently, vehicles would be able to enter and leave the site in forward gear. The Council states that the proposal is acceptable in this respect. I agree.

³ Letter dated 20 November 2018.

16. However, the Council is concerned that swept path analysis drawings have not been provided for emergency vehicles, predominantly fire tenders, and no alternative provisions have been put in place. Furthermore, the Council states that the lack of formal footways would represent a safety hazard and should be provided alongside the access and be accessible to all with tactile paving and dropped kerbs.
17. Based on the submitted swept path analysis, I am satisfied that there would be sufficient space for an ambulance to turn within the site. Given the length of a fire tender, it seems likely that it would need to reverse along Sussex Place when leaving the site. However, the road is short and straight, with limited activity. Given that emergency callouts are likely to be very infrequent, this would have a negligible effect on highway safety, particularly as there would be likely to be crew members available to act as a banksman if needed.
18. In respect of pedestrian safety, there is an existing tarmac footway that runs along the western side of the road. The proposal for 9no dwellings would generate a modest number of vehicular movements and there is limited activity in Sussex Road due to the short length of the road. In this context, I am satisfied that the width and surfacing of the existing footway would provide an acceptable route for pedestrians. The suitability of landscaping within the appeal site could be assessed as part of the landscaping reserved matter.
19. For these reasons, I conclude that the proposed development would provide safe and satisfactory access for vehicles and pedestrians. The proposal would therefore accord with saved Policy TR7 of the Brighton & Hove Local Plan 2005, which seeks to protect the safety of users of pavements, cycle routes and roads.

Other Matters

20. The appellant has indicated a willingness to make a financial contribution towards the provision of affordable housing. Policy CP20 of the City Plan states that the Council will require the provision of affordable housing on all sites of 5 or more dwellings and will negotiate to achieve 20% affordable housing as an equivalent financial contribution on sites of between 5 and 9 dwellings.
21. The appellant suggests that a planning condition could be imposed to stipulate that no development shall commence until the applicant has entered into a planning obligation requiring the payment of a financial contribution towards the provision of off-site affordable housing.
22. Nevertheless, the Planning Practice Guidance (PPG) states that: '*A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency*'.
23. The PPG continues: '*However, in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate,*

*where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes)*⁴. There are no exceptional circumstances before me to indicate that a negatively worded condition would be appropriate, and the proposal does not fall into the category of a complex development scheme. I note that the precise unit mix is not known at this stage, however I see no reason why a planning obligation could not be drafted to accommodate this. Therefore, having regard to the advice in the PPG, it would not be appropriate to seek to secure such a legal agreement by planning condition. Consequently, in the absence of any completed legal agreement to secure it, the proposal would not make a contribution towards the provision of affordable housing.

24. I have had regard to the statutory duty imposed by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which states that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard must be had to the desirability of preserving the building or its setting. Furthermore, I am mindful of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Paragraph 193 of the Framework states that "*great weight should be given to the [designated heritage] asset's conservation*".
25. I note that the Council has not raised the effect of the proposal on the setting of designated heritage assets as a reason for refusal. The proposal would be served by an existing vehicular access, which is acceptable. Matters relating to layout, appearance and scale are reserved for subsequent approval. The indicative site plan shows an acceptable separation to the rear of the Grade II listed buildings, and the indicative elevations suggest that the proposed dwellings would not exceed the height of the buildings in Grand Parade. Having regard to the location of the proposal to the rear of Grand Parade and the minimal views from the CA and the front of the listed buildings, I am satisfied that the final detailed design of the proposal could preserve or enhance the setting of the designated heritage assets.

Planning balance

26. The information before me shows that the Council has a housing supply of 4.0 years. As such, as the Council cannot demonstrate a deliverable 5 year housing land supply, the relevant policies for the supply of housing are out-of-date in accordance with footnote 7 of the Framework. In these circumstances, paragraph 11(d) ii of the Framework is engaged.
27. Whilst paragraph 59 of the Framework refers to significantly boosting the supply of housing, the provision of 9no additional units would make a limited contribution. There would be a social benefit in providing additional housing units in an accessible location close to shops, services and passenger transport facilities. The proposal would bring temporary economic benefit from the construction process, and the long-term economic benefit from the boost to local services from the new residents. These factors weigh in favour of the proposal, but the benefits would be modest because of the limited number of proposed dwellings.

⁴ Paragraph: 010 Reference ID: 21a-010-20190723

28. Although the appellant has indicated a willingness to make a financial contribution towards the provision of affordable housing, in the absence of an appropriate mechanism before me to secure it, this would not weigh in favour of the proposal.
29. In the context of the significant shortfall in housing land supply, I have found that the proposed development would not make efficient use of this previously developed and accessible site, which is a matter that attracts significant weight.
30. I find that the failure to make efficient use of the land would significantly and demonstrably outweigh the benefits outlined above, when assessed against the policies in the Framework taken as a whole. Therefore, the proposal would not be a sustainable form of development.

Conclusion

31. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal is dismissed.

C Osgathorp

INSPECTOR