



Appeal Decision

Site visit made on 6 June 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2023

Appeal Ref: APP/Y9507/W/22/3306699

St Johns Church Hall, Talbot Terrace, Lewes, East Sussex BN7 2DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Talbot Terrace Development Ltd against the decision of South Downs National Park Authority.
 - The application Ref SDNP/22/02957/CND, dated 20 June 2022, was refused by notice dated 4 August 2022.
 - The application sought planning permission for demolition of existing Church Hall and garage and the construction of 3 no. residential dwellings, without complying with condition 2 attached to planning permission Ref SDNP/22/01620/CND, dated 27 May 2022.
 - The condition in dispute is No 2 which states that: *The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Application"*.
 - The reasons given for the condition is: *For the avoidance of doubt and in the interests of proper planning*.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing Church Hall and garage and the construction of 3 no. residential dwellings, without complying with condition 2 attached to planning permission Ref SDNP/22/01620/CND, dated 27 May 2022, at St Johns Church Hall, Talbot Terrace, Lewes, East Sussex BN7 2DS in accordance with the terms of the application, Ref SDNP/22/02957/CND, dated 20 June 2022, subject to the conditions in the schedule below.

Preliminary Matters

2. According to the application form, the proposal was for variation of condition 2 of planning permission SDNP/22/01620/CND (the 2022 permission). This planning permission, granted on 27 May 2022, was itself for variation of a previous planning permission SDNP/21/01784/FUL, granted on 12 October 2021 (the 2021 permission). The description on the Authority's decision notice refers to the 2021 planning permission. However, the appellant's grounds of appeal confirm that the application sought further variation of the plans approved under the 2022 permission.
3. In the banner heading and decision above I have included the description of the proposed development as it was described on the 2021 permission, together with details of the condition on the 2022 permission which it is now proposed should be amended. This accurately describes the proposal which is

the subject of the appeal and both parties have confirmed their agreement to use of this revised description.

4. During my site visit I noted that construction works had commenced. The church hall had been demolished and the foundations and part of the ground floor of the proposed dwellings were in situ. These appeared to correspond with the approved plans and no construction relating to the proposed amended second floor layout had been undertaken.

Background and Main Issues

5. The 2021 permission was for the construction of a terrace of three dwellings on the site of a former Church Hall and garage. Condition 2 of the 2021 permission requires that the development be carried out in accordance with plans listed on the 2021 decision notice.
6. The approved scheme was subsequently amended, initially in the form of a Non-Material Amendment¹ and then again in the form of the 2022 permission. The latter granted permission for further variation of the approved plans and was likewise subject to a condition, also numbered condition 2, which requires that development be carried out in accordance with the alternative approved plans.
7. The appeal proposal is for a further variation of the plans approved by the 2022 permission. The proposed revisions relate to the internal layout of the proposed dwellings. In particular, accommodation on the second floor is proposed to comprise one bedroom and a bathroom at the front, with an additional area described as a study at the rear. This would replace one bedroom at the front and a bathroom at the rear, as proposed on the plans approved in 2022. Neither the gross internal area nor the external appearance of the dwellings would be affected.
8. The single reason for refusal highlights conflict with development plan policies relating to housing mix and the supply of smaller dwellings. The main issue is therefore whether condition 2, and compliance with the associated approved plans, is reasonable and necessary, having regard to the effect of the amended internal layout on the supply of smaller dwellings.

Reasons

9. Strategic Policy SD27 of the South Downs Local Plan 2019 (SDLP) sets out requirements for residential development, aimed at delivering a balanced mix of housing to meet projected future housing needs. The required housing mix is specified in part 1b of the policy, and is expressed in terms of the number of proposed bedrooms. It includes that no more than 10% of the proposed dwellings should have four bedrooms or more. The Policy allows for some degree of flexibility, but specifies that this should be based on robust evidence of local housing need or considerations relating to National Park Purpose 1.
10. The supporting text makes clear that the purpose of Policy SD27 is to provide a mix of homes that reflects the need and community aspirations for small and medium sized homes. It goes on to state that any room which is not a main reception room, kitchen, bathroom or WC, and has dimensions that allow for a

¹ South Downs National Park Authority ref: SDNP/22/00091/NMA

single bed, will be counted in the proposed number of bedrooms and that this includes studies.

11. There is no disagreement between the parties that the second floor studies indicated on the proposed plans would exceed the 7.5sqm minimum size of a single bedroom, as defined in the Nationally Described Space Standards (NDSS)². However, the appellant disputes the weight which should be attached to the supporting text to Policy SD27, highlighting relevant conclusions of the Court of Appeal on that matter. The judgement in question³ confirmed that supporting text is relevant to interpretation of a policy, but does not have the force of policy and cannot trump the policy.
12. In this case, the relevant supporting text explains how the Authority will consider the proposed housing mix as set out in Policy SD27. It is clearly intended to aid interpretation of the policy, reflecting the reality that rooms in new dwellings may ultimately be used for different purposes from those described on proposed plans. The supporting text is directly related to the requirements of the policy and does not introduce additional policy requirements or exclude the provision of studies per se. On that basis, I have had regard to it when considering whether the proposed alternative layout would conflict with the development plan. I have nevertheless also kept in mind that the text in question is explanatory in nature and that the proposed plans specify three bedrooms, not four.
13. The reason for refusal makes clear that the Authority's concern is in relation to the need for smaller dwellings. The proposed variation in the internal layout would not alter the outer envelope of the proposed dwellings or their internal floorspace. The appellant has highlighted that each dwelling would significantly exceed the minimum requirements of the NDSS for three storey, three bedroom dwellings and no evidence has been provided to the contrary.
14. While the use of the rear second floor room as either a study or a bedroom would require removal of bathroom fittings shown on the approved plans, a future occupier would be free to make that choice. The dwellings would still provide a family bathroom on the first floor, so there is no indication that this would compromise the availability of suitable accommodation to support a range of household requirements.
15. The availability of working spaces which encourage home working is supported by Policy HC4 of the Lewes Neighbourhood Plan 2019. The appeal was also accompanied by evidence from the Office for National Statistics of increased demand for hybrid working which the proposed layout would support. While working patterns continue to evolve following the Covid 19 pandemic, and no specific evidence has been provided on the demand for home working within the Lewes area, the general trend highlighted therein provides some limited additional justification for exercising a degree of flexibility.
16. Taking all the above into consideration, given that the outer envelope of the building has been approved and future occupiers would be free to adapt the internal layout following completion, a condition which has the effect of preventing modification of the proposed internal layout during construction is not reasonable.

² Technical Housing Standards – Nationally Described Space Standard (2015)

³ Cherkley Campaign Ltd, R (on the application of) v Mole Valley DC & Anor [2014] EWCA Civ 567 (7 May 2014)

17. I appreciate that Policy SD27 is informed by evidence on local housing need, which will have been tested through the examination in public prior to adoption of the SDLP in 2019. However, although the Authority refers briefly to an Authority Monitoring Report of unspecified date, I have not been provided with any more recent or detailed evidence demonstrating under-delivery of smaller dwellings. Even if such evidence had been provided, allowing this modest development, in a different configuration and with no additional floorspace proposed, would not significantly compromise the delivery of smaller dwellings in the local area or the National Park as a whole. Therefore, the evidence before me does not demonstrate that adherence to the 2022 approved internal layout is necessary to support delivery of appropriate mix of housing over the plan period.
18. No financial viability argument has been advanced by the appellant. Therefore the absence of such evidence does not undermine the conclusions I have reached for the reasons set out above.
19. I conclude that condition 2 of planning permission SDNP/22/01620/CND, requiring compliance with the plans approved in 2022, is neither reasonable nor necessary, having regard to the effect of the amended internal layout on the supply of smaller dwellings. Although the proposed internal layout would conflict with Policy SD27 of the SDLP, part 1b, when interpreted in accordance with the supporting text, there are other considerations which indicate that a flexible approach to the required housing mix should be adopted. The proposal would not conflict with Policies PL1A and HC4 of the Lewes Neighbourhood Plan, which amongst other things are supportive of development proposals which provide space for home working and do not otherwise specify a required housing mix.

Other Matters

20. I have noted that an earlier proposed development was amended to delete a fourth bedroom and that planning permission was granted following this amendment. However, that does not prevent me from considering the merits of the layout now proposed, on the basis of the evidence before me.
21. I have had regard to the appeal site's location within the Lewes Conservation Area and the South Downs National Park. The Authority does not allege that the proposed modification to the internal layout would have an adverse effect on the Conservation Area. Nor is any wider harm alleged to the statutory purposes of the National Park, beyond the housing mix issues which I have considered above.
22. Having considered the development and visited the site, I concur that the proposal would preserve the character and appearance of the Conservation Area and would not conflict with the statutory purposes of the National Park, or the conservation and enhancement of landscape and scenic beauty therein.

Conditions

23. Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. It is evident from comparison of the 2021 and 2022 decision notices that the conditions attached to the 2022 permission had been updated to reflect

discharge of conditions dating from the 2021 permission. On that basis, I have referred to the conditions imposed on the 2022 permission when considering which conditions should be imposed in the Schedule below.

24. As I have no information before me about the status of other conditions imposed on the 2022 planning permission, I have imposed all those that I consider remain relevant. In doing so, I have considered whether they are consistent with advice in the National Planning Policy Framework (the Framework) and PPG. In some cases, I have made amendments to the detailed wording for clarity. In the event that some of the 2022 conditions I have re-imposed have in fact been discharged in the meantime, that is a matter which can be addressed by the parties.
25. As the development has already started it is unnecessary for me to attach a condition specifying the date by which development must commence.
26. Notwithstanding the conclusion I have reached above, a condition requiring compliance with the approved plans remains reasonable and necessary, to provide certainty. I have imposed a modified condition, which allows for the revised layout shown on drawing no. 2102-F-003 H, while also making clear that the approved plans include those listed as having been approved on each of the 2021 and 2022 decision notices, where they have not been modified.
27. I have otherwise imposed the conditions attached to the 2022 permission. These encompass requirements relating to external materials, boundary treatments, the timing of construction works, foul and surface water drainage, parking, ecological measures and future alterations, all of which I am satisfied are necessary and otherwise consistent with the tests in the Framework. I am mindful that the Framework states that permitted development rights should not be restricted unless there is clear justification to do so. However, given the rather constrained extent of the site and its relationship with surrounding development, I am satisfied that the existing condition maintaining control over future additions and alterations remains justified in this case.

Conclusion

28. For the reasons given above, I allow the appeal and grant a new planning permission subject to the conditions detailed in the Schedule below.

Jane Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the approved plans listed under condition 2 of planning permission SDNP/21/01784/FUL, as modified by the approved plans listed under condition 2 of planning permission SDNP/22/01620/CND and as further modified by the Floor Plans & Elevations hereby approved, as detailed on drawing no. 2102-F-003 revision H.

- 2) The external materials and finishes to be used in the development shall be those approved under application SDNP/22/00050/DCOND to which the decision notice dated 4 March 2022 refers.
- 3) Construction work and deliveries in association with the development hereby permitted shall be restricted to between the hours of 0800 and 1800 Mondays to Fridays and from 0830 until 1300 on Saturdays. No works in association with the development hereby permitted shall be carried out at any time on Sundays or on Bank/Statutory Holidays.
- 4) The new hard surfaces shall use porous materials, and/or provision made to direct run-off water from these hard surfaces to a permeable or porous area or surface within the curtilage of the dwellinghouse.
- 5) The development shall be carried out in accordance with the Ecosystem Services Statement submitted, and the measures stated therein shall be put in place prior to the first residential occupation of each individual dwelling and retained as such thereafter.
- 6) Prior to the first residential occupation of each new dwelling, the car parking areas and cycle storage facilities shall be provided in accordance with the approved details and made ready for use. The car parking and cycle storage facilities shall be retained thereafter for the use of occupiers and visitors to the new dwellings.
- 7) Prior to the first residential occupation of each new dwelling, electric vehicle charging points shall be installed adjacent to the two off-street car parking spaces connected with the property at each end of the terrace. The electric vehicle charging points shall be retained as such thereafter.
- 8) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no buildings, structures or works as defined within Part 1 of Schedule 2, classes A, B, C, D, E or F, of that Order, shall be erected or undertaken on the site.
- 9) The boundary walls, fences and other means of enclosure shall be laid out and implemented in accordance with the details approved under application SDNP/22/00050/DCOND, to which the decision notice dated 4 March 2022 refers.
- 10) The development shall be implemented in accordance with the details approved under application SDNP/22/00050/DCOND, to which the decision notice dated 4 March 2022 refers, in respect of location of public sewers and details of measures necessary to divert those public sewers.

END