



Appeal Decision

Site visit made on 26 October 2010

by Isobel McCretton BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 February 2011

Appeal Ref: APP/Q1445/A/10/2131115

Land rear of 67-81 Princes Road, Brighton BN3 20J

- 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 Carelet Ltd against the decision of Brighton & Hove City Council.
 - The application Ref. BH2010/00083, dated 11 January 2010, was refused by notice dated 15 June 2010.
 - The development proposed is construction of 6no. three-storey, two bedroom terraced houses with pitched roofs and solar panels. Provision of private communal gardens, waste and refuse facilities and erection of a street level lift gatehouse with cycle store.
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Procedural Matters

1. The appellants have submitted a S106 Undertaking which will secure financial contributions towards sustainable transport measures in the city. I return to this matter below.
2. Planning permission for 4 dwellings¹ on the site was granted in 2009. This is a fallback position for the appellants and is a material consideration in my determination of this appeal.

Application for costs

3. An application for costs was made by Carelet against Brighton and Hove City Council. This application is the subject of a separate Decision.

Decision

4. I dismiss the appeal.

Main Issues

5. Although local residents have objected to the visual effect of the development, the Council takes no issue with the visual effect of the proposal and I have no reason to disagree with this view. The design and massing of the scheme now proposed would, in my opinion, sit comfortably on the site. I am satisfied that the character and appearance of the Round Hill Conservation Area would be preserved and that the significance of this designated heritage asset would not be harmed. Thus I consider that the main issues are whether the proposed development would provide satisfactory living conditions for future occupiers in terms of external living space and noise and disturbance, and whether the

¹Ref.BH2009/00847 dated 22/7/09

proposal provides for the future travel and parking demands which would be created as a result of the development.

Reasons

6. The appeal site comprises a roughly rectangular plot of land to the rear of nos.67-81 Princes Road. Land levels fall from west to east with this terrace of houses stepping down the hill, but there is an even greater fall in land levels to the rear so that the houses between the appeal site and the highway have an additional 1-2 storeys at the rear. The Brighton-Lewes railway is to the north, in a cutting below the appeal site, beyond which is the Hollingdean Waste Transfer Station and Materials Recovery Facility (MRF), while below, to the east, is an industrial area, the nearest building being a car repair garage and MOT testing station. Access to the site (pedestrian only) is from alongside no.81 Princes Road and there is a horse Chestnut tree on the frontage which is protected by a Tree Preservation Order (TPO).

Living Conditions

7. The second reason for refusal was not specific in detailing what was meant by '*a cramped standard of accommodation for future residents*', but the Council's representations set out concerns about the external living space. The changes in land levels, and the need to screen the development from the railway line and the MRF, mean that there would be a series of retaining walls to the front of the houses and a planted embankment at the rear. The garden areas of the proposed houses would be smaller than those in the approved 4 unit scheme (the Council estimates the smallest to be 27.5m² as opposed to 50m² previously).
8. Some of the garden space would be taken up by raised planters to the sides and rear, but these would have a softer appearance than walls or fences. There would also be a small patio and a semi-private garden area for each house at the front, and a broad belt of communal landscaping with a wildlife pond. The Council does not have specific minimum garden space standards. In my view the proposed garden areas would be adequate for the day to day needs of the future residents and, with good quality planting and landscaping which the Council could control, I do not consider that the outlook for future occupiers would be unduly enclosed and oppressive, or that the amenity space would be inadequate. The 4.5 metre high retaining wall near the house at the rear of no.67 referred to by the Council, appears to be to the rear of the communal landscaped area and fronted by planting, and that end house would have more space to the side and rear. Given that the footprint of the proposed development is broadly similar to that of the approved scheme, I do not consider that the outlook for the future residents of the appeal scheme would be materially different.
9. The third reason for refusal referred to the impact of noise from the nearby MRF, the activities at which have given rise to complaints about noise and odours from existing residents. The noise climate at the site is dominated by the railway line and the MRF, but the houses in this case would not be any closer to either noise source than those already approved, and there is no evidence that noise levels have worsened since the 4-house scheme was determined. The Council refers to a noise diary from one local resident, but I note that was completed in July 2009 around the time that the previous permission was granted. Moreover, both this and the observations of a local

Councillors are unquantified and it is possible that some of the problems highlighted may be addressed through stricter enforcement of conditions relating to the MRF.

10. The appellants submitted a detailed noise assessment with the previous application which has been updated to take account of the fact that there would be second floor bedrooms in the appeal scheme. The noise assessments acknowledge that the $L_{Amax,F}$ night-time guideline level of 45dB given in the World Health Organisation (WHO) Guidelines (above which sleep would be likely to be disturbed) could be exceeded with the windows open. However this would be overcome by the installation of appropriate double glazing and mechanical ventilation. In my experience this is common practice in situations such as development adjoining busy roads or railway lines and there has been no objection on the part of the Council's Environmental Health Officer.
11. In its representations the Council notes that the noise assessment submitted with the previous scheme found that the mean survey results were 5dB and 4dB lower for the day and night-time periods than previous noise measurements undertaken in October/November 2006. On this basis the Council claims that the gardens would be in a similar position to the noise measurements taken in 2006 and argues that if the average daytime readings in 2006 were 5dB higher, then rather than the mean monitored levels of 54dB $L_{Aeq,16}$ taken in 2009 (the noise level which, according to the WHO Guidelines, could cause moderate annoyance in outdoor living areas) the noise experienced in the gardens could be estimated as 59dB which could cause serious annoyance.
12. The appellants account for the difference by the fact that the proposed dwellings would be 6 metres further from the railway. Also a planted boundary wall is proposed along the rear of the development adjoining the railway embankment. While, as the Council points out, it is slightly lower in relation to the rear garden at the bottom end of the proposed terrace, the relationship to the rear gardens is the same as in the previous scheme. As a minimum, the wall would be just below the height of the rear patio doors of the end house and there are no other changes to the details which would lead me to conclude that the relationship between these rear gardens and the railway embankment would be any less acceptable than in the approved scheme or that the occupiers of the appeal proposal would be subjected to more noise.
13. I conclude that the proposed development would provide acceptable living conditions for the future occupiers in terms of amenity space and noise and disturbance and would not conflict materially with Local Plan² policies HO4 and QD27 which, among other things, allow higher density development subject to a number of criteria, including a high standard of design and architecture, and seek to protect the amenity of future occupiers.

Parking

14. With regard to parking, the site is not within a Controlled Parking Zone (CPZ) and the Council's SPG³ sets a normal requirement for the provision of up to 9 spaces (i.e. 1/dwelling and 1 visitor space/2houses), 3 more than the extant

² Brighton and Hove Local Plan 2005. The policies cited have been saved under the terms of a Direction pursuant to paragraph 1(3) of Schedule 8 of the Planning and Compulsory Purchase Act 2004.

³ Supplementary Planning Guidance SPGBH Note 4: Parking Standards (2000) (SPG)

- scheme. The parking standards are expressed as a maximum, the city's aim being to reduce excessive parking provision that encourages the non-essential use of the car, especially for peak time travel.
15. The site is in a reasonably accessible location, being within 4 minutes walk of Ditchling Road which is an arterial north-south bus route through Brighton, and around 485 metres from the London Road railway station. On-site cycle storage would be provided to meet the Councils' standards and the submitted S106 undertaking would secure contributions towards sustainable transport measures contained in the Local Transport Plan. I am satisfied that such contributions are reasonably and proportionately related to the development and that they accord with the tests for planning obligations set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and policy Q28 of the Local Plan.
 16. As with the extant scheme there would be no vehicular access to the site and no on-site parking provision. Local Plan policy HO7 indicates that the Council will grant permission for car-free housing in accessible locations where there are complementary on-street parking controls and where it can be demonstrated that the development would remain genuinely car free over the long term. However the appellants are not claiming that the development would be car free, rather that there is sufficient capacity in the available on-street parking in the area to absorb the likely parking demand from the proposed development.
 17. The Highway Authority did not disagree with the conclusions of the appellants' submitted Technical Note (TN), updated since the previous application was considered. The study found that there would be sufficient on-street capacity to accommodate the extra parking which may be generated. However there are a number of references in the appellants' TN, and in later submissions, to the fact that there is on-street capacity for 6 spaces, estimated from extrapolated census data as being the likely level of car ownership for the development, whereas the adopted standard would require up to 9.
 18. Residents accept that, during the day time, on-street spaces are more readily available in the vicinity of the site, but they consider that, overall, the on-street parking which currently takes place has been underestimated by the appellant. Their particular concern is with night time parking when demand is heaviest and when problems of double parking, parking on pavements and close to junctions are exacerbated. This time period has not been covered by the appellants. A community parking survey was carried out by a group of residents in July 2010. Unlike the survey conducted for the appellants, it was not carried out by a specialist independent traffic survey company and, although advice on the methodology was obtained at the outset from the Council's Principal Transport Planner, it has not been endorsed by the Highway Authority since being completed. I therefore treat the findings with some caution.
 19. PPG13⁴ notes that local authorities should not require developers to provide more car parking spaces than they themselves wish unless there are exceptional circumstances, for example where there are significant implications for road safety which cannot be resolved through the introduction of on-street parking controls. The Highway Authority did not consider that there were

⁴ Planning Policy Guidance 13: Transport (PPG13)

significant circumstances in the surrounding area which would be exacerbated by the proposal. Nevertheless, the residents' survey bears out the local concerns that demand for on-street parking is heaviest in the very late evening. More importantly, in my view it highlights the fact that, because of the high demand, indiscriminate parking in places which could prejudice vehicle and pedestrian safety is already taking place: I observed several instances for myself within the study area during the daytime when going to and from my site visit.

20. Moreover, I am aware that since the application was determined a CPZ has been introduced some 400 metres from the appeal site. In my experience, it is highly probable that some displacement parking, both from commuters and from residents within the CPZ who cannot get/do not wish to purchase permits, will take place within the vicinity of the site.
21. I am also cognisant of the fact that another Inspector, in determining a previous appeal⁵ in respect of proposals for 8 houses on the site, expressed the view that parking stress in the area would be likely to be exacerbated in the absence of any guarantee that the development would be genuinely car free. In that case the estimated demand was 7 spaces.
22. To conclude I do not consider that it has been adequately demonstrated that the proposal provides for the future travel and parking demands which would be created as a result of the development in accordance with Local Plan policy TR1.

Conclusion

23. Although I have not found harm in respect of the living conditions for future occupiers, I am not persuaded that there would be sufficient capacity in the available on-street parking to meet the future parking demands of the development. For the reasons given above, I consider that the appeal should be dismissed.

Isobel McCretton

INSPECTOR

⁵ APP/Q1445/A/08/2073223

