



Appeal Decision

Site visit made on 11 May 2011

by Elizabeth Lawrence BTP MRTPI

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

Decision date: 7 June 2011

Appeal Ref: APP/Q1445/A/11/2147411

Site adjacent to 1 Warmdene Way, Brighton, BN1 8NW.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Mr Bob Walters against Brighton and Hove City Council.
 - The application Ref BH2010/03428 is dated 1 November 2010.
 - The application sought planning permission for demolition of existing garage and construction of a bungalow without complying with a condition attached to planning permission Ref BH2008/03475, dated 23 June 2009.
 - The condition in dispute is No.11 which states that: No development shall take place until details of a scheme to provide sustainable transport infrastructure to support the demand for travel generated by the development has been submitted to and approved in writing by the local planning authority. This shall include a timetable for the provision to be made and shall be carried out in accordance with the approved details.
 - The reason given for the condition is: To ensure that the proposed development provides for the demand for travel it creates and does not put undue pressure on existing on-street car parking in the city and to comply with policies TR1 and SU15 of the Brighton & Hove Local Plan.
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Application for Costs

1. An application for costs was made by Mr Walters against Brighton and Hove City Council. This application is the subject of a separate decision.

Decision

2. I allow the appeal and grant planning permission for demolition of existing garage and construction of a bungalow on site adjacent to 1 Warmdene Way, Brighton, BN1 8NW in accordance with the application Ref BH2010/03428 dated 1 November 2010 without compliance with the condition 11 previously imposed on the planning permission Ref BH2008/03475, dated 23 June 2009, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Main Issue

3. The main issue is whether it is necessary and reasonable to require provision to be made for sustainable transport infrastructure to support the demand for travel generated by the development.

Reasons

4. Whilst the Appeal is against the Councils failure to determine the application within the prescribed period it is noted that the Planning Committee did consider the application
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- and decided against removing condition 11. The Committee resolved to allow the application subject to the same conditions imposed on planning permission BH2008/03475. From the Committee meeting minutes it would appear that concern was expressed that to remove the condition would lead to more people applying for the return of Section 106 contributions relating to sustainable transport. Other concerns referred to in the minutes related to the crossing between the driveway and the highway and the condition of the driveway which are matters that are covered by condition 12 of the 2008 planning approval.
5. The Appellant sought the approval of details relating to various pre-commencement conditions and submitted the Appeal application after the introduction of "*Temporary Relief Measures*" which came into effect on 17 May 2010. The measures confirm that financial contributions for transport, in relation to residential development, will only be sought on schemes of 5 units or above. The note which outlines the measures, which was issued on 11 May 2010, confirmed that as a matter of practice the Local Planning Authority will cease to secure Section 106 contributions through conditioned Section 106's. The "*Temporary Relief Measures*" were clearly introduced notwithstanding any potential conflict with policies TR1 and SU15 of the Brighton & Hove Local Plan.
 6. Condition 11 of planning permission BH2008/03475 seeks the provision of sustainable transport infrastructure and informative 6 attached to the decision advises that condition 11 may be satisfied by a Section 106 agreement, to provide £2,000.00 to fund improved sustainable transport infrastructure. However, the proposed development is for a single dwelling and as such it falls below the threshold for financial contributions for transport.
 7. Bearing in mind the Appeal application was submitted after the introduction of the "*Temporary Relief Measures*" and that the Council has confirmed that the measures are still in place it would be unreasonable to retain condition 11. In addition, little evidence has been submitted to demonstrate a need for improved sustainable transport infrastructure in the vicinity and how any such works would relate to the proposed development.
 8. I conclude that it has not been demonstrated that it is necessary for provision to be made for sustainable transport infrastructure to support the demand for travel generated by the development. Accordingly there would be no conflict with policy QD28 which states that in all cases planning obligations sought will be necessary and directly related to the proposed development and reasonable in all other respects.

Elizabeth Lawrence

INSPECTOR