



Appeal Decision

Hearing held on 12 July 2011

Site visit made on 12 July 2011

by John Chase MCD Dip Arch RIBA MRTPI

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

Decision date: 19 August 2011

Appeal Ref: APP/Q1445/A/11/2147191

Land adjacent to No 481, Mile Oak Road, Portslade, East Sussex, BN41 2RE

- 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 Wilson Hunt against the decision of Brighton & Hove City Council.
 - The application Ref BH2010/01967, dated 25 June 2010, was refused by notice dated 27 January 2011.
 - The development proposed is 2 semi-detached 3 bedroom houses with off-street parking.
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Decision

1. The appeal is allowed and planning permission is granted for 2 semi-detached 3 bedroom houses with off-street parking at land adjacent to No 481, Mile Oak Road, Portslade, East Sussex, BN41 2RE in accordance with the terms of the application, Ref BH2010/01967, dated 25 June 2010, subject to the conditions in the schedule at the end of this decision.

Application for costs

2. At the Hearing an application for costs was made by Wilson Hunt against Brighton & Hove City Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effect of the development on 1) the living conditions of the residents of No 481 Mile Oak Road with particular respect to daylight and outlook, 2) the character and appearance of the area, 3) the living conditions of the future residents with respect to traffic noise from the A27 by-pass, and 4) protected species.

Reasons

Living conditions at No 481

4. The house at No 481 Mile Oak Road has an extension adjacent to the site, with windows facing the boundary at ground and first floor levels serving, respectively, a dining area with an inner living room, and a bedroom. Whilst the original planning approval for the extension may have had different window arrangements, the point at which enforcement action might be taken has elapsed, and the proposal is assessed in relation to the current situation.

5. With respect to the dining area, there is a patio door facing the rear garden of No 481, which provides adequate light and outlook without the need for the contribution of the side window. It is likely that the rearward projection of the new houses would have some effect on the amount of evening sun reaching the patio doors, but not so great as to have a significant effect on amenity. The inner living area is already a relatively dark space, being remote from the side window in the dining area. Artificial light would currently be necessary in this area to carry out most domestic functions, and the additional effect of the new development would not significantly alter the usability of this room.
6. At first floor level, the side window is the only source of light to a single bedroom. Neither main party has produced daylight calculations, but the Council considered it likely that the new building would intrude into a 25 degree line from the centre of the existing window, being the rule of thumb outlined in the Building Research Establishment (BRE) guide "Site Layout Planning for daylight and sunlight". Even if this is the case, additional daylight would be available on either side of the highest part of the new roof, and the BRE guide recognises that the daylight needs of bedrooms are less than living rooms. With respect to outlook, the new wall would obscure the present view from this room, but would not be so close as to be unreasonably overbearing. Whilst it is accepted that a bedroom may be used for day time purposes, this is a relatively minor room in the house, and any loss of light or aspect would not significantly impinge on the residents' overall living standards.
7. The development of the appeal site, which has hitherto been open, will have some effect on the neighbouring property. However, this does not amount to the material nuisance or loss of amenity liable to be detrimental to human health, referred to in Policy QD27 of the Brighton and Hove Local Plan (LP), adopted 2005. It is concluded on the first main issue that the development would not be unduly harmful to the living conditions of the residents of No 481 Mile Oak Road with particular respect to daylight and outlook.

Character and appearance

8. Two main points have been raised in relation to this topic: the effect of the loss of openness on the character of the area, and the relationship of the style and size of the houses to the adjoining development. On the first point, it is noted that the site has an unkempt and overgrown appearance, and makes a limited contribution to the landscape value of the area. It is not contiguous with other open land along the road frontage, being bordered by the semi-detached house at No 481, and by the tunnel entrance where Mile Oak Road passes under the A27. Unlike the open countryside on the opposite side of the road, the unbuilt nature of the site is not an important or intrinsic part of the distinctive character of the area, and there is not an overwhelming case to retain it in its present condition. Whilst it may originally have been part of the garden of No 481, there is no indication that this has been the case within recent times, and the Council have not raised an objection on the basis of the loss of garden land.
9. The new houses would not be substantially different from the semi-detached pair next door in terms of size and massing, but of a dissimilar style, and constructed of different materials. Whilst the existing houses, which date from the turn of the 20th century, may have local historical associations, there is not a compelling case for the new architecture to match the traditional appearance. Indeed, LP Policy QD1 discourages replicating earlier styles unless there is a distinctive historic style of architecture in the area, whereas the other housing

in the street is of varied age and character. A contrasting appearance would not be out of keeping. The proposed site coverage would not be dissimilar to other development in the area. Overall, there is not a compelling case to show that the scheme would be contrary to LP Policies QD1 and QD2, which require new design to be of a high standard, with due regard for its surroundings. The conclusion on the second main issue is that the development would not harm the character and appearance of the area.

The effect of traffic noise on future residents

10. The site abuts the A27 by-pass, which is at a higher level, separated by an embankment. There is a continuous level of noise from this road, and the appellants' noise survey indicates LAeq values of 54 and 51dBA during daytime and night time, placing the site into the A and B noise exposure categories, respectively. Planning Policy Guidance Note 24 recommends that, in the case of development within category B, noise should be taken into account in determining an application, with conditions imposed where appropriate. In this case, in order to meet a night time internal noise level of 30dBA, an attenuation of 21dBA would be required, which would be achievable with the use of standard double glazed windows and acoustic ventilation.
11. Criticisms of the survey methodology are noted, but there are not strong grounds to disregard its findings. Whilst noise levels may vary with wind direction, there is no specific data to prove that any effect would exceed the level of attenuation proposed by the appellants, which is above the identified requirement. Any noise arising out of the use of Mile Oak Road would also be adequately suppressed by the sound reduction measures. There would be background levels of noise in the garden areas, but not to an intolerable degree, and it is noted that there are other properties in the vicinity closer to the noise source. Overall, there is no reason why this aspect should not be effectively addressed by a planning condition to enforce the use of sound insulation, leading to the conclusion on the third main issue that there would not be harm to the living conditions of the future residents with respect to traffic noise from the A27 by-pass, in compliance with LP Policy SU10.

Protected species

12. The appellants produced three ecological reports, dated March and June 2010, and January 2011. The earliest report concluded that there was no evidence of badgers on the site, and that it did not contain suitable habitats for bats or reptiles, the conservation value of the land being low. This advice was modified in later reports, following re-survey of the land and representations from neighbours, to indicate the likelihood that badgers used the site for commuting from nearby setts, and that there was the possibility of slow worms on the land. A series of recommendations were made concerning procedures to protect species during clearance of the land and construction, to provide a badger route, and to introduce planting conducive to bio-diversity.
13. There is no indication that there is a badger sett on or in the immediate vicinity of the site, and the ecologist's assertion that badgers are tolerant to changes away from the sett, so that the development would lead to minimal disturbance, was not seriously challenged. Similarly, there were reasonable grounds to consider that any reptiles found on the site could be satisfactorily transferred to other habitats. Whilst some lessening of confidence may have arisen out of the changed findings of the progression of reports, it is also

accepted that their conclusions were limited by the data available at the time of the surveys, and that the time span over which they were prepared allowed a reasonably comprehensive assessment. There is not compelling evidence to contest the assertion that any harm to protected species could be adequately mitigated, which would be susceptible to control by planning conditions. Subject to this, the development would not cause demonstrable harm to protected species, complying with LP Policy QD18.

Other Matters

14. Reference was made to the likelihood of archaeological artefacts being found in the area, although it does not form part of an identified area of archaeological interest. In view of the lack of documentary support for this assertion, and the likelihood that the site was disturbed during the course of the engineering works to the road, there are not substantial grounds to dismiss the appeal on this basis, or to justify the use of planning conditions.
15. The appellants did not dispute that the site plan shows an incursion beyond the identified development site, into land beyond the settlement boundary. Whilst the extent of the discrepancy is not great, it is of more than minimal significance. The Council were content that the modifications to the layout could take place without changing the main characteristics of the scheme, and this decision comes to the same conclusion. A planning condition would be necessary to require the submission of amended details.

Conditions

16. In addition to the conditions referred to above, regard has been had to the Council's suggested conditions in relation to the advice in Circular 11/95. They are necessary to control external materials and require landscaping, for the benefit of the appearance of the development, and hard surfaces should have provision for drainage to avoid the risk of flooding outside the site. Plans are specified for the avoidance of doubt and in the interests of proper planning. The first floor bathroom window overlooking No 481 should be obscure glazed to maintain privacy. Compliance with the Code for Sustainable Homes is necessary to meet sustainability objectives, and the appellants confirmed at the Hearing that Code 5 would be achievable. Standard limitations on permitted development rights would protect neighbours' amenity with respect to overlooking from side windows without the need for a specific condition.

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1010 E01, PO2A, PO3A, PO6A, PO7A, and PO8A, except as modified by compliance with these conditions.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until a scheme of insulation from traffic noise from the A27 by-pass, to achieve internal LAeq levels of 35dBA

between 0700 and 2300 hours, and 30dBA between 2300 and 0700 hours, has been submitted to and approved in writing by the local planning authority. No house shall be occupied until its construction has been completed in accordance with the approved details.

- 5) All external hard ground surfaces shall either be constructed of porous materials, or provision made to direct the run-off of water to permeable areas within the curtilage of the property, and retained in that condition.
- 6) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include hard surfacing, means of enclosure, planting proposals, and indications of all existing trees and hedgerows on the land with details of any to be retained, together with measures for their protection in the course of development. The scheme shall incorporate the bio-diversity proposals set out in the ecological report prepared by PJC Consultancy, dated 6 January 2011.
- 7) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of either of the houses or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation. All hard landscaping and means of enclosure shall be completed in accordance with the approved details before occupation of the houses.
- 8) No development shall take place, including clearance of the land, until a scheme of measures for the conservation of protected species has been submitted to and approved in writing by the local planning authority. Such measures shall be based on the recommendations contained in the ecological report prepared by PJC Consultancy, dated 6 January 2011, and shall be implemented throughout the course of construction, with any permanent features retained thereafter.
- 9) The dwellings shall achieve Level 5 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 5 has been achieved.
- 10) Notwithstanding the details shown on the approved plans, no development shall take place until a revised site layout with the rear boundary in the location shown on drawing 1010 E01 has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) The house on the south eastern side of the site shall not be occupied until the first floor window on the south eastern wall has been fitted with obscured glass, which shall thereafter be retained in that condition.

John Chase

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

J Cattell BA, MRTPI	Planning Consultant
M Downes	On behalf of appellants
A Tamblyn MA, MSc, MIEEM, FRGS	Ecology Consultant
R Zinzan RIBA	Architect
N Thomas BSc BArch, Reg.Arch	Architect

FOR THE LOCAL PLANNING AUTHORITY:

G Everest	Planning Officer, Brighton and Hove City Council
Cllr R Carden	Ward and City Councillor

INTERESTED PERSONS:

F Payne	Local Resident
B Payne	Local Resident
R McNicol	Observing
Cllr P MacCafferty	Chairman, planning committee

DOCUMENTS

- 1 Ecology reports by PJC dated March 2010 and January 2011
- 2 Site plan with overlay showing neighbours' assessment of effect on sunlight, and boundary positions.
- 3 SPD 08 referring to Sustainable Building Design