



Appeal Decision

Site visit made on 25 October 2011

by Jessica Graham BA(Hons) PgDipL

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

Decision date: 1 November 2011

Appeal Ref: APP/Q1445/A/11/2156828

Land to the rear of 197 Old Shoreham Road, Portslade, Sussex BN41 1XR

- 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 Mr Peter Bradford against the decision of Brighton & Hove City Council.
 - The application Ref BH2011/00834, dated 11 March 2011, was refused by notice dated 23 May 2011.
 - The development proposed is the erection of a pair of semi-detached houses.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a pair of semi-detached houses on land to the rear of 197 Old Shoreham Road, Portslade, Sussex BN41 1XR in accordance with the terms of the application, Ref BH2011/00834, dated 11 March 2011, subject to the nine conditions set out in the schedule attached to this decision

Main issues

2. The main issues are
 - (a) the effect that the proposed development would have upon the character and appearance of the area;
 - (b) whether the proposal would be capable of complying with relevant sustainability standards; and
 - (c) the impact of the proposed development upon existing trees.

Reasons

Character and appearance

3. Together with No. 199, No. 197 is one of a pair of semi-detached two-storey dwellings on the southern side of Old Shoreham Road, immediately adjoining the eastern edge of Victoria Park. No. 197 has been converted to flats, and this semi-detached pair is separated from the others to the east by the intervening presence of the library and clinic buildings. The proposed development would be constructed on land adjoining the rear gardens of Nos. 197 and 199, cut into the slope such that the ground level would be some 3m below the level of the existing gardens.
4. The design of the proposed dwellings is contemporary, with a strong vertical emphasis, slightly curved roof profiles to break up the massing, and articulated facades which would provide interest in views from Victoria Park. I consider

this an appropriate design response to the location of the site between the modern commercial buildings to the south, and the 1930s style of the existing dwellings. The overall height of the new houses would be comparable to that of the existing houses, and although the proportion of built form to plot size would be considerably greater, the separation distance from Nos. 197 and 199, the drop in levels and the context of the adjoining parking areas and recreation park would ensure that the development would not appear overly dominant, or unduly cramped, within its setting.

5. The Council contends that the area behind existing properties on Old Shoreham Road has a spacious and open character, within which the bulk of the proposed new building would be excessive. However, as noted above, the intervening library and clinic buildings sever the dwellings at Nos. 197 and 199 from the run of houses fronting the southern side of the road; they appear instead as an isolated pair, set against a backdrop of commercial buildings. In views eastward along Old Shoreham Road, and from within Victoria Park, the development would occupy a plot that currently has the appearance of empty wasteland adjoining the parking area of a large commercial building. In my judgment, this appearance would be improved by the construction of the proposed dwellings, which would help to provide an appropriately domestic-scale enclosure to part of this eastern side of the park, in keeping with the residential properties that front its western and southern sides along Beaconsfield Road and Victoria Road.
6. I conclude that the proposed development would meet the aims of Policies QD1, QD2 and QD3 of the Brighton & Hove Local Plan 1995, which seek to ensure that new development makes a positive contribution to the visual quality of the environment, taking account of local characteristics and making efficient and effective use of its site.

Sustainability standards

7. The Council's second reason for refusal concerned the fact that the proposed development is intended to achieve Level 3 rather than Level 5 of the Code for Sustainable Homes; it does not consider this a sufficiently high level of sustainability. The aim of the Code is to improve the overall sustainability of new homes by setting a single national standard for England and Wales within which the building industry can design and construct homes to higher environmental standards. It is important to note that in land use planning terms (as distinct from the requirements of the Building Regulations, which is a separate regime) compliance with the Code remains entirely voluntary.
8. Government advice set out in *Planning and Climate Change* (a supplement to Planning Policy Statement 1) advises that when proposing any local requirement for sustainable buildings, local planning authorities should specify that requirement in terms of nationally described standards, for example by reference to a Level of the Code for Sustainable Homes. However, it goes on to state that any such policy should be set out in a Development Plan Document, not a Supplementary Planning Document, so as to ensure examination by an independent Inspector.
9. The Council's position that new residential development on 'greenfield' sites should achieve a minimum rating of Level 5 is not derived from the provisions of any adopted Development Plan Document, but rather is based on the advice set out in its adopted Supplementary Planning Document 08: *Sustainable*

Building Design. This approach has not, then, been the subject of examination by an independent Inspector.

10. While Policy SU2 of the Local Plan states that permission will be granted for proposals which demonstrate a high standard of efficiency in the use of energy, water and materials, it does not refer to the Code for Sustainable Homes, or set out any other measurable requirements. I am not convinced by the Council's argument that the wording of this Policy should be interpreted as requiring efficiency over and above that required by Building Regulations. It quite simply does not say that. While I sympathise with (and applaud) the Council's desire to improve the sustainability of new housing, I consider that in the current absence of an adopted Development Plan Policy specifying the Code Level to be achieved, it would be unreasonable to seek to make compliance with this voluntary Code mandatory through the imposition of conditions, unless the developer has specifically indicated that the proposal would achieve a particular Level.
11. The Council has drawn my attention to an appeal decision (ref APP/Q1445/A/11/2147191) in which an Inspector imposed a condition requiring the development to achieve Level 5 of the Code, but it is apparent from the text of the decision that the appellant in that case had confirmed that Level 5 would be achievable. In the current case, the appellant has indicated that the proposed development would achieve Level 3 of the Code (which would be sufficient to meet current Building Regulations requirements), and the Council has not expressed any dissatisfaction with the information contained in the Waste Minimisation Statement that was submitted with the application.
12. On that basis, I consider that a condition requiring the new dwellings to achieve Level 3 of the Code for Sustainable Homes would be sufficient to ensure that they would comply with current relevant sustainability standards.

Trees

13. The proposed development would be constructed in close proximity to an existing sycamore tree that lies outside the appeal site, at the edge of Victoria Park. The appellant has not conducted a survey of the impact that the proposed development would have upon this tree. He has instead provided a copy of a letter from a tree care company, advising that one option would be to ensure that footings are dug at least 5m from the base of the tree. The letter also advises that any development work would be conditional on an effective root protection zone being fenced off with adequate materials during construction, and if access to the site was required within the root protection zone, the fitting of adequate compaction reduction surfacing. The appellant contends that since the footings of the proposed development would be at least 5m from the base of the tree, its protection could be ensured by condition.
14. The professional opinion of the Council's Arboricultural Manager, to which I attach considerable weight, is that the proximity of the sycamore to the proposed development would make it susceptible to damage from compaction, which could ultimately lead to the loss of this otherwise healthy tree. However, he has also advised that since the visual amenity of this particular tree is duplicated by a closely situated maple, a possible solution might be to allow the appellant to fell the sycamore at his own expense, and compensate for its loss by purchasing and planting a number of replacement trees in the open space nearby.

15. With this in mind, it seems to me that the matter should be easily capable of satisfactory resolution, and need not constitute a reason to refuse planning permission. An appropriately worded condition could be imposed to secure the submission of a landscaping scheme, prior to the commencement of development. This landscaping scheme would be required to include details of the measures that would be taken to protect the sycamore tree, and if these proved unacceptable to the Council, provision to be made for compensatory off-site tree replacement planting.
16. The requirement to submit details of a landscaping scheme for prior approval would also address the Council's concern, set out in its second reason for refusal, that the landscaping of the site has not been given due consideration. Subject to an appropriately worded condition, then, I consider that the proposed development would not conflict with the requirements of Policies QD15 and QD16 of the Local Plan, concerning adequate consideration of landscape design, and the retention of existing trees where possible.

Other matters

17. The proposed development would involve the removal of the existing vehicle access and parking area alongside No. 197 to form a pedestrian access, the installation of guard rails on the outside edge of the pavement opposite this access, and the reinstatement of the pavement and kerb dropped to form the associated vehicle crossover. Since these would provide valuable highway safety benefits outweighing any harm caused by increased pressure for parking arising from the new dwellings, I consider it necessary to attach a condition requiring these works to be carried out before the dwellings are occupied.
18. I note the concerns of the occupier of No. 199 about the construction of new dwellings at the end of that property's rear garden, but since the ground level of the new houses would be very much lower than that of the existing, the openings in the upper level of their northern elevation would be screened by the proposed cycle store and the boundary walls, and so would not result in any overlooking of, or reduction of privacy at, the existing pair of semi-detached houses. I understand the concerns of the occupier of the ground floor flat at No. 197 about the access to the new dwellings passing his kitchen door, but since this route would provide pedestrian access only, I am satisfied that it would not result in any harmful increase in noise or disturbance.

Conditions

19. In addition to the conditions discussed above, I have attached the Council's suggested condition requiring the submission of samples of materials, to ensure that these are appropriate to the character and appearance of the development and its setting. I also agree with the Council that conditions are needed to secure the provision of the refuse and recycling storage and cycle parking prior to the occupation of the dwellings, and the future retention of these important facilities. I have attached the Council's suggested condition requiring compliance with Lifetime Homes standards, as the appellant has confirmed that the proposal is designed to achieve those standards, but I do not consider it necessary to impose separate conditions governing hard surface materials and tree protection fences, since those concerns are addressed by the condition that requires submission of details regarding landscaping matters.

Conclusion

20. For the reasons set out above, and subject to the attached conditions, I conclude that the appeal should be allowed.

Jessica Graham

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Subject to condition no. 3 below, the development hereby permitted shall be carried out in accordance with the following approved plans: 25546/2D, 25546/3B, 25546/7A and 25546/8.
- 3) Notwithstanding condition no. 2 above, no development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include means of enclosure; hard surfacing materials (including information as to their porosity); proposed new planting on the appeal site; indications of all existing trees and hedgerows on or in close proximity to the land, and details of any to be retained, together with measures for their protection in the course of development; and proposals for off-site replacement tree planting to replace any that would be lost as a result of the development.
- 4) 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 two permitted dwellings 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 works and means of enclosure shall be completed in accordance with the approved details before either of the dwellings is occupied.
- 5) No development shall take place until samples of the materials (including colour of render, paintwork and colourwash) to be used in the construction of the external surfaces of the development 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.
- 6) Neither of the dwellings hereby permitted shall be occupied until the bollard and guard rails are erected, and the existing vehicle crossover removed and the kerb and pavement reinstated, in accordance with the details shown on plan no. 25546/3B.
- 7) Neither of the dwellings hereby permitted shall be occupied until the refuse and recycling storage facilities, and cycle parking facilities, have been provided in accordance with the details shown on plan no. 25546/8 and made available for use. These facilities shall thereafter be retained for their intended purpose at all times.
- 8) The dwellings shall achieve Level 3 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 3 has been achieved.
- 9) The dwellings shall be constructed to Lifetime Homes standards prior to their first occupation, and retained as such thereafter.