



Appeal Decision

Site visit made on 1 October 2013

by Lynne Evans BA MA MRTPI MRICS

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

Decision date: 22 October 2013

Appeal Ref: APP/Q1445/A/13/2201260

Land to the rear of 39-73 Queen Victoria Avenue, Hove

- 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 Cook Brighton Ltd against the decision of [].
 - The application Ref: BH2013/00453 dated 13 February 2013, was refused by notice dated 17 May 2013.
 - The development proposed is 2 no. new build dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - a) the effect of the proposal on the character and appearance of the local area;
 - b) whether the proposed development would create satisfactory living conditions for future residents, with particular regard to outlook and pedestrian access;
 - c) the effect of the proposal on the living conditions of surrounding residents, with particular regard to overlooking and loss of privacy, outlook, noise and disturbance, and
 - d) whether the proposal would achieve a satisfactory level of sustainability with reference to the Code for Sustainable Homes.

Reasons

Issue a) Character and appearance

3. The appeal site relates to a narrow strip of land on the south side of Edward Avenue which, along this part of the road, provides a service road to the rear of properties at 39 – 73 Queen Victoria Avenue. This terrace of properties comprises retail and service use at the ground floor and residential above. The surrounding area is predominantly residential with a mix of well-spaced houses and bungalows; some appear split-level, reflecting the local hilly topography.
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4. The appeal site is divided into a number of plots and some of the plots appear to be or have been used as amenity space or for parking. There is disagreement between the Appellant and the Council, as well as some of the local residents over the nature of the use of this land, and indeed some of the evidence is conflicting. Nonetheless, I consider that its openness does make a contribution to the character and appearance of the local area. The surrounding development is generally well spaced and this area of open land, despite its narrowness provides a physical open gap between the 2-3 storey development at Nos 39 – 73 Queen Victoria Avenue and the smaller scale residential development to the south in both Edward Avenue and Elizabeth Avenue. I do not therefore agree with the Appellant that the site, which varies in appearance between the individual plots, detracts from the character and appearance of the local area; it offers a generally open buffer between development which contributes to the local character and appearance of generally well-spaced dwellings.
5. The proposed development would introduce a single storey development with a mono-pitch, sedum roof, into this open gap to provide two new one bedroom dwellings. It would be a largely inward looking development with only high level windows facing towards the street and areas of terrace enclosed by tall, vertical timber boarding. It would not, in my view, in terms of its scale, bulk and massing relate appropriately to any of the surrounding development. Given the small size of the site and the nature of the proposal, including the extent of built massing and limited openings, it would appear as a cramped, oppressive and incongruous form of development which would detract from the character and appearance of the local area, comprising more generously spaced properties.
6. I therefore conclude that the proposed development would harm the character and appearance of the local area. This would conflict with Policies HO4, HO5, QD1, QD2, QD3 and QD27 of the Brighton & Hove Local Plan 2005 (Local Plan) as well as the National Planning Policy Framework (Framework). These policies and the Framework seek a high quality of development which respects the local context.

Issue b) Satisfactory Living Conditions for future residents

7. The design of the properties would include for glazing from each sitting room, opening onto a terrace enclosed on all sides by tall timber boarding and a window from each bedroom looking into a restricted and enclosed space. Apart from these openings, the other windows would all be high level or roof level. I consider that this arrangement of windows and the restricted outlook would lead to a very claustrophobic internal environment. This would not provide a satisfactory outlook and living environment for future residents and would conflict with Policy QD27 of the Local Plan as well as one of the Core Principles of the Framework which states that planning should *always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings*.
8. The Council has also raised as a ground for refusal that the proposed footway in front of the two dwellings would not connect with the public footway outside of the site and would not therefore provide a safe and attractive pedestrian route to and from the development. However, were no other matters of concern and

planning permission were to be granted this is a matter which I consider could be addressed by an appropriate condition.

Issue c) Living Conditions of Surrounding Residents

9. No 50 Elizabeth Avenue to the east of the appeal site is set at a higher level, but in very close proximity to the appeal site with windows facing towards the rear. Given the proximity of the new development in relation to this adjoining property, I am concerned that the position of the window to the sitting room and terrace of the eastern most proposed dwelling would give rise to unacceptable overlooking and loss of privacy to some of the rear windows of No 50 Elizabeth Avenue. Notwithstanding the difference in levels, and the scale of the new development, the uncomfortably close proximity of the new development to this property would also be over bearing in terms of their outlook from the rear of the house. This would also unacceptably harm their living conditions.
10. The adjoining property at the south-western end of the appeal site at No 13 Edward Avenue is set at a lower level than the site with a bedroom window facing northwards. There is an existing fence between the appeal site and the adjoining property. Within the appeal site there is hardstanding which appears to be of a size which could be used for the parking of two cars. The proposed development would also include for parking for two cars in broadly the same location. There is again conflicting evidence before me as to the extent to which the hardstanding is currently used for parking and whether the proposed development would lead to a material intensification of that use. However, given the small scale of the development and taking into account the existing layout of the site immediately adjoining No 13 Edward Avenue, I do not consider that there would be material harm to the living conditions of these neighbours from the parking of cars as proposed.
11. There is a dense leylandii/conifer hedging along the northern boundary of the adjoining gardens of No 13 Edward Avenue and No 50 Elizabeth Avenue. Given the scale of the development in relation to the adjoining gardens together with this dense hedge screen, I consider that there would be no harm to the living conditions of the adjoining neighbours, from within their garden areas, in terms of loss of outlook due to overbearing development or overlooking and loss of privacy. The Council's Arboricultural Officer has noted that the footprint of the building would be likely to be within the root protection area of the existing planting, but were no other matters of concern and planning permission were to be granted, I have no reason to disagree with the conclusions of the Council's Officer that conditions could be imposed regarding the foundations and method of construction to protect the hedge.
12. Although I am satisfied, that subject to the imposition of appropriate conditions, that there would be no harm to the living conditions of the neighbours at No 13 Edward Avenue, this does not outweigh that harm I have concluded to the living conditions of the neighbours at No 50 Elizabeth Avenue, with particular regard to overlooking and loss of privacy as well as loss of outlook. This harm would conflict with Policy QD27 of the Local Plan as well as one of the Core Principles of the Framework which states that planning should *always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.*

Issue d) Sustainability

13. The Council has raised a further ground for refusal relating to the proposed level of sustainability for the development. The Appellant has proposed to achieve Level 3 of the Code for Sustainable Homes whereas the Council is seeking Level 5 on the basis of its view that the appeal site is a greenfield site. The decision notice refers to Policy SU2 of the Local Plan and the Council's Supplementary Planning Document SPD08: *Sustainable Building Design 2008* (SPD). Although not part of the development plan, the SPD is a material consideration and I have taken it into account. Policy SU2 of the Local Plan seeks to secure a high standard of efficiency in the use of energy, water and materials and is generally in accordance with the objectives of the Framework in this regard. The policy does not set out specific requirements for developments to meet. Under the SPD, a range of recommended standards are set out including in relation to different scales of developments and on greenfield sites. For small scale developments the recommended standard is Code Level 3 but for all greenfield sites this increases to Code Level 5.
14. I am not persuaded from the limited information before me that the site comprises 'fixed surface infrastructure' and so falls within the definition of previously developed land as set out in the Framework, but there is insufficient evidence to enable me to reach a firm conclusion on the matter.
15. Whilst the Council's overall objectives are to be supported, given the small size of the development and lack of firm evidence before me on the existing land use as well as the range of sustainability benefits being brought forward including the Appellant's proposal to meet Code Level 3, I am not persuaded in the particular circumstances of this case that it would be reasonable to seek a higher level. I therefore consider that the proposed development would secure a satisfactory level of sustainability with reference to the Code for Sustainable Homes, and taking account of the guidance under the SPD. There would be no conflict with Policy SU2 of the Local Plan in this regard.

Other Considerations

16. The Framework sets out a presumption in favour of sustainable development and I have had regard to the Appellant's arguments in this regard. The Appellant has argued that the Council cannot demonstrate a five year housing land supply but the evidence submitted is not conclusive in this regard. Nonetheless, I recognise that there would be benefits from bringing forward two additional dwellings in terms of the overall stock of housing and I have also noted the support from the local residents who would be keen to occupy one of the properties. However, although I have concluded that the sustainability measures proposed are acceptable in the circumstances of this case, I have found that there would be harm to the character and appearance of the local area and that the proposed development would not provide satisfactory living conditions for future residents or the existing neighbours at No 50 Elizabeth Avenue. These conclusions are on their own compelling and the contribution that two additional dwellings would make to the housing supply would not outweigh the harm I have concluded.

17. For the reasons given above and having regard to all other matters raised, including in letters of representation, I conclude that the appeal should be dismissed.

L J Evans

INSPECTOR

