
Appeal Decision

Site visit made on 14 April 2014

by Louise Phillips MA (Cantab), MSc, MRTPI

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

Decision date: 1 May 2014

Appeal Ref: APP/Q1445/A/13/2207433

Plot adjacent to 42 Rosebery Avenue, Woodingdean, Brighton BN2 6DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Graham Card against the decision of Brighton & Hove City Council.
 - The application Ref BH2013/01377, dated 30 April 2013, was refused by notice dated 17 July 2013.
 - The development proposed is a new detached residential dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters reserved for determination at a later date. I have considered the appeal on this basis but I have had particular regard to the site layout and block plan, drawing No 1728/04, which shows the front elevation of the proposed dwelling to be aligned with that of the adjacent property, 42 Rosebery Avenue. It is stated elsewhere in the appellant's evidence that the proposed dwelling would follow this building line. I have also had regard to the appellant's clear intention to construct a single storey dwelling which would be of a lower height than No 42.
3. I have taken account of the recently published Planning Practice Guidance in reaching my decision.

Main Issues

4. The main issues are the effect of the proposed development on the character and appearance of the area, including the setting of the adjacent National Park; and on protected species and their habitats.

Reasons

Character and Appearance

5. The appeal site comprises a parcel of grassed land at the end of the row of dwellings on the eastern side of Rosebery Avenue. It is bounded to the south by No 42 Rosebery Avenue, a chalet-style property granted planning permission under application Ref BH2009/03171. Both the appeal site and No 42 lie outside the boundary of the built up area where Policy NC6 of the

Local Plan¹ states that development will not be permitted unless certain specific criteria apply and there would be no significant adverse impact on the countryside.

6. None of the criteria specified in Policy NC6 are relevant in this case, while in respect of the countryside, the site is adjacent to the boundary of the South Downs National Park (National Park), which lies to the north. The evidence suggests that the National Park designation was conferred relatively recently and that the area was previously covered by the Sussex Downs Area of Outstanding Natural Beauty (AONB).
7. The policies referred to in the Council's decision notice relate to the AONB rather than the National Park, but they remain relevant in considering the effect of development upon the latter. This is because paragraph 115 of the National Planning Policy Framework (the Framework) states that great weight should be given to conserving landscape and scenic beauty in both types of area. In accordance with the statutory purpose of including land within National Parks, I have also given great weight to the conservation of wildlife in the area, particularly in relation to the second main issue of the appeal.
8. The site is separated from the National Park by Drove Road, a public footpath/bridleway, but there are clear views across it into and out of the National Park. In this particular area, the National Park comprises a vast expanse of open, sloping land. Another footpath, which connects Rosebery Avenue and Drove Road, bounds the site to the west and a large area of flat, open land bounds it to the east. Therefore the area to the north of Rosebery Avenue has an open character to which the appeal site presently contributes. Whilst it is bounded by residential development to the south, the site is exposed on the three sides most visible from the National Park and public footpaths.
9. I recognise that the proposal is in outline, but I consider that a dwelling on this site would be out of place in the context of its largely open surroundings. Looking from the west on Drove Road, it would interrupt the view of the open area of land which bounds the site to the east. It would therefore detract from the contribution this makes to the open character of the area more generally.
10. Looking from the east, it would appear to stand alone adjacent to Drove Road and, if it were oriented to follow the building line of Rosebery Avenue as shown on drawing No 1728/04, it would be particularly dominant in this view for it would fill much of the depth of the site. It would project beyond the rear building line of the properties in Downland Road to the west of the appeal site and would thereby extend the pattern of built development further into the open area adjacent to the National Park.
11. Furthermore, the retention of the existing bramble hedge on the northern boundary of the site would not be sufficient to soften the edge of the development in views from within the National Park itself, even if the proposed dwelling were to be lower than No 42 Rosebery Avenue. Nor would the retention of the footpath linking Rosebery Avenue to Drove Road compensate for the effect of the proposed development on the open character of the area to the north.

¹ Brighton & Hove Local Plan, 2005

12. In reaching my conclusions, I have taken account of the grant of planning permission for No 42 Rosebery Avenue, which is also located outside the boundary of the built-up area. However, No 42 is some distance away from Drove Road and the appeal site presently acts as an open buffer between it and the National Park. It is also contained within the rear building line of the dwellings in Downland Road.
13. For these reasons, I do not consider that No 42 detracts from the open character of the area, which includes the National Park, or from the established pattern of development to the same extent as would the proposed development. Therefore, while the Council's policies have not changed since planning permission was granted for No 42, I agree with its conclusion that the present proposal would cause more harm when assessed against them.
14. Consequently, I conclude that the proposed development would be significantly detrimental to the character and appearance of the area, including the setting of the National Park, and would fail to conserve its natural beauty as required by the Framework. Thus it would be contrary to Policies NC5 and NC6 of the Local Plan, which require development within the urban fringe/outside the boundary of the built up area to have no significant adverse impact on the countryside. Whilst they relate to the AONB, the proposal would also conflict with the aims of Policies NC7 and NC8 of the Local Plan, which seek to conserve and enhance the visual and landscape quality of the area now designated a National Park, including in respect of its setting.

Protected Species

15. The Council's ecology specialist refers to records of several protected species within 1km of the appeal site, including reptiles, bats and great crested newts within 290m to the west. The Council also refers to a local habitat which has the potential to support breeding birds. Given the open character of the area and the presence of vegetation and hedges in the vicinity of the site, I have no reason to question the Council's evidence.
16. The appeal site itself is located within the open area to the north of Rosebery Avenue and is bordered by hedgerows on three sides. Whilst the appellant apparently tends the grassed area regularly, it is fenced off from the curtilage of No 42 and does not appear to be used for domestic purposes. In the context of its surroundings, it is not inconceivable that protected species may be present. Therefore I consider that there is a reasonable likelihood of protected species being present as required by Circular 06/2005² (the Circular).
17. In such circumstances, paragraph 99 of the Circular requires that the presence or otherwise of protected species, and the extent to which they may be affected by the proposed development, is established before planning permission is granted. No survey or other information has been provided in this respect and while the application is in outline, a grant of planning permission would establish the principle of development on the site. Consequently, it would not be appropriate to leave this matter to be addressed through conditions.
18. Therefore I cannot be satisfied that significant harm to biodiversity, including protected species, would be avoided, mitigated or compensated for as required

² ODPM Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System

by paragraph 118 of the Framework. The proposal would also be contrary to Policy QD18 of the Local Plan, which requires appropriate site investigations to be undertaken where it is evident that a proposal could directly or indirectly affect a species of protected animal or its habitat.

Other Matters

19. In reaching my decision, I have taken account of the presumption in favour of sustainable development set out in the Framework. I recognise that the proposal would provide an additional dwelling in an accessible location and that it would be designed to comply with the Code for Sustainable Homes and Lifetime Home Standards criteria. I also recognise that several nearby residents have signed letters which state that they do not object to the proposed development.
20. However, these other matters neither alter nor outweigh my findings in relation to the main issues of the appeal.

Conclusion

21. For the reasons given above I conclude that the appeal should be dismissed.

Louise Phillips

INSPECTOR