



Appeal Decision

Site visit made on 11 November 2013

by Susan A F Simpson LLB Solicitor (N-P)

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

Decision date: 31 December 2013

Appeal Ref: APP/Q1445/A/13/2201610

3 Rudyard Road, Woodingdean, Brighton, BN2 6UB

- 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 Jason Raynsford against the decision of the Brighton & Hove City Council.
 - The application Ref BH2013/00315, dated 31 January 2013 was refused by a notice dated 8 April 2013.
 - The development proposed is the demolition of existing bungalow and erection of 2 No three bedroom semi detached town houses and 2 No two bedroom detached chalet bungalows with associated car parking, landscaping and ancillary buildings.
-

Decision

1. The appeal is dismissed.

Preliminary matter

2. The Council has amended the original description of the development in its decision notice to that set out above and the appellant used this amended description when completing his appeal form. I also have adopted the same wording as I consider it more accurately reflects the development that is being proposed.

Main Issues

3. The main issues in the appeal are:-
 - the effect of the development upon the character and appearance of the area and the street scene along Rudyard Road;
 - the effect of the development upon living conditions of occupiers at 1 Rudyard Road and 27c The Ridgway with specific reference to privacy and noise and disturbance;
 - whether the development would provide acceptable living conditions for future occupiers of the townhouses with specific reference to privacy.

Local and national planning policies

4. The Council's reasons for refusal refer to saved policies QD1, QD2, QD3 and QD27 of the adopted Brighton & Hove Local Plan 2005 (the Local Plan) and
-

emerging policy CP12 of the Brighton & Hove Proposed Submission City Plan Part One (the City Plan). The City Plan is in its early stages towards formal adoption and, as it may be subject to amendment, I have attributed it limited weight. My attention has been drawn to the age of the Local Plan but the relevant policies therein are broadly consistent with policies contained in the National Planning Policy Framework (the Framework) and, in the absence of any firm evidence to establish otherwise, I find there is no reason to determine the appeal other than in accordance with these policies whilst also having regard to any material considerations.

5. I also note the appellant's detailed reference to various core planning principles and policy contained in the Framework and, these together with other relevant sections of the Framework, will be taken into account when considering the development proposal before me.

Reasons

Character and appearance of the area and the street scene

6. The appeal site comprises the curtilage of a detached, dilapidated bungalow and parts of the rear gardens of 31 and 33 The Ridgway. Its forms part of a residential area located within the settlement of Woodingdean. This neighbourhood is described in the Brighton & Hove Urban Characterisation Study as an area of "predominantly bungalows and two storey houses with mixed building styles on a variety of plot sizes and lacking unifying features".
7. Mixed and varied forms of development are to be found in the wider area but, in the immediate locality, a particular building style and regular plot sizes do tend to prevail along the individual roads. Nearby, the development along The Ridgway includes predominately bungalows of varying designs and these extend for a short length around the corner into Rudyard Road. There is then a clear distinction between these low profile dwellings and the regular rows of modestly sized two storey terraced properties which, thereafter, extend along Rudyard Road and Rudyard Close.
8. The blocks of terraced properties are set back from, and, some, are at right angles to, and set below, the road. This layout, together with the generous expanses of highway verges, provides an open and spacious feel to this part of Rudyard Road. As the appeal site is located between these two forms of housing, I agree with the appellant that, it has a transitional role in terms of the street scene. It is with the aforesaid in mind, and the character and appearance of the immediate area that I have described, that I consider the development falls to be assessed.
9. The townhouses would be set into the ground by a full storey in order to achieve a lower ridge height than No 3 and its neighbours to either side. However, this would not disguise the appearance of this part of the development as a pair of three storey dwellings that would be significantly greater in terms of their mass and bulk than, and fail to connect visually with, the low profile bungalows at the entrance to Rudyard Road and the modest scale of the adjoining two storey terraced housing.
10. I note that the townhouses would be similar in width to, and reflect the building line of, the present dwelling on the site. Nevertheless, a significant width of the

site would be occupied with a building of considerably greater size and bulk which, together with the formation of an access road to its side, and the cutting of the development into the ground would, collectively, have the effect of appearing as though this aspect of the proposal had been squeezed into the plot. The overall result would be an incongruous, cramped and unsympathetic form of development that would dominate the plot and the street scene and fail to respect the spatial and local characteristics of the area.

11. I note that the design of the proposed bungalows is intended to reflect the "chalet" style appearance of the rear elevations of the townhouses. The appellant considers that their proportions and symmetry would be typical of neighbouring development and acceptable when appreciated in a three dimensional form. Nevertheless, the proposal would feature roof depths which would be noticeably greater than neighbouring properties and those that would be constructed in the adjoining townhouses and would appear out of proportion and incongruous for this reason. Further, the design and placement of the windows would exacerbate this harm because of their scale, lack of uniformity and their failure to visually integrate satisfactorily with the remainder of the building.
12. Due to their location towards the rear portion of the site, public views of this part of the development would be limited but, despite the difference in ground levels, they would be seen from a number of the existing and proposed properties bordering the site. Overall, I find that the development would fail to achieve the high standard of design that is required for this transitional site and, so, would not make a positive contribution to the visual quality of the environment.
13. Whilst I appreciate that the development is intended to make efficient and effective use of this site for housing purposes, I conclude that this would only be at the expense of causing significant harm to the character and appearance of the area and the street scene along Rudyard Road, contrary to policies QD1, QD2, QD3 of the Local Plan and CP12 of the City Plan. It would also be contrary to policy in the Framework which states that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.

Living conditions for existing and future occupiers

14. The proposed access would be located along the side boundary with 1 Rudyard Road. Even though the vehicular movements associated with 2 No two bedroom bungalows may not be excessive, they would pass very close to the full length of No 1's garden and cause a level of noise that would disturb and significantly diminish the enjoyment of this small garden by its occupants. I consider that the noise and disturbance associated with the use of the access would materially harm the living conditions of occupants of No 1.
15. However, I note that the appellant has offered to erect acoustic fencing along the western boundary of the site in order to mitigate the amount of vehicular noise. I have considered this offer in the context of the advice contained in Circular 11/95 *Use of conditions in planning permissions* which states that, if used properly, conditions can enhance a development and enable many development proposals to proceed where it would otherwise have been

necessary to refuse planning permission. I consider that an appropriate type of acoustic fencing would be capable of ameliorating the noise associated with the vehicular movements of the development to an acceptable level. The use of such a condition would, therefore, overcome this objection to the development.

16. In reaching this conclusion I have taken into account that the owner of the property has not objected to the development but such a lack of objection would not justify a proposal that would be in conflict with Development Plan policies. Reference has been made to other accesses in the locality including that which extends between 27 and 29 The Ridgway but this access appeared to be wider and the associated vehicular movements, therefore, would be unlikely to be quite as intrusive as in the current case
17. The proposed bungalows would be situated on the north western and north eastern portions of the site where the land slopes upwards towards their neighbour (27c The Ridgway) to the rear. Both first floor bedrooms would be served by windows in the flank elevations of these dwellings. The appellant argues that the windows would not serve habitable rooms but they would serve regularly used rooms and, therefore, would be important in terms of their function as the only form of outlook for their occupants.
18. The first floor bedroom views in a southerly direction from the bungalows would be across to the rear elevations and gardens of No 1 and the townhouses. The appellant states that the separation distance between buildings would be about 18 m in the case of the north western bungalow and No 1 but it would be less between the north eastern bungalow and the townhouses. Even so, whilst these distances would be sufficient to maintain a reasonable level of privacy within the dwellings, my concern relates to distance that would be achieved to the rear boundaries of the small gardens serving No 1 and the townhouses. These distances would be significantly shorter and insufficient to prevent a material loss of privacy to the existing and future occupants of these gardens.
19. Further, the second floor window in the flank elevation of the western townhouse would face towards the side of No 1 and appear to provide almost direct views across to the garden where the additional overlooking at close quarters would further diminish the level of privacy which its occupants can reasonably expect to enjoy. The appellant states that the degree of overlooking associated with this window would be no greater than the lawful situation that has been established in respect of a similar positioned window in the existing bungalow. However, it was confirmed on my visit that the comparable window depicted on the plan attached to the Certificate of Lawful Development is obscure glazed. On the basis of the evidence before me, I do not find the use of this window in the existing and proposed developments to be directly comparable in terms of the privacy issue in this appeal.
20. I note the reference to the development that has taken place at 3 The Ridgway and West View Close and accept that some overlooking of garden areas is to be expected in urban situations but, whereas, this is normally of an oblique kind, in this case, there would be the potential for direct overlooking of a nature which would render the existing and proposed gardens very limited in terms of privacy and amenity value. For these reasons, I conclude that the development would result in material harm to the living conditions of the

occupiers of 1 Rudyard Road and the proposed townhouses with regard to overlooking.

21. No 27c benefits from windows that face down towards the appeal site. Given the difference in the ground levels, views from the first floor bedroom windows of the new bungalows would more than likely be limited to the first floor level of those at No 27c. As the intervening distance would be about 14 m and views across to this neighbouring property are, and would have been available from, the existing and former use of this part of the appeal site as garden areas for 31 and 33 the Ridgway, I do not consider that the development would result in a further material reduction in the level of privacy currently enjoyed by occupants of 27c The Ridgway.
22. However, my conclusions in respect of the development's effect upon the living conditions of residents at No 1 and No 27c with respect to noise and disturbance and levels of privacy do not overcome the serious intrusion of privacy that would occur to existing occupiers of No 1 and the future occupiers of the townhouses. Thus, I find the development to be contrary to policy QD27 of the Local Plan and one of the core principles set out in the Framework which requires planning always to seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Other matters

23. I have taken into account all other matters that have been raised. The proposal would provide 4 new homes and a mix of housing in a sustainable location. It would be of a sustainable design and would meet the Lifetime Homes Standards and Level 5 of the Code for Sustainable Homes. However these positive benefits of the proposal are not of sufficient substance to outweigh the harm that I have identified and the Development Plan conflict in this case.
24. I also have had regard to the long planning history associated with the site, the extensive pre-application discussions with the planning department prior to the submission of the proposal and the Local Development Order and Compulsory Purchase Order that have been made in respect of 3 Rudyard Road. My attention has been drawn to the frontage form of development at 47a and 49a Downs Valley Road, which, I saw, is some distance from the site and within an area containing a more varied form of housing than that which prevails in the vicinity of the appeal premises.

Conclusion

25. Having considered all the matters that have been raised, I find none alter my conclusion that, for the reasons given above, the appeal must fail.

S A F Simpson

INSPECTOR