

Appeal Decision

Site visit made on 15 May 2017

by **Chris Forrett BSc(Hons) DipTP MRTPI**

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

Decision date: 22nd June 2017

Appeal Ref: APP/Q1445/W/16/3166012 186-187 Lewes Road, Brighton BN2 3LD

- 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 John Blankson of 3B Property against the decision of Brighton & Hove City Council.
 - The application Ref BH2015/01736, dated 14 May 2015, was refused by notice dated 21 July 2016.
 - The development proposed, from the application form, is the demolition of existing ground floor commercial accommodation and 2 storey residential above. Erection of a new 4 storey mixed use development consisting of 2no. A1-A5 use on the ground floor with 8 flats over three storeys above.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing building and erection of four storey building with 2no commercial units comprising retail, financial and professional services or take-away (A1/A2/A5) on ground floor and 8no two bedroom flats on upper floors with associated works at 186-187 Lewes Road, Brighton BN2 3LD in accordance with the terms of the application, Ref BH2015/01736, dated 14 May 2015, subject to the conditions set out in the schedule to this decision letter.

Procedural Matter

2. The Council have amended the description of development to the "Demolition of existing building and erection of four storey building with 2no commercial units comprising retail, financial and professional services or take-away (A1/A2/A5) on ground floor and 8no two bedroom flats on upper floors with associated works". The Appellant has also used this description on the appeal form. As the revised description accurately reflects the development proposed I have determined the appeal on the basis of the revised description.

Main Issue

3. The main issue is whether the proposal makes appropriate provision for affordable housing.

Reasons

4. Policy CP20 of the Brighton and Hove City Plan Part One (2016) (CP) requires the provision of affordable housing on all site of 5 or more dwellings. For sites of between 5 and 9 (net) dwellings a target of 20% affordable housing should be provided as an equivalent financial contribution. The Council have indicated
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- that £164,500 would be an appropriate level of financial payment towards the provision of affordable housing elsewhere.
5. The policy also states that this target may be applied more flexibly where the Council consider this to be justified with consideration given to the accessibility of the site, the costs relating to the development (and in particular financial viability), whether affordable housing would prejudice the realisation of other planning objectives, and the need to achieve a successful housing development. However, from the evidence before me, there has been no compelling argument advanced to justify a reduced or waived contribution in the context of Policy CP20.
 6. However, following the Court of Appeal's judgement of 11 May 2016, wherein the Secretary of State successfully appealed against the judgment of the High Court of 31 July 2015, it follows that considerable weight should be given to the Secretary of State's Written Ministerial Statement (WMS) of 28 November 2014 and the updated Planning Practice Guidance which indicates that planning obligations of this type should not be sought from development of this limited scale.
 7. Notwithstanding that, the determination of planning applications should be made in accordance with the Development Plan unless material considerations indicate otherwise. The WMS is clearly a material planning consideration for which I attach great weight to as it represents the clearest and most up-to-date expression of national planning policy.
 8. Both main parties have referred me to appeal decisions which consider whether affordable housing contributions should be sought on developments on 10 units or less. The Council have detailed several decisions which support the Development Plan position of seeking affordable housing on such sized developments elsewhere in the country together with three recent decisions within Brighton and Hove¹. On the other hand, the Appellant has also provided details of appeal decisions within Brighton and Hove which give greater weight to the WMS and conclude that affordable housing is not required².
 9. The Council have referred me to the Objectively Assessed Needs for Housing : Brighton & Hove (2015). This has identified a significant need for additional affordable housing (of 810 units per annum) over the plan period to 2030. Reference is also made to the Council's housing register which indicates a significant need for affordable housing and that the housing prices in the City are higher than other parts of the country. I am also aware that there are significant housing land supply constraints that limit the outward expansion of the City and that there is a limited supply of developable sites within the existing urban area.
 10. Considering all of the above matters, there is substantial local evidence of the need for affordable housing. Whilst I have attached considerable weight to the WMS, this does not outweigh the need for affordable housing as required by the Policy CP20. Consequently, a financial contribution towards affordable housing is required.

¹ APP/Q1445/W/16/3142069, APP/Q1445/W/16/3147419 and APP/Q1445/W/16/3165865

² APP/Q1445/W/16/3158279 and APP/Q1445/W/16/3152366

11. In the event of the above conclusion, the Appellant has provided a completed Unilateral Undertaking which would deliver the required sum of money for the provision of affordable housing elsewhere.
12. Given the Development Plan policy, I conclude that the contribution is necessary to make the proposal acceptable, is directly related to the development and is fairly and reasonable related in scale and kind to the development. Consequently, it would satisfy the tests of Regulation 122 of the Community Infrastructure Regulations 2010 and paragraph 204 of the National Planning Policy Framework.
13. For the above reasons, the development would, by reason of the completed Unilateral Undertaking, would provide an appropriate mechanism to secure much needed affordable housing in accordance with Policy CP20 of the CP.

Other matters

14. The Unilateral Undertaking also makes provision for membership of a car club, a residential travel pack (including a one bus saver ticket valid for three months, a two year membership to a car club, and information on local public transport, cycling and walking), and a sustainable transport payment of £10,000 towards improvements to the footway, on street cycle parking, an amendment to a Traffic Regulation Order, and an extended loading bay.
15. Given that the development does not provide any off street parking provision, I consider that the measures outlined in the Undertaking are reasonably required to make the development acceptable in planning terms.
16. In addition to the above, I note that the Appellant has questioned the timeliness of the determination of the application, in that such delays allowed for the adoption of the current policy in relation to affordable housing. However, whilst I have some sympathy for the Appellant in this respect, I must determine the appeal on the basis of the current policy.
17. I have also had regard to the concerns raised in the representations from the Council's consultation period on the application, and through the appeal consultation period, including matters such as the amount of people living in the area, the effect of the development on the character and appearance of the area and loss of light. However, none of these issues present a compelling reason for withholding planning permission in this case.

Conditions

18. The Council has suggested a number of conditions that it considers would be appropriate. I have considered these in the light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
19. Other than the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. A condition relating to the external materials is necessary in the interests of the character and appearance of the area.
20. Conditions relating to water and energy efficiency measures, and potential contaminated land issues, are necessary for environmental reasons.

21. To protect the amenity of the future occupiers of the development, and existing residents in the locality, conditions relating to the hours of operation of the non-residential elements, deliveries and waste collections related to the non-residential uses, details of any odour control equipment (including sound insulation), cycle storage and refuse facilities, and noise mitigation to the residential element are all necessary.
22. With the exception of the contaminated land matters, it is not necessary for any of the suggested conditions to be agreed pre-commencement. It is necessary for this to be agreed prior to any works commencing as the contaminated land investigations relate to matters below ground level and should be resolved before any ground disturbance works occur.
23. The Council have also requested a condition requiring compliance with optional requirement M4(2) (accessible and adaptable dwellings) of the Building Regulations. However, the adopted policy referred to does not include M4(2) or set out the proportion of new dwellings which should comply with the requirement, as advised by the PPG. Furthermore, it is unclear whether step free access could be achieved to any of the flats. In this light, I do not consider such a condition necessary.
24. In respect of noise mitigation measures between the ground floor commercial units and the residential properties above, the Council have indicated that this should have an airborne sound insulation value of 5dB better than that specified in Approved Document E of the Building Regulations. Whilst this objective is desirable, such a requirement is not necessary to make the development acceptable in planning terms.

Conclusion

25. Taking all matters into consideration, I conclude that the appeal should be allowed.

Chris Forrett

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans – 11784/PA/001, 11784/PA/005, 11784/PA/006, 11784/PA/007, 11784/PA/008, 11784/PA/009 and 11784/PA/010.
3. No development above ground floor slab level of the development hereby permitted shall take place until samples of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the local planning authority, including (where applicable):
 - a) All brick, render and tiling (including details of the colour proposed)

- b) All cladding to be used, including details of their treatment to protect against weathering
- c) All hard surfacing materials
- d) The proposed window, door and balcony treatments
- e) All other materials to be used externally

The development shall be carried out in accordance with the approved details.

4. Notwithstanding the submitted details, prior to the first occupation of the development hereby permitted, details of secure cycle parking facilities for the occupants of, and visitors to, the development shall be submitted to and approved in writing by the local planning authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times for the life of the development.
5. Prior to the first occupation of the residential element of the development hereby permitted the refuse and recycling storage facilities indicated on the approved plans shall be fully implemented and made available for use. These facilities shall thereafter be retained for use at all times for the life of the development.
6. None of the residential units hereby approved shall be occupied until each residential unit built has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).
7. None of the residential units hereby approved shall be occupied until each residential unit built has achieved a water efficiency standard of using not more than 110 litres per person per day maximum indoor water consumption and the implemented measures shall remain operational for the lifetime of the development, unless agreed in writing by the local planning authority
8. Prior to the first occupation of the non-residential development, a BREEAM Building Research Establishment issued Post Construction Review Certificate confirming that the non-residential development built has achieved a minimum BREEAM New Construction rating of 'Very Good', or a detailed report as to why this has not been technically possible, shall be submitted to and approved in writing by the local planning authority.
9. Prior to the first occupation of each residential unit written evidence which demonstrates that the glazing, ventilation and façade specifications recommended in the Noise Assessment (2015) by Acoustic Associates Sussex Ltd, dated 13 May 2015, Project J1149 have been implemented within the buildings shall be submitted to and approved in writing by the local planning authority . The submitted evidence must show that internal noise levels achieve BS8233:2014 standards as outlined in the above report. The implemented measures shall be retained for the life of the development.
10. The non-residential uses in the development hereby approved shall not be open to customers except between the hours of 09:00 and 23:30 on

Sundays to Thursdays and between the hours of 09:00 to midnight on Fridays and Saturdays.

11. Deliveries and waste collections associated with the non-residential uses in the development hereby approved shall only be taken at or despatched from the site between 08.00 and 18.00 on Mondays to Saturdays, and not at any time on Sundays or on Bank or Public Holidays.
12. Prior to first occupation of each part of the non-residential development by a use that requires the fitting of odour control equipment, a detailed scheme of such equipment shall be submitted to and approved in writing by the local planning authority. The scheme shall include measures to control the odour emitted from the use together with sound insulation of the equipment. The approved details shall be implemented in full prior to the commencement of the use and shall be retained as such thereafter.
13. Development other than that required to be carried out as part of an approved scheme of remediation must not commence until the following parts (a) to (c) have been submitted to and approved in writing by the local planning authority (unless specifically dispensed with in writing by the local planning authority).

(a) a desk top study documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Contaminated Land Research Report Nos. 2 and 3 and BS 10175:2011+A1:2013 - Investigation of Potentially Contaminated Sites - Code of Practice.

(b) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with BS 10175:2011+A1:2013.

(c) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such a scheme shall include nomination of a competent person to oversee the implementation of the works.

In the event of the need for remedial works, the approved scheme shall be carried out in full and in accordance with approved details (unless varied with the written agreement of the local planning authority).

Prior to the first occupation of any part of the development a written verification report, by a competent person approved under the provisions of part (c), which demonstrates that the remediation works have been implemented fully in accordance with the approved details shall be submitted to and approved in writing by the local planning authority. The verification report shall comprise of:

- i) built drawings of the implemented scheme;
- ii) photographs of the remediation works in progress; and
- iii) certificates demonstrating that imported and/or material left in situ is free from contamination.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under part (c).