



Appeal Decision

Site visit made on 5 January 2015

by Louise Phillips MA (Cantab) MSc MRTPI

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

Decision date: 26 January 2015

Appeal Ref: APP/Q1445/A/14/2228097

Land to the rear of 23 Falmer Road, Rottingdean, Brighton BN2 7DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Stuart MacRorie against Brighton & Hove City Council.
 - The application Ref BH2014/00723 is dated 6 March 2014.
 - The application sought planning permission for the erection of a single storey 2no. bedroom detached dwelling house with associated parking and landscaping without complying with a condition attached to planning permission Ref BH2012/03676, dated 13 August 2013.
 - The condition in dispute is No 3 which states that: Within three months of the date of the permission hereby approved, a Final/Post Construction Code certificate issued by an accreditation body confirming that the dwelling has achieved a Code for Sustainable Homes rating of Code level 4 shall be submitted to, and approved in writing by, the Local Planning Authority.
 - The reason given for the condition is: To ensure that the development is sustainable and makes efficient use of energy, water and materials to comply with Policy SU2 of the Brighton and Hove Local Plan and Supplementary Planning Document SPD08 Sustainable Building Design.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey 2no. bedroom detached dwelling house with associated parking and landscaping at Land to the rear of 23 Falmer Road, Rottingdean, Brighton BN2 7DA in accordance with application Ref BH2014/00723 made on the 6 March 2014 without compliance with condition number 3 previously imposed on planning permission Ref BH2012/03676, dated 13 August 2013, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition:
 - 1) Within one month of the date of this decision a Final/Post Construction Code Certificate, issued by an appropriate accreditation body, confirming that the dwelling has achieved Code for Sustainable Homes Level 3 shall be submitted to and approved in writing by the local planning authority.

Procedural Matters

2. The appeal is made on the basis that the Council did not issue its decision within the prescribed period. This reflects the Council's concern that the proposal should be dealt with by way of a full planning application because the dwelling has already been constructed and the condition in question has already been breached. However, I am satisfied that it can properly be dealt with under the provisions of the Act quoted above (Section 73A(2)(c) specifically) and I have determined the appeal accordingly.
3. The proposal seeks not to comply with a condition requiring the dwelling to be constructed to Level 4 of the Code for Sustainable Homes (the Code). The Council states at Section 8 of its appeal statement that it considers a reduction to Code Level 3 justifiable in this case. I have had regard to its position in making my decision.

Main Issue

4. The main issue is whether the disputed condition is necessary and reasonable to ensure that the dwelling achieves an appropriate standard of environmental sustainability.

Reasons

5. A detached dwelling has been constructed on land to the rear of No 23 Falmer Road as a result of planning permission granted by the Council under Ref BH2012/03676¹. However, while condition No 3 of that permission required it to achieve Code Level 4, the appellant states that it has in fact only achieved Code Level 3. The reason given for the failure to comply is that because additional costs were incurred during construction, it is now not financially viable to install the solar panels which would be necessary to achieve the higher Code level. I have been provided with some figures, but I do not have sufficient evidence about the profits and costs of the project overall to be able to determine whether or not this reason is valid.
6. Nevertheless, the Government's expectations around energy efficiency in new dwellings are set out in Part L of the Building Regulations and, at present, they equate to those of Code Level 3. Whilst it is legitimate in principle for local planning authorities to seek higher standards, the Council's basis for doing so is guidance in its Supplementary Planning Document (SPD)² rather than policy in its adopted development plan. Policy SU2 of the Brighton and Hove Local Plan 2005 makes no reference to any specific standards.
7. The SPD has been subject to public consultation and it is a material consideration in my decision. However, the Council has more recently sought to include local Code Level standards in Policy CP8 of its emerging City Plan. The Inspector appointed to examine it has raised initial concerns in respect of the effect of these standards upon the viability of development in the City generally. In particular, she questions whether a local requirement more onerous than the national standards provided by Building Regulations is justified³.

¹ This permission was granted as a result of a successful application to make a minor material amendment to a previous permission granted under Ref BH2010/03462.

² Sustainable Building Design Supplementary Planning Document, June 2008 (SPD 08).

³ Letter to Brighton and Hove City Council, from Inspector Laura Graham, dated 13 December 2013.

8. The Council states that it is modifying its proposed policy in response, but I have not seen the changes and they have not yet been formally proposed to, or examined by, the Inspector. Having regard to paragraph 216 of the National Planning Policy Framework (the Framework), I therefore give very limited weight to the City Plan policy in my decision. Moreover, the Inspector's initial concerns cast doubt upon the local standards presently included in the SPD and I cannot be satisfied that it is not being used to add unnecessarily to the financial burdens of development (paragraph 153 of the Framework). Consequently, the weight that I give to the provisions of the SPD is also much reduced.
9. In light of the above, I consider that there is no robust basis in policy or locally adopted guidance for requiring the dwelling in this case to be constructed to a higher Code level than that required nationally. I acknowledge the concerns expressed by interested parties that the 'eco-home' status of the development was significant in the Council's initial decision to grant planning permission. However, there is no evidence before me to suggest that this was the determining factor. Nor does the energy efficiency of the dwelling have any direct link with the other concerns raised in respect of tree felling, light pollution or vehicular access.
10. Therefore, on the basis that national standards provide sufficient safeguards, I conclude that the disputed condition is not necessary to ensure that the dwelling achieves an appropriate level of environmental sustainability. Nor is it reasonable given my findings in relation to the Council's local policy position. In reaching my decision, I have had regard to the three appeal decisions referred to by the appellant which consider similar issues⁴. In each case, the Inspector's conclusions support my own.

Conclusion and Conditions

11. For the reasons given above I conclude the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting another as set out in my formal decision above. The new condition is necessary to provide a mechanism for confirming that the dwelling has achieved the Code level claimed. As the dwelling is complete to the extent that it is occupied, I see no reason why it should take three months to obtain the necessary certification and I have reduced the suggested timeframe for compliance accordingly.
12. Having regard to the advice in the Planning Practice Guidance, the other conditions imposed by the Council in granting permission under Ref BH2012/03676 remain relevant in the present case. However, the wording of the formal decision provides for the fact that the development has been constructed and that some of the conditions have already been discharged.

Louise Phillips

INSPECTOR

⁴ Appeal Refs APP/Q1445/A/09/2119295 (and Costs); APP/Q1445/A/12/2172383; and APP/Q1445/A/13/2198904.

