The Planning Inspectorate

Appeal Decision

Site visit made on 21 November 2016

by Grahame Gould BA MPhil MRTPI

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

Decision date: 10th January 2017

Appeal Ref: APP/Y3805/W/16/3153842
55 Victoria Road, Southwick, West Sussex BN42 4DJ

- 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 Barnard against the decision of Adur District Council.
- The application Ref AWDM/0200/16, dated 5 February 2016, was refused by notice dated 4 May 2016.
- The development proposed is demolition of existing detached bungalow and erection of no. 1 detached 3 bedroom house fronting road and erection of 1 no. 4 bedroom house with basement accommodation in rear garden.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council has confirmed that the reference to some Sycamore trees adjoining the appeal property (No 55) being subject to a tree preservation order was an error. The Council has, however, advised that the trees in question are within the Kingston Buci Conservation Area (the CA). Those trees are therefore afforded protection under the legislation for CAs[1] and as neither the appellant nor the Council, in their originally submitted cases, have referred to the development's relationship with the CA I have sought their views on this matter.

3. Although the Council did not undertake an assessment of any effects the development might have upon the CA, notwithstanding that omission, having been made aware of the development's proximity to the CA I am required to pay special attention '… to the desirability of preserving or enhancing the character or appearance of that area'. In doing this I have had regard to the comments made by the appellant and the Council with respect to this matter.

Main Issues

4. The main issues are the effect of the development on:

   - the character and appearance of the area;
   - the living conditions for the occupiers of the dwelling to the rear of the site (house B), with particular regard to light, outlook and privacy;

[1] The Planning (Listed Buildings and Conservation Areas) Act 1990

- the character and appearance of the CA, with particular regard to how the provision of a basement for house B might affect the Sycamore trees that would adjoin house B; and
- the living conditions of the occupiers of neighbouring properties, with particular regard to privacy and vehicular noise and fumes.

Reasons

5. The development would involve the demolition of a derelict bungalow and the construction of two houses. One of the houses (house A) would be a two storey replacement for the bungalow and would front directly onto Victoria Road. The second dwelling, house B would be sited to the rear of house A and would be a part single and part two storey building, with a part basement area. A new drive would serve house B and would pass between 53 Victoria Road (No 53) and house A.

The approach to this decision

6. It is agreed that the Council cannot demonstrate the availability of a five year supply of deliverable housing sites (an HLS). Accordingly having regard to the provisions of paragraph 49 of the National Planning Policy Framework (the Framework) the Council's relevant policies for the supply of housing should not be considered as being up to date.

7. Having regard to the provisions of paragraph 14 of the Framework I have therefore approached this appeal on the basis that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework, taken as a whole or specific policies within the Framework indicate that development should be restricted.

8. It is clear from the reasons for refusal that the Council raises no objection to house A, in terms of its siting, design and its effect on the living conditions of the occupiers of Nos 53 and 57, and I see no reason to take a contrary view. In my reasoning below I shall therefore limit my consideration of the development to the aspects that concern house B.

Character and Appearance

9. The appeal site occupies all of No 55's grounds and some land to the rear of Nos 57 and 59 and has the appearance of being somewhat unkempt garden land, with a few small timber sheds randomly sited within it. The garden land appearance of the site, even in its unkempt form, is compatible with the character of the immediately adjoining properties in Victoria Road, with the rear gardens of those neighbouring properties being free from built development, with the exception of some garden sheds. The floor area and height of house B would be significantly greater than the existing sheds within the site and the outbuildings within the grounds of the immediately neighbouring properties in Victoria Road. The provision of house B would therefore, in relative terms, result in a significant hardening in the site's appearance in what is a quite leafy garden environment.

10. I therefore find that the provision of house B would be at odds with the prevailing garden land appearance of this part of Victoria Road. As house B would not front Victoria Road its siting would mean that it would not be in

keeping with the prevailing character of this part of the street, which is characterised by frontage development. Victoria Road is for the most part characterised by buildings that front directly onto this street. There are, however, some instances of backland development, namely the garage compound to the rear of Nos 5 and 9, the dwellings to the rear of Nos 16/18 and No 24 and the garage workshop to the rear of Nos 26 and 28.

11. However, I consider the backland development that has taken place to be the exception to the general pattern of development within Victoria Road. The planning history provided by the Council suggests that the backland development that has occurred is long established and/or there have been some very specific factors that have given rise to it, for example the chalet bungalow to the rear of Nos 16 and 18, allowed on appeal, being a replacement for some existing buildings. I therefore consider that the other instances of backland development in Victoria Road do not provide any particular justification for house B.

12. There is a substantial property at 27 Park Lane (No 27) to the rear of the site that occupies a backland position. I understand that No 27 has been formed from the amalgamation of a number of buildings. There is, however, disagreement about how this property is or has been occupied, with the appellant submitting that it is a house, while the Council is of the view that it is a nursing home. No 27 is an usually large property for the area and while it may currently being occupied as a single dwelling, the Council's reference to it being a nursing home, suggests that at some stage in its history it has been in an institutional use, which would be consistent with its scale.

13. It therefore appears to me that the development of No 27 is not representative of either Park Lane or Victoria Road and of itself does not provide a justification for the siting of house B. I also consider that the physical separation that there would be between house B and No 27 would mean that the former would not be a continuation of the latter.

14. The appellant has drawn attention to a scheme allowed on appeal[2] for eight houses as replacements for two bungalows at 82 Underdown Road (No 82), a site that is around 0.6 of a mile from No 55. It would appear from the Inspector's reasoning that the site at No 82 was of a different character to No 55 and thus not directly comparable. In any event I am required to consider the scheme before me on its individual merits and that is what I have done.

15. I consider the architecture for house B to be unobjectionable and while this dwelling would not be readily visible from the street and the dwellings in Victoria Road are of varied designs and types, those factors do not persuade me that that the siting for house B would be acceptable.

16. I therefore conclude that the siting of house B would be harmful to the character and appearance of the area and in this respect whether any part of the site should be categorised as previously developed land is not determinative. The development would therefore be in conflict with the Framework, most particularly paragraphs 56, 58 and 64, because it would not be respectful of the character and appearance of its surroundings and would fail to improve the quality of the area.

[2] APP/Y3805/A/12/2174337

17. As the development would not be respectful of its surroundings there would also be conflict with saved Policy AH2 of the Adur District Local Plan of 1996 (the Local Plan) and the Council's 'Space Around New Dwellings and Flats' Development Control Standard No. 2 (DCS2). Notwithstanding the HLS's position, I consider that as Policy AH2 addresses general design considerations, it is not, in the Framework's terms, a relevant policy for the supply of housing. I also consider that Policy AH2 is consistent with the Framework's design policies. Accordingly I find that the conflict with Policy AH2 attracts weight for the purposes of the determination of this appeal, notwithstanding this policy's age, when regard is paid to paragraphs 211 and 215 of the Framework.

18. The site immediately adjoins the CA, which is mixed use in character and comprises dwellings, the tennis and croquet clubs and a school. The site in its totality therefore forms part of the setting to the CA and the provision of dwellings would be compatible with the varied character and appearance of the development within and adjoining the CA. I therefore consider that the character and appearance of the CA and its setting would be preserved, assuming that none of the trees within the CA were lost. I consider the specific effect on the trees in the CA in my reasoning below.

Living conditions for the occupiers of house B

19. House B would be sited in very close proximity to a number of mature Sycamore trees that are within the grounds of the neighbouring tennis and croquet clubs and the canopies of those trees overhang the site. Bedrooms 1 and 2 would be single aspect rooms each with single windows facing directly towards the neighbouring trees. I consider the proximity of the trees and the orientation of the windows serving bedrooms 1 and 2 would mean that the trees' presence would significantly and adversely affect the receipt of light to and the outlook from both of these bedrooms, most particularly when the trees are in leaf.

20. With respect to the adverse effect there would be on the receipt of light to bedrooms 1 and 2, I find support for my concern from the contents of the recommendations section of the arboricultural survey report (the tree report) that accompanied the application and the details shown on the tree shadow plan included within that report. That plan shows a number of the trees adjoining the site's westernmost boundary casting significant shadows across the site. I therefore consider it likely that that there would be pressure from house B's occupiers for the neighbouring trees to be removed or pruned, which could be detrimental to the appearance of those trees and the contribution that they make to the CA.

21. I recognise that there are other houses nearby that are in close proximity to trees within the CA. However, I do not consider that the relationship of those other houses with the trees adjoining them should be taken as justification for permitting a new house with two bedrooms that would, from its first occupation, be subject to poor levels of outlook and natural lighting because of the proximity of the established trees. While consent by now may have been granted for pruning works to some of the trees within the vicinity of house B, there still remains the likelihood that if this house was to be built so close to those trees that future pressure would arise for the removal of the trees or drastic pruning works to be undertaken.

22. I am also of the opinion that the receipt of light to and outlook from bedroom 3 would be quite poor. That is because this bedroom's main window would be in very close proximity to one of No 27's elevations, affecting both the receipt of light and outlook. Bedroom 3's other window would afford no real outlook, given that it would be a high level window. However, the position of bedroom 3's main window would mean that views towards it from neighbouring properties would not cause any unacceptable loss of privacy for its users.

23. I do not share the Council's concerns with regard to the receipt of light to and outlook from the kitchen being unacceptable. That is because the kitchen and living/dining area would be open plan and the latter area would be served by a significant area of glazing in its south western elevation. I therefore consider that the kitchen would be in receipt of borrowed light and that its interior would not create oppressive living conditions for the occupiers of this house.

24. For the reasons given above I conclude that the outlook from and receipt of light to bedrooms 1, 2 and 3 would be poor and that unacceptable living conditions would be available to the occupiers of house B. There would therefore be conflict with Policy AH2 of the Local Plan, the DCS2 and paragraphs 56 and 64 of the Framework because the development would through its siting and design provide a poor living environment for house B's occupiers.

Trees and the Conservation Area

25. The application details do not include an arboricultural impact assessment, despite the tree report recommending the preparation of one. The construction of house B would be in close proximity to a number of trees and the works have the potential to significantly affect the root systems for the retained trees, not least because house B would have a basement. These trees form part of a group situated on or immediately adjacent to the CA's eastern boundary and the Council's report (appraisal) of 1999 for this CA states that 'Fine trees are one of the most important assets of Kingston Buci. New development should avoid damaging this asset …'. From what I saw of the CA I consider the trees, such as those adjoining No 55, are important features within this heritage asset.

26. The tree report acknowledges that the trees adjoining the site's western boundary collectively have a '… very good landscape value' and of those trees the ones identified as T28, T29 and T31 are referred to as being the most important and have been classified as having a life expectancy of 'at least 20 years' according to the tree quality assessment chart appended to the tree report. Trees T28, T29 and T31 would be sited in very close proximity to the rear of house B and it would appear that the excavations associated with its construction would encroach into the root protection areas (RPA) for those trees. It would also seem likely that the excavation works associated with the formation of the basement could have implications for the retained trees, although it is difficult to be certain about this in the absence of a drawing showing the RPAs overlaid on the layout for house B.

27. Given the absence of a drawing that combines both the layout of the development and the RPAs it has not been demonstrated that house B would be sited as far away as practically possible from the adjoining trees, as

recommended in the tree report. If the construction works were to encroach significantly into the RPAs for the trees identified for retention, thus undermining their wellbeing, then the affected trees' acknowledged contribution to the collective value of this grouping of trees within the CA would be diminished. I found these trees to be contributing positively to the CA's appearance and the CA's appearance would not be preserved if house B's construction was to result in the loss of these trees. I therefore consider that it has not been demonstrated that the construction impact of the development on the trees could reasonably be left to the imposition of conditions were I minded to allow the appeal.

28. I am, however, content that the provision of the drive and parking area in front of house B could be provided in a manner that would not adversely affect the wellbeing of the adjoining cherry tree (tree T20).

29. I conclude that it has not been demonstrated that harmful encroachment into the trees' RPAs would be avoided and that the trees earmarked for retention, most particularly T28, T29 and T31, would be capable of being retained. Accordingly I therefore find there to be conflict with saved Policy AB25 of the Local Plan. Policy AB25 of the Local Plan specifically concerns the implications of new development on trees and as such is not a policy relevant to the supply of housing, in the terms used in paragraph 49 of the Framework. I also consider that there is no inconsistency between the provisions of the Policy AB25 and the Framework. Policy AB25 is therefore a development plan policy to which weight can be attached in the determination of this appeal.

30. I consider that the harm to the CA would be less than substantial when considered within the context of paragraphs 133 and 134 of the Framework. That being said I consider that the housing supply benefit arising from house B's construction would be outweighed by the harm to the CA I have found.

Living conditions for the occupiers of neighbouring properties

31. No 53 has a deep, two storey, rear outrigger with various door and window openings within its side elevation facing No 55. While there would be three first floor windows within house B's front elevation that would face towards No 53's outrigger and rear garden, those windows would be high level and/or would serve secondary accommodation (bathrooms). I therefore consider that no unacceptable overlooking would arise from the presence house B's first floor windows.

32. There would be various windows at ground floor level in the new dwelling's front elevation that would face towards the rear of No 53. However, it is intended that a 1.8 metre high fence would be installed along the boundary shared with No 53 and with that fence in place and given the distance that there would be between house B and No 53, I consider that no unacceptable overlooking would arise from the presence of house B's ground floor windows.

33. I recognise that some overlooking of the rears to Nos 53, 57 and 59 could arise from the comings and goings associated with the occupation of house B. However, I consider any such overlooking would be comparable to that associated with the use of the site as garden land and as such there would be no harm to the living conditions of the occupiers of Nos 53, 57 and 59.

34. The daily comings and goings associated with house B's occupation has the potential to generate some noise and fumes in association with the movement of vehicles. However, for a single dwelling that vehicular activity is likely to be quite low and I therefore consider that the noise and fumes generated by the occupation of this house would be at a level that would not be harmful to the living conditions for the occupiers of the neighbouring properties.

35. For the reasons given above I conclude that the development would not give rise to any unacceptable harm to the living conditions for the occupiers of neighbouring properties. There would therefore be no conflict with Policy AH2 of the Local Plan and the DCS2 because there would be no unneighbourly effect for the occupiers of existing dwellings.

Other Matters

36. The development would contribute to the supply of housing in the area, albeit that contribution would be a very modest one. I also recognise that the internal and external space within the development as a whole meets the standards applied by the Council and that Southwick is a suitable location for housing, given its accessibility to every day local facilities (employment, shops, schools and other community facilities). The aforementioned matters in social and economic terms weigh in favour of this development.

37. The existing bungalow is subject to a demolition order and its removal would improve the area's appearance, however, its replacement by house A is unobjectionable. However, no evidence has been presented explaining why house A or a dwelling of an alternative design could not be constructed, subject to obtaining planning permission, in the absence of there being permission for a second dwelling. I therefore consider that the absence of planning permission for house B of itself need not be a barrier to the replacement of the bungalow. Replacing the bungalow does not therefore weigh significantly in favour of the development.

38. Were some of the trees to be lost that would result in a reduction in biodiversity value in the area. However, I consider that loss of value would not be significant and would in part be compensated for by the planting that would be undertaken in association with the development. I therefore consider there would be no unacceptable harm to the area's biodiversity value and this would be a neutral effect of the development.

39. While a number of neighbouring residents have expressed support for the development, this does not persuade me that house B would be an appropriate form of development for this area.

Planning Balance

40. Although some of the above mentioned other matters, as social and economic benefits, weigh in favour of this development, most particularly the provision of some new housing, I find them to attract limited weight and that that weight is outweighed by the environmental harm that I have identified. I consider that the environmental harm could not be overcome by the imposition of reasonable planning conditions.

41. Having regard to my reasoning above, I conclude that the proposal does not comply with the development plan taken as a whole and does not represent sustainable development in the terms of the Framework. The adverse

impacts I consider that granting permission would cause would significantly and demonstrably outweigh the benefits, taking account of all the benefits the development would have.

Conclusions

42. While there would be no harm to the living conditions for the occupiers of the neighbouring properties, I have found that there would be unacceptable harm to the character and appearance of the area, the living conditions for some of the occupiers of the development and the trees adjoining the site. I therefore conclude that the appeal should be dismissed.

Grahame Gould

Inspector