The Planning Inspectorate

Appeal Decision

Site visit made on 10 October 2012

by Lynne Evans BA MA MRTPI MRICS

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

Decision date: 30 October 2012

Appeal Ref: APP/Y3805/A/12/2174337
82-88 Underdown Road, Southwick, Brighton BN42 4HL

- 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 Woodcock Holdings Ltd against the decision of Adur District Council.
- The application Ref: AWDM/0096/12 dated 19 January 2012, was refused by notice dated 03 April 2012.
- The development proposed is demolition of existing dwellings and outbuildings the erection of 8 no houses.

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing 2 bungalows and outbuildings and erection of 8 dwellings (comprising a terrace of 4 three bedroom two storey houses plus rooms in roof at front of site and a terrace of 4 two bedroom two storey houses at rear) and 11 car parking spaces at 82-88 Underdown Road, Southwick, Brighton BN42 4HL in accordance with the terms of the application, Ref: AWDM/0096/12 dated 19 January 2012 subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The Council amended the description of development at the application stage to read: *Demolition of existing 2 bungalows and outbuildings and erection of 8 dwellings (comprising a terrace of 4 three bedroom two storey houses plus rooms in roof at front of site and a terrace of 4 two bedroom two storey houses at rear) and 11 car parking spaces.* I consider that this more fully describes the scheme proposals and I have therefore used this description in my decision.

3. The Council's notice of refusal referred to the National Planning Policy Framework (Framework), which had been published a few days prior to the application being determined. In view of that timescale, the Appellants and the Council were offered the opportunity to address the implications of the Framework on the appeal proposals and I have taken those further representations into account in my decision.

4. In addition to the Framework, the Council relied on policies from its adopted Adur District Local Plan (Local Plan) adopted in 1996. I have noted the date of

the adoption of the Local Plan, but at this point in time its saved policies form part of the development plan. The Framework sets out the government's planning policies to secure sustainable development. It also confirms that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise, and I have therefore determined the appeal accordingly.

5. The Appellants submitted a signed and dated unilateral undertaking in respect of a financial contribution towards transport infrastructure improvements. I address the Undertaking later in my decision.

Main Issues

6. The main issues raised in this appeal relate to:

   a) The effect of the proposed development, and in particular the proposed rear terrace of four houses, on the character and appearance of the local area, and

   b) The effect of the proposal on the living conditions of the adjoining neighbours, with particular regard to overlooking and loss of privacy, loss of light, overbearing effect, noise and disturbance and unneighbourly development.

Reasons

Issue a) Character and Appearance

7. The appeal site comprises two detached bungalows with long rear gardens containing a range of outbuildings and sheds, on the east side of Underdown Road. In terms of their scale, plot size and appearance, they appear as an anomaly within the street which comprises, particularly further to the south of the appeal site, predominantly pairs of semi-detached or short terraces of two storey traditional properties, some of which have accommodation in the roof space. There are a number of examples of backland development along Underdown Road and the surrounding streets. Although most of these do not intrude significantly on the street scene, they do form part of the character of the local area.

8. Towards the northern end of the street, the frontage development is interrupted by the flatted development at Warren Court set back from the street front and within its own grounds. Between Underdown Road and the parallel road to the east, Southview Road, is Southview Close comprising a small backland development of two and three storey development. One of the terraces of two storey properties within that development together with the rear of one of the garage blocks serving that development sides onto northern boundary of the appeal site. The rear of the appeal site borders commercial backland development in Southview Road. There is tall and overgrown leylandii planting along parts of the northern, rear and southern boundaries of the appeal site. I do not agree with the Council's description that there is a clear divide in the character and appearance of the local area to the north and south of the appeal site.

9. From my site visit, the location of the site within the built up area and a consideration of the current policy framework, I am satisfied that the principle

of residential redevelopment of this existing residential site would be acceptable. The Framework reconfirms previous guidance that private residential gardens are excluded from the definition of previously developed land. However, neither the Framework nor the development plan policies which have been referenced in this case precludes development on such sites. The Framework, at paragraph 53, indicates that Local Planning Authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area. The key considerations under the relevant development plan policies relate to the effect of the proposal on the character and appearance of the local area and on the living conditions of the adjoining neighbours. These, in turn, accord with the sustainability objectives of the Framework and have formed my main considerations in this appeal.

10. The Council has raised no issue with the proposed terrace of four properties fronting the street. This element would be the principal part of the overall development which would be visible within the street scene. The proposed terrace, in terms of its scale, form, layout, street alignment and traditional design approach would, in my view, fit comfortably with the form of the neighbouring properties and would respect the street scene.

11. The development at the rear would be signalled by the access drive running alongside the boundary with the adjoining property to the south at No 80 and part of the built development would be seen when passing along the street, given the siting of the rear terrace. However, as a result of the set back of this terrace, and its smaller scale compared with the frontage development, it would not materially intrude on the street scene.

12. Both the Appellant and the Council have provided various density calculations as a comparison between the proposed scheme and the surrounding area to assist their arguments. However, although density is a helpful indicator I consider that for a site of this size, issues relating to the form, layout, scale and massing and appearance of the scheme are more relevant to take into account.

13. I consider that the spacing of the proposed terraces, in terms of their distances between each other, the car parking arrangements as well as the amount of garden space and boundary landscaping would be appropriate to ensure that the development would not appear as an overdevelopment of this site. There would in my view be an appropriate balance between built development and garden space to ensure that the development would not be an over intensive use of the site. The rear terrace would be set in from the side boundaries and lower in scale than the frontage terrace which would be appropriate to reflect its siting to the rear.

14. I am therefore satisfied that the proposed development would respect the character and appearance of the local area and that there would be no conflict with Policies AG1 and AH2 of the Local Plan as well as guidance in the Framework.

Issue b) Living Conditions

15. The neighbours on either side of the appeal site, at No 80 to the south and No 90 to the north would be aware of the proposed development and there would be a changed outlook from some of their windows and within their rear garden

area facing towards the appeal site. However, I am satisfied that given the distance and relationship between the proposed terrace at the rear of the site and the neighbouring development there would be no unacceptable overlooking of the windows at the rear and side of the neighbouring properties, or of their gardens.

16. Although two storey rather than single storey, the proposed built development would be sited further away from the side windows in No 80 facing towards the appeal site, compared with the existing situation. Given the distance to the proposed terrace at the front of the site with the access road in between and the opportunity for an appropriate boundary treatment, I do not consider that the outlook for the neighbours at No 80 from the windows in their side elevation facing towards the appeal site would be materially harmed and the development would not be over bearing. The distance between the properties combined with the orientation of the development would also result in no unacceptable loss of light to these side facing windows. I also do not consider that there would be any unacceptable effect on light to the windows in No 90 from the proposed development because of the detailed siting of the proposed development and distance between the existing and the proposed.

17. I also consider that there would be no unacceptable harm to the living conditions of the neighbours at No 30 Southview Close, given the detailed siting and scale of the proposed rear terrace in relation to that property, as well as the change in levels. In this regard I have considered issues relating to overlooking and loss of privacy, overbearing effect as well as loss of light. The angle of view between the proposed windows in the rear terrace and No 30 would, in my view, be sufficiently oblique that no direct overlooking would result. I am satisfied from the information provided by the Appellants that the proposed terrace at the rear would not unacceptably overshadow the adjoining property or its garden, particularly when account is taken of the overshadowing effect of the existing leylandii along that boundary. Given the detailed siting, scale and height of the rear terrace I do not consider that it would be overbearing for the neighbours, in terms of their outlook, either from windows in their house or within their garden area.

18. The adjoining neighbours, particularly at Nos. 80 and 90 Underdown Road would be aware of the adjoining development including car movements, particularly in their rear garden areas. However, taking into account the number of dwellings and car parking spaces proposed, I consider that the proposed layout and the scope for appropriate boundary treatments along the relevant boundaries would ensure that the development would not be unneighbourly or give rise to unacceptable levels of noise and disturbance. The boundary with No 80 as well as parts of the rear boundary is marked by very tall and overgrown leylandii hedging. This would be removed as part of the scheme proposals, but I consider that there would be the opportunity to replace with more sensitive and appropriate boundary planting which would screen the proposed development. The proposed boundary treatments would be the subject of a condition for further approval to ensure an appropriate approach to protect the living conditions of the immediate neighbours.

19. I am therefore satisfied that there would be no material harm to the living conditions of the adjoining neighbours as a result of the proposed development. There would be no conflict with Policy AH2 of the Local Plan or the Framework.

Other Considerations

20. My attention has been drawn to a previous refusal which was subsequently dismissed at appeal for a redevelopment of the site for 9 flats and 4 houses (APP/Y3805/A/11/2152039). However, that appeal was for a different form of development and my decision has been based on the planning merits of the proposed development before me.

21. Local residents have raised additional concerns, which were not grounds for refusal of the scheme at the application stage, including, amongst other matters, in respect of both car parking and flooding. The car parking proposals would in my view be appropriate to serve the development with regard to the Highway Authority's parking demand calculator, the form of the development as well as the location of the site in relation to public transport. I recognise that the road is a no-through road, but given the scale of the development, I do not consider that the additional traffic generated by the proposal would materially affect traffic flows or raise issues of highway safety. The highway authority has also raised no issue in these regards.

22. In terms of flooding I have taken into account the concerns raised by the local residents, particularly in relation to ground water flooding which I understand to be a common issue across much of the district. The submitted flood risk appraisal provided by the Appellants at the application stage indicates that subject to appropriate measures the development would not worsen the risk of flooding elsewhere or result in risk to future occupiers. I do not therefore consider that there would be any justification for withholding permission on grounds of flooding, but that appropriate flood measures should be the subject of conditions.

23. I note that the Council does not consider that it faces a shortfall in its five year residential land supply position. However, as I have found that the proposed development would be acceptable under both my main issues and there is no suggestion under the relevant policies that this form of development is only acceptable where it is needed to meet a housing shortfall, this is not a matter which I propose to consider further.

24. A unilateral undertaking has been submitted by the Appellants to make a financial contribution towards sustainable transport improvements in the local area. Although it was not a ground for refusal the Council has indicated that it would expect a development of this scale to contribute towards sustainable transport improvements and its appeal case is supported by a detailed statement from West Sussex County Council in this regard.

25. There is, in my view, nothing wrong with the principle of collecting and pooling contributions to take account of the combined impact of development, particularly bearing in mind the proportion of new housing which is expected to arise from smaller developments. Such an approach appears to accord with the approach set out under the West Sussex County Council *Revised County Parking Standards and Transport Contributions Methodology* Supplementary Planning Guidance 2003 and revised in 2010 (SPG).

26. From the information provided at the appeal stage by the County Council to support the contributions requested, I am satisfied that the submitted Undertaking would accord with the SPG as well as guidance in the Framework and the Communities Infrastructure Levy Regulations 2010. I have therefore taken it into account in my decision as a material consideration in support of the proposals.

Conditions

27. The Council has proposed a number of conditions which it would to see in the event of planning permission being granted. I agree that conditions should be imposed in respect of materials, access and parking, visibility splays, boundary treatments and levels for the finished development both in the interests of protecting the character and appearance of the local area as well as the living conditions of adjoining neighbours and highway safety. In the interests of protecting the living conditions of the immediate neighbours I also agree that a condition should be imposed to ensure that the windows in the side elevations of the rear terrace should be obscure glazed and non–openable below a specified height. Given the constraints of the site within a residential area I also agree that a construction method statement should be submitted including hours of working. Conditions should also be imposed in the interests of minimising flooding risk.

28. The Council has proposed the removal of permitted development rights. Circular 11/95 advises that the removal of permitted development should not be imposed except in exceptional circumstances. Given the nature of the site and immediate neighbours on either side, I agree that in the circumstances of this case such a condition should be imposed both to protect the living conditions of adjoining residents as well as the character and appearance of the local area.

29. Finally I also propose to add a condition to list the approved plans on the basis that, otherwise than as set out in this decision and in conditions, it is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning.

Conclusion

30. For the reasons given above and having regard to all other matters raised, including in letters of representation and the petition from local residents, I conclude that the appeal should be allowed.

L J Evans

INSPECTOR

Schedule of Conditions (Nos 1 – 12 inclusive)

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) No development shall take place until samples of the materials to be used on the external surfaces of the dwellings hereby permitted have been submitted

to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

3) No development shall take place until a detailed construction plan for the parking spaces, cycle storage, access and turning facilities shown on the approved plans has been submitted and approved in writing by the Local Planning Authority. The parking spaces, cycle storage, and access and turning facilities shall be provided in accordance with the approved construction plan prior to the first occupation of the development hereby permitted and thereafter shall be retained for their designated use.

4) No dwelling shall be occupied until the vehicular and pedestrian visibility splays have been constructed in accordance with the details shown on Plans 824 -105A and 106A and shall thereafter be maintained and kept free from obstruction up to a height of 600mm.

5) Notwithstanding Condition 12, no development shall take place until details of the proposed finished floor levels of the development in relation to the existing and proposed site levels shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.

6) Notwithstanding Condition 12, no development shall take place until plans and details of the positions, designs, materials and types of boundary treatment to be erected, including soft planting, has been submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details prior to the first occupation of the development hereby permitted, and shall thereafter be retained permanently.

7) No development shall take place until detailed proposals have been submitted to and approved in writing by the Local Planning Authority to accord with the Standard Practices and Recommendations set out within the Flood Risk Appraisal from Renaissance Regeneration dated 31 January 2011. The development shall be constructed in accordance with the approved details.

8) Notwithstanding Condition 12, the parking areas and access road shown on the approved plans shall be constructed using permeable materials in accordance with details to be first submitted and approved in writing by the Local Planning Authority.

9) The first floor windows in the side elevations of the rear terrace (house type B) shall at all times be obscure glazed and non–opening below 1.7m above the floor level of the room in which they are installed, and they shall be permanently retained in that form.

10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or any order revoking or re-enacting that Order with or without modification, no development within Classes A, B D and E of Part 1 of the Schedule shall be carried out at the approved dwellings.

11) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be

adhered to throughout the construction period. The Statement shall provide for:

i) the parking of vehicles of site operatives and visitors

ii) loading and unloading of plant and materials

iii) storage of plant and materials used in constructing the development.

And that:

iv) demolition and construction works shall not take place outside the hours of 08.00 hours to 18.00 hours Monday to Friday; and 09.00 hours to 13.00 hours on Saturdays, and at no time on Sundays or Bank holidays.

12) The development hereby permitted shall be carried out in accordance with the following approved plans: 824 – 01; 824 – 10; 824/100F; 824/101E; 824/102F; 824/103C; 824/104B; 824/105A and 824/106A.