



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/17/3166685
7-11 Church Place, Brighton BN2 5JN

- 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 outline planning permission.
 - The appeal is made by Mr Andrew Lee of Lee Hire Ltd against Brighton & Hove City Council.
 - The application Ref BH2016/01794, is dated 5 May 2016.
 - The development proposed is the demolition of existing garage workshop and flat and erection of 6no three bedroom dwellings.
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Decision

1. The appeal is dismissed and planning permission for the demolition of existing garage workshop and flat and erection of 6no three bedroom dwellings is refused.

Procedural Matter

2. The appeal application has been submitted in outline with the application form indicating that landscaping is to be considered at the outline stage. I have therefore dealt with the appeal on this basis. Notwithstanding that, drawings were submitted with the application which included details of how the proposed development might be formed. However, given that all matters except landscaping are reserved for subsequent approval I have given these drawings little weight where they relate to matters not relevant to landscaping matters.

Main Issues

The main issues are

- (i) The effect of the development on Heritage Assets;
- (ii) whether the proposal makes adequate provision for affordable housing; and
- (iii) the effect of the development on the on the supply of employment land .

Reasons

Heritage Assets

3. All of the buildings on the appeal site are designated as locally listed buildings and as such are non-designated heritage assets. The site is also located just outside of the Kemp Town Conservation Area. The Church of St Mark, located

- at the corner of Church Road and Eastern Road is a Grade II Listed Building, beyond which is the East Cliff Conservation Area. The Grade I Listed Buildings of Sussex Square are also in proximity to the site.
4. The appeal documents include a Historic Building Assessment (HBA) which contains an extract from the local listing which identifies that all of the buildings on site as being part of the Marquis of Bristol Estate Buildings.
 5. In respect of the appeal site, the HBA focusses on the buildings at 1-5 Church Place. However, it does acknowledge the significance of the garage itself which is the site of the original diary and that it should be considered as part of the group of buildings, which reflects the local listing designation. Whilst I agree that its significance is reduced by the later alterations, the garage site nevertheless has an important historical aspect.
 6. From the application, and appeal, documentation it is not clear which parts of the existing structures are to be retained or re-used. It is stated that some of the walls will be preserved as retaining walls but it is not clear which they are or the extent of them. In addition to the above, it is noted that the plans submitted with the application appear to show that the new buildings, on the part of the site where the locally listed buildings are, would utilise the existing external walls.
 7. Whilst this uncertainty may be, in part, as a result of the outline nature of the proposal it nevertheless means that there is not a clear indication of what the overall impact would be on the locally listed buildings.
 8. The Council have also raised concern over the indicative plans in that the development shown would obscure the north elevation of the current shop unit. Given that landscaping is being considered at the outline stage, the details shown does give a broad indication of the position of the proposed buildings and their impact in relation to the existing retained buildings. In this respect, I agree with the Council that the location of this element of the development would have a detrimental impact on the setting of 5 Church Place owing position close to the front of the building.
 9. Taking all of the above into account, I consider that the proposed development would give rise to an unacceptable level of harm to the locally listed buildings on the site, including 5 Church Place.
 10. I have also considered the potential public benefits to the non-designated heritage assets. Subject to a suitable scheme coming forward through the consideration of reserved matters (should I be minded to allow the appeal), the development could retain and allow for the walls to be repaired and maintained. However, I do not consider that this potential benefit would outweigh the harm I have already identified.
 11. Turning to the effect of the development on the heritage assets off site, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the setting of the Church of St Mark, and the buildings in Sussex Square.
 12. Whilst I share the Council's concern over the effect of the indicative scheme on the setting of these buildings, I am conscious that as an outline application, with all matters except landscaping reserved. Notwithstanding those concerns, I am of the view that it would be possible to develop a scheme of six 3-

- bedroomed dwellings which would not have any adverse impact on the setting of any of these listed buildings.
13. In respect of the effect of the development on the Kemp Town Conservation Area, the proposal would have some impact on views into and out of the Area. However, with a suitable design of buildings, the proposal would not give rise to any material harm.
 14. Finally, in respect of the East Cliff Conservation Area, this is located to the south of the site beyond the Church of St Marks. Given the distance between the Conservation Area and the appeal site, including the Church in-between, the development would not have any adverse impact on its setting.
 15. The Council have also cited that the development would represent an overdevelopment of the site. However, this appears to have been advanced on the basis of the effect of the development on the heritage assets. From the evidence before me, the Council consider that a suitable scheme could be designed as reserved matters stage in respect of other requirements of the development such as parking provision and amenity space and I have no reason to disagree. Given that position, I am not convinced that the development would represent an overdevelopment of the site.
 16. For the above reasons, the proposed development would result in significant harm to the non-designated heritage assets on the site contrary to the provisions of Policy HE10 of the Brighton and Hove City Plan Part One (2016) (CP) which amongst other matters seeks to ensure the retention and continued use of buildings of local interest, such as locally listed buildings.

Affordable housing

17. Policy CP20 of the CP requires the provision of affordable housing on all sites 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 that £216,000 would be an appropriate level of financial payment towards the provision of affordable housing elsewhere.
18. 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.
19. 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.
20. 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.

21. The Council have referred me to the Objectively Assessed Needs for Housing : Brighton & Hove (2015) (OAN) which 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.
22. 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 Policy CP20.
23. The Appellant has indicated that a contribution of £36,000 per dwelling (plus the loss of the existing flat) together with the expected high build costs as a result of preserving the existing walls of the workshop, removing the filled in fuel tanks, and removing contaminated soil would render the redevelopment of the site uneconomic. However, no viability appraisal has been provided to me which would demonstrate that would be the case. In the absence of such, there is not a compelling argument to justify a reduced or waived contribution in the context of Policy CP20.
24. Given the Development Plan policy, I conclude that the provision of affordable housing is necessary to make the proposal acceptable, is directly related to the development and is fairly and reasonably related in scale and kind to the development. Consequently, it would satisfy the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 204 of the National Planning Policy Framework.
25. For the above reasons, the development would not, in the absence of a completed section 106 obligation, provide an appropriate mechanism to secure much needed affordable housing contrary to Policy CP20 of the CP.

Employment land

26. Policy CP3 of the CP seeks to ensure that sufficient employment sites and premises are safeguarded in order to meet the needs of the City. The policy goes on to state that the loss of unallocated sites will only be permitted where the site or premises can be demonstrated to be redundant or incapable of meeting the needs of alternative employment uses (Use Classes B1-B8). Given that the site is currently operational as a vehicle recovery garage the site is clearly not redundant.
27. In terms of meeting the needs of alternative employment uses, very little evidence has been provided that demonstrates that the site could not meet the needs of an alternative employment use, either by use of the current buildings or as part of a redevelopment scheme.
28. Whilst the proposed development would clearly have substantial benefits in removing a vehicle recovery garage from a predominantly residential area, in the absence of any investigation as to whether an alternative employment use could utilise some, or all, of the site the proposal is clearly in conflict with Policy CP3.

29. In coming to that conclusion I acknowledge that the flower shop would remain and that vehicle recovery business would relocate to a more appropriate site. However, this would not overcome the net loss of employment land should I have been minded to allow the appeal.
30. For the above reasons, the proposal fails to demonstrate that the site is incapable of meeting the needs of alternative employment uses contrary to Policy CP3 of the CP.

Other matters

31. The Appellant has raised concerns over the Council's processing of the planning application. However, these concerns are procedural matters which have very little bearing on the planning merits of the development before me.

Conclusion

32. Taking all matters into consideration, including some letters of support, I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR

