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## Appeal Decision

Site visit made on 4 September 2017

by **L Gibbons BA (Hons) MRTPI**

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

Decision date: 29<sup>th</sup> September 2017

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### **Appeal Ref: APP/Q1445/W/17/3175715** **7 Barrowfield Drive, Hove BN3 6TF**

- 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 K Wolley against the decision of Brighton & Hove City Council.
  - The application Ref BH2016/05241, dated 7 September 2016, was refused by notice dated 24 February 2017.
  - The development proposed is a new dwelling on land to the rear of the property at 7 Barrowfield Drive Hove.
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### **Decision**

1. The appeal is dismissed.

### **Main Issue**

2. The main issues are:
  - i) the effect of the proposed development on the character and appearance of the area with particular reference to trees, and;
  - ii) The effect of the proposed development on biodiversity.

### **Reasons**

3. The appeal site is located within a residential area. The houses are individually designed built in the Sussex style. The roads are narrow and mainly curved with grass verges. The front and rear gardens contain mature planting with a significant number of large trees all of which contribute to a very verdant and almost woodland backdrop. Overall, the area has a very distinctive and pleasant character.
4. The proposal is for a single dwelling in the rear garden of No 7 Barrowfield Drive. The garden is fairly long and wide. There are two protected cedar trees within the garden which would be retained in the garden of No 7. Other large trees include a cedar within the garden of No 6 Barrowfield Drive which is close to the common boundary with No 7, and also a horse chestnut located on Elm Close. These trees contribute significantly to the character and appearance of the area.
5. An Arboricultural Implications Assessment accompanied the planning application. This indicates that foundations for the house have been designed to incorporate mini/screw technology. Reference is made to the principle of their use being well established. However, these details have not been

- provided and I cannot be certain that this would be an appropriate method which would accommodate root growth for all four trees.
6. In addition, there is no information provided on how much further the root protection areas for the trees would reach particularly given that it is estimated that they would have between 20 and 40 years of additional growth. The Council query whether the girth of the cedar within the garden of No 6 has been measured accurately, and this may have implications for subsequent growth. The appellant refers to the root growth for the horse chestnut potentially being limited by competition for space and the presence of the road. However, I have not been provided with evidence to demonstrate this would be the case. Moreover, in the case of three of the trees the root protection areas are currently shown to be extending to the walls of the proposed dwelling. Taking these factors into account I consider that a condition requiring further details on the foundations would not be suitable.
  7. The Council do not raise any concerns in respect of shade or daylight or indeed effects on the trees during the construction process. I also note that limited works to the protected trees have been permitted. Nevertheless, when stood within the garden of No 7, the two protected cedar trees are particularly tall and imposing. The presence of the cedar in the garden of No 6 is also very noticeable given its height and location close to the boundary. The horse chestnut has branches which come slightly over the hedgerow which adjoins the boundary along Elm Close. The trees are a significant feature of the immediate surroundings and even with lack of windows in some elevations future residents would be very aware of their presence.
  8. Taking these factors into account I consider that the relationship of the building to these trees in fairly close proximity, and their numbers could cause significant apprehension to future occupiers. Whilst the trees would not be on land owned by the future occupiers I do not agree that the trees would not potentially be under threat. I say this particularly in respect of anxiety relating to safety. Therefore, it may be difficult for the Council to resist applications to lop or fell relating to the protected trees, and also other landowners for requests for work to be done to the other two trees. Significant levels of pruning of these trees would have a very negative impact on the verdant and wooded context of the area.
  9. For the reasons given above, I conclude that the proposed development would cause harm to the character and appearance of the area having regard to trees. It would be in conflict with saved Policy QD16 of the Brighton and Hove Local Plan 2005 which amongst other things will not permit new development which would damage or destroy a preserved tree unless the development is of national importance or essential to meet recognised social and/or economic needs which cannot be located elsewhere and there is no practicable way to retain the tree.

#### *Ecology and biodiversity*

10. Paragraph 109 of the National Planning Policy Framework (the Framework) sets out that the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible. Paragraph 118 of the Framework sets out that if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately

mitigated, or, as a last resort, compensated for, then planning permission should be refused. The Council refer to a significant loss of biodiversity relating to the loss of five trees and the green space within the garden of No 7.

11. The Council consider that the loss cannot be mitigated through typical measures. However, it does not explain why this is the case in this particular scheme. The trees proposed for removal are either in poor condition or do not have significant value or quality. Two of the trees are dying. No significant biodiversity features have been identified within the garden and the Council do not refer to any particular feature or species.
12. Replacement planting and landscaping is proposed. Were other matters acceptable, I am satisfied that conditions relating to the submission of a scheme to enhance the nature conservation interest of the site and a scheme for landscaping would be sufficient to address potential impacts on biodiversity and ecology. There would be no conflict with Policy CP10 of the Brighton and Hove City Plan Part 1 2016, which amongst other things seeks new development that net gains in biodiversity wherever possible, taking account of the wider ecological context of the development.

#### *Other matters*

13. The dwelling would have windows which would face mainly towards the road along Elm Close. There would be some distance between the side elevation and the front of No 5 Elm Close and also No 9 The Green. Therefore, there would be no detrimental loss of privacy to the occupiers of those properties. There is no evidence to indicate that the lighting of the upstairs rooms would cause unacceptable levels of light and subsequent disturbance to neighbours.
14. In relation to parking and access I note that Elm Close is narrow although it is straight at the point where the site is proposed to be accessed. The proposed scheme would include parking provision. The Council and the Highways Authority do not raise any concerns with parking, visibility or access subject to suitable conditions. Based on observations at the site visit and evidence before me I see no reason to disagree with this matter. However, these matters are not sufficient reasons to justify the scheme before me.

#### **Conclusion**

15. I have found that the proposed development would be acceptable in terms of its effect on biodiversity. However, I have found that the proposed development would cause harm to the character and appearance of the area with particular reference to trees and this is sufficient reason to dismiss the appeal.
16. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*L Gibbons*

INSPECTOR

