
Appeal Decision

Site visit made on 7 November 2017

by Rory MacLeod BA MRTPI

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

Decision date: 22nd December 2017

Appeal Ref: APP/Z3825/W/17/3179462

1a Clarence Road, Horsham RH13 5SJ

- 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 Clarence Road Developments Ltd against the decision of Horsham District Council.
 - The application Ref DC/17/0765, dated 4 April 2017, was refused by notice dated 9 June 2017.
 - The development proposed is demolition of existing building and erection of 5 no flats with associated amenity space.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (a) the effect of the development on the character and appearance of the area, (b) the effect of the development on the living conditions of the occupiers of adjoining dwellings and (c) whether there should be a requirement for a contribution towards affordable housing.

Reasons

Character and appearance

3. The appeal site is currently occupied by a detached vacant storage building set back from the road frontage to align with adjacent buildings but which otherwise covers the entire site area. It is proposed to redevelop the site to provide a building of five flats, two to both the ground and first floors with the final unit being set within the roof space. The present high boundary walls would be replaced by new boundary enclosures and a garden would be provided to the rear of the building.
4. The site is located in a predominantly residential area but with variation in the form of buildings. To the north, both sides of Clarence Road are characterised by mainly two storey semi-detached houses with small front gardens. There are detached houses of similar scale on both sides of the site. Clarence Court is opposite, a building of flats arranged mainly over two floors facing Clarence Road but over three floors at its junction with Brighton Road. There is a terrace of two storey houses with front dormer windows on the opposite side of Brighton Road facing the junction. To the south-west there is a single storey bungalow in Brighton Road with a garden that backs on to the rear part of the

appeal site. To the rear of the site there is a modern development of two storey flats.

5. The front wall, eaves and ridge lines to the proposed building would align with those of adjacent buildings in Clarence Road. Either side of a central front entrance there would be two storey bay windows resembling the scale and form of bay windows to houses in Clarence Road. Above these there would be two small front dormers with pitched roofs over set within the front roof slope, similar in scale to other dormers nearby. In all these respects, the development would be respectful to the character of the surrounding area.
6. Planning permission has recently been granted for a pair of semi-detached houses at the site with a similar profile to that of the building now proposed. The Council has drawn attention to the increased mass of the current proposal and the provision of larger flat roof dormer windows compared to the consented scheme. There would be an additional single storey element at the rear, the width of the rear part of the building would be greater on all three floors and there would be a small increase in the depth of the rear facing roof slope. The additional mass would all be towards the rear of the building and would not be conspicuous from any public viewpoint. The two side dormers would not be unduly large and would be set in the rear part of the flank roof slope partially concealed by the gable ends to the front roof slope. The rear dormer would be acceptably proportioned in the rear roof slope.
7. Whilst there would be an increase from two to five units compared to the consented scheme, the size and layout of the flats would be satisfactory and the rear garden area would be adequate for the occupiers. The proposal would provide additional accommodation within the built up area of Horsham and would not appear cramped in the context of the site.
8. My findings in relation to the first issue are that the proposal would have a satisfactory design and appearance that would not be out of keeping with or detract from the pattern of development in the surrounding area. It would thereby be in compliance with policies 32 and 33 of the Horsham District Planning Framework 2015 (HDPF) which require developments to be of a high quality and inclusive design with a scale and layout based on a clear understanding of the context for development. The proposal would also be in compliance with Section 7 of the National Planning Policy Framework (the Framework) in relation to the design of new buildings.

Living conditions

9. The flank and rear walls to the present building are in excess of 3m in height and the proposal would present lower boundary walls 1.8m high to adjoining residential properties. The new building would be substantially higher and project behind the rear walls to 1 and 3 Clarence Road, but its profile would be similar to that of the consented scheme for two houses. The greatest change compared to that scheme would be the additional depth at ground floor level which would be partly hidden by the new boundary walls. The rear part of the flank walls would be closer to the side boundaries by about 1 metre but would still be set in from these boundaries by about 1 metre. The enlargement at roof level compared to the consented scheme would be small. The new building would be clearly visible from within the back gardens to adjacent dwellings but there would not be a significant change in mass in relation to the extant permission. Having regard to the siting of adjacent buildings, I consider that

there would not be a material effect on the living conditions of the occupiers of these buildings in respect of the scale or mass of the proposal being either dominating or overbearing.

10. There would be dormer windows at second floor level in the proposal whereas the extant permission has roof lights. The north facing side dormer would be to a bathroom and face the roof slopes to 3 Clarence Road; it would not give rise to any loss of privacy for adjoining occupiers. The rear dormer would provide oblique views towards the rear gardens of 3 Clarence Road and 31 Brighton Road. However, this would be on a similar plane to the first floor rear windows on the proposed and consented schemes and would not result in a material difference in respect of overlooking of adjacent properties.
11. On the south side of the building there would be a dormer comprising two large windows to serve the kitchen part to a combined living, dining and kitchen area; the room would also be lit by smaller windows at the front. The dormer window would provide elevated and conspicuous direct views over the roof slopes of the house at 1 Clarence Road and diagonally towards the bungalow at 31 Brighton Road. The whole of the rear wall to the bungalow and most of the rear garden would be overlooked from this prominent vantage point. The depth of the rear garden to the bungalow is about 10m. In view of the dormer's siting close to the common boundary, its pronounced and lofty position and the size of its windows, it would give rise to a significant sense of being overlooked with a resultant loss of privacy for the occupiers of the bungalow.
12. It would be possible to include a planning condition to require the windows in the dormer to be obscure glazed and non-opening to preclude overlooking. However, I concur with the Council that given the extent of the windows and that they would be the main natural light source to the habitable room, such a condition would lead to unacceptable living conditions for the occupiers of the flat. The extant permission for two houses would not result in such problems of overlooking and moreover, includes a condition to require first floor side windows to be obscure glazed and non-opening in the interest of privacy of the occupiers of neighbouring properties.
13. The proposal would thereby be contrary to the provisions of policies 32 and 33 of the HDPF that seek to ensure that development recognises the constraints that exist at a site and does not cause unacceptable harm to the occupiers of surrounding properties through issues such as overlooking.

Affordable housing contribution

14. Policy 16 of the HDPF states that on sites providing between 5 and 14 dwellings, the Council will require 20% of dwellings to be affordable, or, where on-site provision is not achievable a financial contribution equivalent to the cost of providing the units on site. The proposed development would therefore be expected to provide one affordable unit or an equivalent financial contribution.
15. The Council's statement references some of the evidence base to justify inclusion of Policy 16 in the HDPF. There is clearly an ongoing need for affordable housing provision in Horsham and financial contributions from sites of between 5 and 14 dwellings is considered as a key element in meeting that need. The appellant has not offered a draft undertaking to make the requested contribution and indeed contests its requirement. The proposal is therefore in conflict with Policy 16.

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16. The Written Ministerial Statement (WMS) of 28 November 2014 states that *"Due to the disproportionate burden of developer contributions on small-scale developers, for sites of 10-units or less, and which have a maximum combined gross floor space of 1,000 square metres, affordable housing and tariff style contributions should not be sought."* A High Court judgement on 31 July 2015 found the policy expressed through the WMS to be unlawful and quashed the relevant parts of Planning Practice Guidance (PPG). However, following an appeal to the Court of Appeal on 11 May 2016, the WMS has been reaffirmed as lawful policy and PPG has been updated to reflect this. The WMS and PPG are material considerations to which considerable weight should be attached as the most up to date statements of national planning policy on this issue.
 17. However, Paragraph 196 of the National Planning Policy Framework (the Framework) requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. There is therefore conflict between the requirements of the development plan and the WMS and PPG. The weight to be attached to both sides of this conflict is a matter for the decision maker.
 18. Paragraph 47 of the Framework requires local planning authorities to use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area. Paragraph 50 of the Framework, requires local planning authorities to plan for and deliver a wide choice of high quality homes including affordable housing where the need is identified. The Council's evidence supports the continued relevance of Policy 16 in relation to the supply of affordable housing on small sites.
 19. Paragraph 50 of the Framework also stipulates that where the need for affordable housing has been identified that off-site provision, or a financial contribution of broadly equivalent value, should be robustly justified. The Council's evidence confirms the use of viability assessments when applicants consider that the contributions would make the development unviable. The procedures for this are set out in Supplementary Planning Documents (SPD). Whilst the latest SPD postdates the appeal, there was an earlier SPD that enabled review of viability. The appellant contends that such a payment would affect the scheme's viability but no details have been submitted to support this contention. The Council claim that their approach to affordable housing contributions has not significantly impacted upon viability or hindered housing delivery in general.
 20. The HDPF dates from 2015 and is a recently adopted plan and substantial weight should be afforded to its provisions as a whole. However, the reaffirmation of the WMS and update to PPG clearly post-date the adoption of the HDPF. A proposed amendment to the Plan to take account of the then unchallenged WMS was withdrawn. The HDPF as adopted therefore does not fully acknowledge the current national planning policy position in relation to contributions towards affordable housing.
 21. The Council has provided up to date evidence to support the continued relevance of their policies, the ongoing need for affordable housing provision in the borough and that in recent years supply has not been able to meet this need. However, there is also a need for additional market housing and in particular for small unit accommodation such as the appeal proposal as

confirmed by the background paper to the HDPF titled 'Housing Need in Horsham District' published in March 2015, prepared by GL Hearn.

22. The proposal is for 5 flats and therefore is at the lowest end of the range of 5-14 dwellings in which policy 16 seeks a 20% contribution. It is a relatively small scheme and the WMS and revisions to PPG were drafted to avoid applying a disproportionate burden on small-scale developments such as this.
23. Having regard to the particular circumstances of this case, I conclude in this instance that the WMS and PPG, as material considerations, outweigh the requirements of the development plan. Accordingly, I consider that the scheme is not required to make provision for affordable housing. I am satisfied that such an obligation would satisfy the tests set for an obligation in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, but is not required in this instance. However, as I am dismissing the appeal on other grounds, this matter has had limited bearing on my decision.

Planning Balance

24. I acknowledge that the re-use of the site for commercial purposes represents a fallback position for the appellant. Such a use may have some impact on the living conditions of nearby residents, but would be largely contained within the existing building. Moreover, the extant permission for two houses confirms that there is no objection in principle to the residential redevelopment of the site.
25. The proposal offers additional units compared to the extant permission and would arguably make a greater windfall contribution towards meeting the Council's housing needs. It would result in economic, social and environmental benefits in accordance with the provisions of the Framework, but alternative housing schemes would also result in such benefits.
26. These benefits however, do not outweigh the significant harm that would arise from the proposal in relation to the overlooking of 31 Brighton Road from the south facing side dormer. Whilst this is a suburban setting in a built up area where a degree of overlooking is inevitable, the consequent loss of privacy for the occupiers of this bungalow would be substantially more harmful than the general more distant overlooking common in urban areas. Given the size of the windows and the nature of the room that they would serve, this harm could not readily be mitigated by planning conditions to preclude overlooking. Moreover, the parties have not suggested such a condition in relation to this impact.

Other Matters

27. The majority of local resident representations against the proposal relate to the absence of any on-site parking provision and the aggravation of existing problems of off-site parking congestions within Clarence Road. I have noted that the County Council, the local highway authority, raises no objection to the proposal on these grounds. The site is in a sustainable location close to facilities and public transport links and I concur with the view that the proposal is acceptable in this respect.
28. The Council adopted a CIL Charging Schedule on 1 October 2017 and there is disagreement between the parties on whether this should be applicable to the proposal in the event of the appeal being allowed. This has had no bearing on my decision.

Conclusion

29. For the reasons set out above and having regard to all matters raised, I conclude that the proposal would result in a significant adverse effect on the living conditions of the occupiers of an adjacent dwelling. The appeal is therefore dismissed.

Rory MacLeod

INSPECTOR