
Appeal Decision

Site visit made on 13 July 2015

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 17 July 2015

Appeal Ref: APP/U1430/W/14/3001671

11 Ellerslie Lane, Bexhill-on-Sea, East Sussex TN39 4LJ

- 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 Orbit Homes (2020) Ltd against the decision of Rother District Council.
 - The application Ref RR/2014/2019/P, dated 12 August 2014, was refused by notice dated 16 October 2014.
 - The development proposed is demolition of dwelling and the redevelopment of the site for 35 residential dwellings, associated parking, access and amenity space.
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Decision

1. I dismiss the appeal.

Preliminary Findings and Main Issues

2. There is correspondence on the appeal file as to the procedure, the appellant's view at that time being that an Inquiry was necessary in view of the amount of public interest and alleged adverse effect this has had, and would continue to **have, on the appellant's case; the need for expert evidence on any heritage significance of 'Moleynes Mead'; issues of the principle of the development and numbers; and the effect on the wider area.** There is also reference to a statistical greater likelihood of success at Inquiry. In the event, the issues that have been found determinant in this appeal are limited and the site inspection was a full and fair appraisal of all parts of the site and surroundings. It is not **considered that the appellant's case has been prejudiced by the choice of procedure,** which is appropriate to the proposals and the issues.
3. The application for 35 dwellings that is the subject of this appeal follows a previous scheme for 44 dwellings (Ref: RR/2014/226/P) that was refused on 10 April 2014, and the appellant has summarised the reasons for refusal at that time. The appeal scheme is considered by the appellant to have responded to those previous reasons. Reference is made **to the Council's Strategic Housing Land Availability Assessment** considering the site as being suitable for 40 units.
4. The proposal is to develop a mixed tenure of market housing and affordable housing and the appellant is stated to be well known for their expertise in the delivery of successful, good quality schemes of affordable housing. The proposed provision of affordable housing complies with policy and it is agreed that this level of supply at this time would be a valuable contribution. Whilst the appellant takes no issue with the overall housing provision in the District,

albeit describing the five year supply as 'adequate but fragile', there does appear to be a shortfall in affordable provision.

5. **Having regard to the site's location, within the urban area**, with access to transport and services, and with residential development surrounding it, as well as the nature of the present reasons for refusal and the contents of the **Council's Report and submissions to this appeal, it is considered now that the site is suitable in principle for residential development of a similar overall number of dwellings to that proposed, subject to the findings with regard to the main issues set out below.**
6. The **Council's first reason for refusal alleged a poor standard of layout and design** in relation to six lettered issues, the third issue being similar to the second reason for refusal on residential amenity, and the third reason for refusal was a separate issue. Having regard to the foregoing therefore, the main issues are as follows;
 - The effect on the character and appearance of the area with particular regard to the location and design of plots 13 to 25.
 - Whether the affordable housing is sufficiently well integrated with the market housing.
 - The effect on the living conditions of prospective occupiers with regard to space, access, refuse and recycling facilities, plots 13 to 25.
 - **The effect on the living conditions of existing occupiers at 'Welton' and 33 Fryatts Way.**
 - Whether there is sufficient space for parking, turning and manoeuvring.
 - The effect on protected trees at plots 24 and 25.
 - The effect on the **significance of 'Moleynes Mead'**.

Reasons

Policy

7. Policy OSS4 of the Core Strategy sets out general development considerations with criteria as follows; (i) development meets the needs of future occupiers, including providing appropriate amenities and the provision of appropriate means of access for disabled users; (ii) it does not unreasonably harm the amenities of adjoining properties; (iii) it respects and does not detract from the character and appearance of the locality; (iv) it is compatible with both the existing and planned use of adjacent land, and takes full account of previous use of the site; and (v) in respect of residential development, is of a density appropriate to its context, having due regard to the key design principles. Achieving mixed and balanced communities is the subject of Policy LHN1 and part (vi) requires development to ensure that affordable housing is integrated with market housing, where practical. Policy EN3 requires new development to be of a high design quality.
8. The Council have drawn attention to parts of the National Planning Policy Framework, paragraph 17 lists the core planning principles, 56, 58, 63 and 64 concern the requirement for good design. Also referred to are passages in

section 12 on conserving and enhancing the historic environment, with a distinction drawn between designated heritage assets and heritage assets.

Character and Appearance

9. The character and appearance of the local area is of a spacious layout of detached properties, and that arrangement is acceptably reflected in the proposed layout of detached properties in the proposed development. The provision of open space south of the tree belt does have the effect of placing development in the remaining site area, but the linear arrangement of plots 1 to 8 along Fryatts Way, with plots 9 to 12 and 26 to 32 forming their own linear roadside development, would be compatible with the existing form and grain of development in the area. The somewhat separate plots 33 to 35, making use of the existing entry onto Ellerslie Lane would not be unusual in the area as a small *cul-de-sac* and would retain a presence onto the through road.
10. However, the provision of affordable housing by way of terraces would represent a stark difference in style and layout with not only the surrounding development, but also within the site. It is accepted that there would be some differences in density and form, and that a terrace represents an economic and efficient form of development. There is no reason why a higher density, such as terraces, should not be introduced within the site, but there is no transition proposed between two quite different building forms. The use of the same materials would not be sufficient to overcome the visual disruption that the introduction of these terraces would cause, with little modelling in elevation or height, and without the variation in roof design evident in the other proposed dwellings. The frontage arrangement would not be conducive to individual occupiers being able to soften the appearance with planting, and the predominance of rows of car parking would introduce further clutter to the public frontages of the houses.
11. The appellant makes reference to the acceptability of terraces in development at Ashdown Road/Galley Hill, and whilst all applications must be determined on their merits, and there would have been many considerations to balance in that other decision as well, it appears from the information provided that the terraces there have variety in roof form and elevation that is lacking in the appeal proposal. The objection in the current case is not the use of terraces as such, but their architectural treatment and their relationship with the remainder of the development.
12. To conclude, the change from a spacious and varied layout to a regimented and largely unrelieved appearance of four single buildings would be too abrupt and would risk eroding the qualities of both the detached and the terraced properties, causing harm to the character and appearance seen within the development and hence at the margins, where it would not relate sympathetically to the surroundings. The proposal would not accord with the requirement for high design quality in Policy EN3 and part (iii) of Policy OSS4.

Integration

13. The shortcomings just identified would be interpreted as an unwelcome differentiation between affordable and market housing, being placed in closely **developed blocks in one part of the site. The appellant's experience is acknowledged and there are no doubt good management reasons for a degree of grouping rather than 'pepper potting' on this small size of development.**

However, the abrupt change of layout and the unrelieved design, together with the change in the treatment of the circulation and parking, with these houses set at the far end of the *cul-de-sac* would lack integration, with a risk of poor social cohesion, contrary to the aims of Policy LHN1(vi).

Living Conditions – Prospective Occupiers

14. This aspect of the first reason for refusal again concerns the layout of the terraced houses. Plots 13 to 18 have reasonably sized rear gardens which would have access to light and air, being orientated with the buildings to the east and an open aspect to the south. However, plots 19 to 25 would be of the same width but a shorter length, and would have the gardens to the north of the terraces. The shortcomings of the unrelieved length with only a short gap between plots 21 to 22 would risk the gardens of plots 22 to 25 having poor access to light and air, while plots 19 and 20 would be acceptable, being at the open end of the terrace. The proximity of a tree to plot 25 and the likely **boundary treatment alongside the garden of 'Welton' would further lessen the utility of these four eastern-most gardens.**
15. Refuse collection points are denoted, and whilst management action could **ensure that parts of the Council's concern would be overcome, the point in front of plot 19 appears close and obtrusive, with a risk of disturbance to the occupiers.** Rear access-ways are often a feature of terraced designs and would be available for storage of wheelie bins and the like in gardens, but in order to **provide both a boundary with 'Welton' and privacy for such as plots 19 to 22,** there is a distinct possibility of this narrow access-way being uninviting, and possibly underused. As a result, these aspects of the layout and design would not fully satisfy the requirement of Policy OSS4(i).

Living Conditions – Existing Occupiers

16. Looking first at the relationship of plot 8 with the existing dwelling at 33 Fryatts Way, the intention is to form termination of view to the end of the road, with number 33 stepping out from the more general line of dwellings on one site, and the house on plot 8 stepping forward similarly. There would be a reasonable proximity of the two garages, existing and proposed, and the dormer window above the garage of the proposed dwelling would add interest to the street scene. Whilst there would be first floor windows facing across the intervening gap and obliquely in the case of the dormer, the view would be over the publicly visible entrance area rather than the private rear garden.
17. Nevertheless, there would be a perception of being overlooked felt by the occupiers of number 33, by reason of the proposed west facing window at first floor level on plot 8, a bay window to bedroom 1, and to a lesser extent, from the dormer window to bedroom 2. In addition, the size and height of plot 8 would risk appearing intrusive in the outlook from the east facing windows of number 33, the forward position of both the existing and intended building and the enclosing effect of both garages tending to focus the outlook from the existing dwelling. In view of the space to the rear of plot 8, this finding does not call into question the amount of development proposed in this area of the site, only its disposition.
18. **With regard to 'Welton, the existing dwelling has access to land along a significant length of the mutual boundary, across which is land that is presently open and used for horse grazing.** There is a garage between the existing

house and the boundary, although this is not shown on the layout plan 401A. **The windows to 'Welton' are mainly arranged to look along the garden, with subsidiary windows to the lounge and a first floor bedroom facing the appeal site.** Occupiers of the conservatory however would experience more of view of the development and a perception of overlooking.

19. The outlook would be of the rear elevation of the terrace at plots 19 to 21, but **in addition to the land within the occupier's control, there would be a similar length of the rear gardens of those houses.** The separation distance from the scale bar on drawing 401A would be in the order of 21m, and that would be to the side of the existing plot, rather than straight ahead. There would remain substantial areas of open space in the rear outlook, such as the garden to plot **8, in addition to that of 'Weltons'.** There is presently an informal hedge on the boundary, although the formation of the rear access-way could formalise this treatment to avoid users overlooking at close quarters.
20. In planning terms, the harm by reason of built form where none exists at present is limited, but it is the case that the regimented building form and lack of modelling of the terraces would be a component of the outlook from this house and the visual shortcomings previously identified would be felt particularly by this occupier. In addition the short gardens and rear access-ways risk a harmful perception of overlooking, or the addition of a more formal boundary where there is presently a hedge. The aims of Policy OSS4(ii) to not unreasonably harm the amenities of adjoining properties would not be met, albeit to only a limited extent.

Parking, Turning and Manoeuvring

21. The proposed new *cul-de-sac* from Fryatts Way would not provide usable turning space for larger vehicles until the end at the frontage of plots 19 to 25. That space appears adequate **and the appellant's 'swept path analysis sheet 1 of 2' confirms this.** The council's concerns appear to be the risk of this turning area being used by parked vehicles. However, this area is part of the terraced affordable housing and associated parking, and management action could ensure that the area is kept available for turning. The highway authority appears to be in agreement with the proposed arrangement which thus is in accordance with Policy EN3(ii)(c).

Protected Trees

22. The revised and reduced layout that is the subject of this appeal has no adverse effect on the tree belt and lower paddock to the south of the area now proposed to be developed, and it is reasonable that this area is left free of buildings for use as open space. The resulting 35 units is less than was considered by the Strategic Housing Land Availability Assessment, but the reduction brings benefits to the character and appearance of the area and the prospective occupiers. The remaining concern of the Council is with regard to the relationship of trees on the roadside boundary with plots 24 and 25.
23. These trees are covered by a Tree Preservation Order and do contribute significantly to the character and appearance of the Ellerslie Lane area, being in a prominent position where there is a break in frontage development and a narrowing of the road. The result of this and the vegetation on the east side is a more rural character to the Lane, and the retention of the trees would be desirable to filter views of the development and to retain this character.

24. **The appellant's arboricultural survey** and report has utilised appropriate methods and has identified the condition and life expectancy of the trees. There is some crowding of trees at the north-east corner and the removal of those proposed need not cause visual harm, and would allow the development to proceed whilst retaining those trees that are in good health and have a significant life ahead. The reduced building density provides for protection of tree roots and there is no evidence that the construction of the development would risk further loss. This matter could be controlled by condition.
25. In particular however, the Council are of the view that T26 would dominate the back garden of Plot 25 being too close to the property, and that together with T25 would grow to be at risk of irresistible pressure to lop or prune. Whilst the appellant is correct to say that with a Tree Preservation Order there would be control, it is the case as time elapses and trees grow, that pressure for visually harmful tree works can become irresistible. Good planning and layout should provide for tree growth whilst still providing a good standard of usable garden.
26. The rear gardens to the terrace 22 to 25 have been found to be small but also of limited quality due to their orientation and that of the terrace to the south, to which failings the proximity of the trees to the east add a harmful sense of enclosure as previously reasoned. There would be a real and serious risk of trees T25 and T26 being subject to pressure to prune in order to maintain daylight and to avoid nuisance through tree litter and a perception of harm through movement in the wind. This could result in adverse effects through pruning, or total loss, and that would have a harmful effect on the character and appearance of the Ellerslie Lane frontage where these remaining trees are of high townscape value. There is a risk of harm to the character and appearance of the area, of the type which Policy OSS4(iii) seeks to avoid.

'Moleynes Mead'

27. **The reason for refusal states that the building is one of 'local interest, character and appearance, the retention of which, and its re-use, should be first considered as part of any re-development proposals'.** It appears that the Council do not operate a local list of buildings of architectural or historic interest. The Glossary in Annex 2 defines **'a heritage asset as being a building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest, heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing).'** It is clear that whilst local listing is included as a method for a local planning authority to identify a heritage asset, it is not essential, and in this case the Council have identified the building as an (undesignated) heritage asset. The fact that the same Council assessed the site as being suitable for 40 dwelling as part of the Strategic Housing Land Availability Assessment process, with no reference to the existing house being a constraint on development, is noted.
28. From the information contained in the Consultation Report headed **'The factual details are being assessed as the basis for a proposed addition to The National Heritage List for England'**, and observations on site, it is concluded now that the building should be regarded as a heritage asset. That view acknowledges the physical changes that have occurred over time to the architectural interest, as well as the historical interest of the known architect and other historic associations. The building is being considered for adding to the statutory list,

and the outcome of that process is not known at the time of writing this Decision. Were it to be statutorily listed, the requirements of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 would come into play, with special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

29. Paragraphs 129 and 131 of the Framework set out considerations with regard to the effect on all heritage assets, paragraphs 132, 133 and 134 are specific to designated heritage assets and paragraph 135 states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
30. It is the case therefore that the considerations differ significantly between the building being an undesignated heritage asset, as at the time of this Decision, and those concerning a designated heritage asset. It would not be appropriate for this Decision to pre-empt the findings of others whose task is to consider whether the building should be statutorily listed or not, as that decision needs to take **account of wider issues of the building's merit.**

Other Considerations

31. The appellant has submitted an unsigned and undated unilateral undertaking pursuant to section 106 of the Town and Country Planning Act 1990, and the Council has made comment on aspects of the document. The appellant in response expresses the preference for affordable housing to be secured by condition. The web-based Planning Practice Guidance advises that it may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Town and Country Planning Act 1990. In such cases the local planning authority should use a condition rather than seeking to deal with the matter by means of a planning obligation. Were all else acceptable in this appeal, consideration could have been given to this approach.
32. There are other matters raised by local residents in response to the original application and this appeal, and it is noted that some of these are not the **subject the Council's reasons for refusal, and the relevant authorities have** raised no objection. Having regard to the overall conclusions in this appeal, it is not necessary to comment further on these matters.

Conclusions

33. The Framework states a presumption in favour of sustainable development and paragraph 7 sets out the three dimensions to such development; economic, social and environmental. On the first, this is land that is in the right place, within an urban area, and there would be economic activity through the building works and new occupiers in the area with their spending assisting the local economy. The Council take no issue with the loss of the present activity on the site. The social role would be advanced through the provision of much needed affordable housing, introducing a mix of occupiers as sought in Policy LHN1, and through the provision of housing generally as sought in paragraph

- 47 of the Framework to boost significantly the supply of housing, but there is a poor integration of affordable with market housing.
34. However, failings have been identified in a limited area of the proposal and this does not represent a high quality environment. Paragraph 56 of the Framework states that the Government attaches great importance to the design of the built environment; good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. The environmental role is furthered in the better use of land in a sustainable location, but again there is a small area of the site and the proposed built form that fails to reach the standard sought.
35. In summary, the site appears suitable for the amount of development proposed but there are shortcomings in the design and disposition of the terraced properties which includes also the layout of refuse collection points. The size and utility of some rear gardens is a cause for concern and this is added to by the proximity of trees which contribute to the character and appearance of the area. There would also be a risk of a perception of harmful overlooking and an erosion of outlook to two existing neighbouring properties. The loss of a heritage asset has not been able to be fully considered in light of considerations as to its architectural or historic merit and hence suitability for adding to the statutory list, but this omission does not affect the overall conclusion that the design of a small area of the development fails to reach the standards sought in the Framework and the Development Plan policies previously detailed.
36. These failings are not outweighed by the benefits of the scheme to the supply of housing and affordable housing in particular, given the findings on the suitability of the site in principle and with regard to much of the detail. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR