
Appeal Decision

Site visit made on 7 July 2015

by Kenneth Stone Bsc(Hons) DipTP MRTPI

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

Decision date: 23 July 2015

Appeal Ref: APP/Q1445/W/15/3003880

Brighton College, Eastern road, Brighton BN2 0AL

- 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 Steve Patten (Brighton College) against the decision of Brighton & Hove City Council.
 - The application Ref BH2014/02054, dated 20 June 2014, was refused by notice dated 22 September 2014.
 - The development proposed is described as the 'demolition of the swimming pool and old music school buildings, the erection of a new academic building with connections to the Great Hall and Skidelsky building, the removal of an elm tree and other associated works'.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the swimming pool and old music school buildings, the erection of a new academic building with connections to the Great Hall and Skidelsky building, the removal of an elm tree and other associated works at Brighton College, Eastern road, Brighton BN2 0AL in accordance with the terms of the application, Ref BH2014/02054, dated 20 June 2014, subject to the conditions set out in the schedule at the end of this decision.

Procedural matter

2. Subsequent to the Council's determination of the application the subject of this appeal it made Tree Preservation Order (No.7) 2014 (TPO), which protects two elm trees in the vicinity of the development. I have had regard to the TPO in the consideration of this appeal.
3. I have been provided with a document entitled draft statement of common ground submitted by the appellant. This document is unsigned and I have had no confirmation from the Council that they have agreed to its contents. I have therefore taken account of the information contained within it as additional information to the appellant's case.

Background and Main Issues

4. The proposed development is for the construction of a new five storey academic building within the existing campus of Brighton College. The new building would be located and connected to the Great Hall, a grade II listed building and the Skideslsky building, a modern addition to the College campus. The College buildings and grounds are identified as falling within the College Conservation Area (CCA). The proposal would require the removal of two existing buildings and the felling of an existing elm tree. The Council have

confirmed that they do not object to the loss of the existing buildings, the scale and design of the proposed new building, or its impact on the adjacent listed buildings. Its sole concern relates to the loss of a mature elm tree, which the Council considers has substantial amenity value within the College Conservation Area and has substantial scientific and ecological value as part of the National Elm Collection.

5. On this basis the main issue in this appeal are:
- Whether the proposed development would preserve or enhance the character or appearance of the CCA, with particular regard to its effect on the protected elm tree ; and
 - The effect of the proposed development on the ecology of the area.

Reasons

6. The appeal site forms part of the wider Brighton College campus and presently accommodates a swimming pool and old music school buildings. The swimming pool building is single storey, fronts onto Sutherland Road and is attached to the adjoining Great Hall, a Grade II listed building. Behind the swimming pool building within the College campus grounds is the smaller old music school building. This sits adjacent to the internal estate road and at an elevated level above the floor level of the swimming pool building. A mature elm tree is located to the south of the Old Music School building and a further mature elm tree beyond that. Both the elm trees are protected by the TPO.

Character and appearance

7. Views into the College site along Sutherland Road are restricted, for the most part, due to the scale and layout of the buildings. The built form around the site creates an outer perimeter of development on the southern half of the campus with further buildings within this area creating an inner quadrangle. Towards the north the College site is more open with the grounds laid out for sports pitches.
8. Along Sutherland Road the single storey level of the swimming pool building affords views into the site and of the elm tree. These area however restricted due to the angles of view and the scale of the other buildings. Outside of the site therefore the elm tree makes little contribution to the street scene or the character of the area.
9. Within the College grounds which is within the conservation area the mature tree softens the built development and positively contributes to the appearance of the area. This view however is not accessible for general members of the public. Whilst the tree is now the subject of a tree preservation order, it makes little contribution to public amenity in the general area.
10. The loss of the tree would not result in a significant or harmful impact on the character of the surrounding area. Its loss from the conservation area would however result in harm to the appearance of the conservation area from within the college. Given the lack of visibility and the limited wider impact this would amount to less than substantial harm in the context of paragraph 134 of the National Planning Policy Framework (the Framework). However, the proposal would result in the removal of two exiting buildings which do not make positive contributions to the conservation area and which would be replaced by a new

building. The Council and English Heritage, as it then was, have confirmed that the design, appearance, and siting of the new building will make a positive contribution to the conservation area and better reveal the significance of the adjoining listed building. I agree that the proposal is of a high quality design and its improved relationship with the adjoining Great Hall, by stepping the building away from the building and having a lightweight connection would improve the setting of that listed building. In this regard the development proposals as a whole would have a positive effect on the heritage assets, enhancing the appearance of the conservation area and the setting of the listed Great Hall.

11. For the reason given above I conclude that the proposed development would enhance the appearance of the College Conservation Area, and the character and appearance of the wider area. Consequently, it would not conflict with policy QD16 and HE6 of the Brighton and Hove Local Plan 2005 (BHLP) which seek to protect trees on development sites and within conservation areas, but recognise where trees are unavoidably lost require replacement tree planting.

Ecology

12. The Framework at paragraph 118 advises that in determining planning applications the decision maker should aim to conserve and enhance biodiversity by applying various principles. Bullet point five of that list indicates that planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location, clearly outweigh the loss.
13. Whilst it has not been argued that the elm tree is aged or veteran the Council are concerned that its rarity ensures it is of significant ecological and scientific value. The National Elm Collection has no special statutory or policy protection although section 197 of the Town and Country Planning Act places a duty on decision makers to ensure whenever it is appropriate, that, in granting planning permission for any development adequate provision is made for the preservation and planting of trees. The tree is, according to the arboricultural report submitted by the appellant, in good health with a reasonable remaining life expectancy. Given the national rarity of the elm tree I afford this tree significant weight in my considerations. However, the appellant has provided compelling evidence on the detailed consideration for the retention of the tree, the educational and college need for the development and the limitations of the overall site to accommodate this development without prejudice to their wider plans, which are set out in a master plan.
14. Paragraph 72 of the Framework advises that the government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. It further advises that decision makers should take a positive approach to development that will widen choice in education. The College have provided evidence to demonstrate the design and layout parameters and constraints of the development and to demonstrate how the development fits within the wider aspirational plans for the development of the site. The improvement of the college facilities in terms of teaching environment and numbers of rooms will strengthen the facility and widen choice.

15. When taken in the round I am satisfied that the benefits associated with the development in terms of the school, the widening of educational choice, the spin off benefits to the economy from the building activities and level of investment, and the significant visual improvements from the new building, would clearly outweigh the loss of one tree, albeit that tree is an elm. Added to this the appellant is proposing planting three additional elm trees and this can be secured by condition.
16. There is no substantiated evidence before me that the development would affect a protected species and whilst I note the references by the parties to the white-letter Hairstreak butterfly there is no evidence of it being present on site.
17. For the reasons given above I conclude that the proposed development would not result in material harm to the ecology of the area through the loss of the elm tree. Consequently it would not conflict with policy QD16 of the BHLPP which seeks to protect trees on development sites or seek replacement planting where they are unavoidably lost.

Overall Conclusions and conditions

18. Overall I am satisfied that the benefits of the scheme outweigh the amenity and ecology value that could be attributed to the elm tree and the contribution it makes to the conservation area and its wider ecological and scientific value. Therefore I conclude that the development would amount to sustainable development and that the appeal should succeed
19. I have not been provided with suggested conditions by the Council, however there are a set of conditions attached to the Officer report and the appellant has included those conditions in their draft statement of common ground. I have therefore used these as the basis of my consideration as to the conditions I should impose on the permission. I have considered the conditions in the context of the advice in the PPG and the wording of the suggested models of acceptable conditions in appendix A to Circular 11/95 'The use of conditions in planning permissions' which remains extant. I have imposed all the conditions but made minor adjustments to some to improve precision and better reflect the wording of the guidance as set out below.
20. I have imposed a condition specifying the approved plans, for the avoidance of doubt and in the interests of proper planning as advised at paragraph 21a-022 of the PPG. Conditions 3 through to 7 are required in the interests of the appearance of the development, the adjoining buildings and the wider area. Conditions 8, 9 and 10 are required to mitigate and compensate for the loss of the elm tree and to protect the retained elm tree. Condition 11 is required to ensure the development is properly drained and conditions 12 and 13 are consistent with Local plan policy and required to ensure the development is sustainable. Condition 14 is required to ensure the development takes appropriate account of any potential contamination and condition 15 is required to protect the surrounding environment, residents and in the interests of highway safety.
21. For the reasons given above I conclude that the appeal should be allowed.

Kenneth Stone

INSPECTOR

SCHEDULE OF CONDITIONS FOR APPEAL REF NO: APP/Q1445/W/15/3003880

- 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings: 2001 Rev B; 3000 Rev B; 3010 rev B; 3011 rev A; 3015 Rev A; 3020 Rev J; 3020 Rev J; 3022 Rev J; 3023 Rev J; 3024 Rev J; 3025 Rev E; 4000 Rev B; 4001 Rev B; 4010 Rev E; 4011 Rev F; 4012 Rev E; 4013 Rev E; 4020 Rev B; 4021 Rev B; 4030 Rev B; 4031 Rev E; 5000 Rev D; 5001 Rev C; 5010 Rev C; and 5011 Rev A.
- 3) No cables, wires, aerials, pipework (except rainwater downpipes as shown on the approved plans), meter boxes or flues shall be fixed to any elevation facing a highway.
- 4) No works shall take place until samples of the materials (including samples of the timber louvres, roofing materials and details of all timber treatments) to be used in the construction of the external surfaces of the works hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in strict accordance with the approved details.
- 5) No development shall take place until sample panels of the brickwork and flintwork have been constructed on the site and approved in writing by the Local Planning Authority. The brickwork and flintwork comprised within the development, including the mortar, shall be carried out and completed to match the approved sample panels.
- 6) No development shall take place until sample elevations and sections at 1:5 scale of the window frames and mullion profiles have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in strict accordance with the approved details.
- 7) No development shall take place until further details of the treatment of those areas of the northern elevation of the Great Hall that will become exposed within the atrium of the new building have been submitted to and approved, in writing, by the Local Planning Authority. The submitted details shall indicate how the exterior walls will be treated including details of materials and finishes. Where doorway features are affected, proposed full details of the design, materials and finish of these elements should be provided. The development shall be carried out in strict accordance with the approved details.
- 8) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme for the planting of a minimum three Elm trees, including two on the footway along Sutherland Road. The scheme shall include the location of the new trees, their size (to be a minimum Heavy Standard with a 12-14cm girth), and planting method, and a maintenance programme. The trees

shall be planted in the first planting season following the first occupation of the building or the completion of the development, whichever is the sooner; and any trees which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

- 9) No development shall commence until fences for the protection of trees to be retained have been erected in accordance with a scheme which has been submitted to and approved in writing by the Local Planning Authority. The fences shall be erected in accordance with BS5837 (2012) and shall be retained until the completion of the development and no vehicles, plant or materials shall be driven or placed within the areas enclosed by such fences.
- 10) No development shall commence until a scheme to enhance the nature conservation interest of the site has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall include the provision of swift and bat boxes and be implemented in full prior to the occupation of the development hereby approved.
- 11) No development approved by this permission shall be commenced until details of the proposed means of foul and surface water sewerage disposal have been submitted to and approved in writing by the Local Planning Authority. The foul and sewerage works shall be completed in accordance with the details and timetable agreed.
- 12) Unless otherwise agreed in writing by the Local Planning Authority, no non-residential development shall commence until a BRE issued Interim/Design Stage Certificate demonstrating that the development has achieved a minimum BREEAM rating of 60% in energy and water sections of relevant BREEAM assessment within overall 'Excellent' for all non-residential development has been submitted to, and approved in writing by, the Local Planning Authority. A completed pre-assessment estimator will not be acceptable.
- 13) Unless otherwise agreed in writing by the Local Planning Authority, the non-residential development hereby approved shall not be occupied until a BREEAM Building Research Establishment issued Post Construction Review Certificate confirming that the non-residential development built has achieved a minimum BREEAM rating of 60% in energy and water sections of relevant BREEAM assessment within overall 'Excellent' has been submitted to, and approved in writing by, the Local Planning Authority.
- 14) (i) The development hereby permitted shall not be commenced until there has been submitted to and approved in writing by the Local Planning Authority:
 - (a) a desk top study documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Contaminated Land Research Report Nos. 2

and 3 and BS10175:2001 - Investigation of Potentially Contaminated Sites - Code of Practice; and, unless otherwise agreed in writing by the Local Planning Authority,

- (b) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with BS10175:2001; and, unless otherwise agreed in writing by the Local Planning Authority, and
- (c) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include the nomination of a competent person to oversee the implementation of the works.

(ii) The development hereby permitted shall not be occupied or brought into use until there has been submitted to the Local Planning Authority verification by the competent person approved under the provisions of (i) (c) above that any remediation scheme required and approved under the provisions of (i) (c) above has been implemented fully in accordance with the approved details (unless varied with the written agreement of the Local Planning Authority in advance of implementation). Unless otherwise agreed in writing by the Local Planning Authority such verification shall comprise:

- a) as built drawings of the implemented scheme;
- b) photographs of the remediation works in progress; and
- c) certificates demonstrating that imported and/or material left in situ is free from contamination. Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under (i) (c).

- 15) No development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include details of measures to mitigate disturbance during demolition and construction works from noise and dust, plant and equipment and transport movements in addition to details of any temporary external lighting to be installed at the site and measures to prevent light spillage. The development shall be carried out in accordance with the approved CEMP unless otherwise approved in writing by the Local Planning Authority.

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