



Appeal Decision

Site visit made on 4 March 2016

by Megan Thomas BA(Hons) in Law, Barrister

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

Decision date: 24 March 2016

Appeal Ref: APP/C3810/W/15/3132744

Deans Yard, Orchard Way, Fontwell, Walberton BN18 0SJ

- 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 MJH Property Developments Ltd against the decision of Arun District Council.
 - The application Ref WA/27/15/PL, dated 27 May 2015, was refused by notice dated 21 July 2015.
 - The development proposed is the demolition of existing garages and the erection of two chalet dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing garages and the erection of two chalet dwellings at Deans Yard, Orchard Way, Fontwell, Walberton BN18 0SJ in accordance with the terms of the application, Ref WA/27/15/PL, dated 27 May 2015, subject to the conditions in the Schedule at the end of this decision letter.

Main Issues

2. The two main issues in the appeal are the effect of the proposal on the supply of employment floorspace and the effect of the proposed southern-most dwelling on the living conditions of occupants of 2 Deans Close with regard to outlook.

Reasons

Supply of employment sites

3. The appeal site contains 6 vacant workshop/commercial units located in a line along its eastern boundary. The units are small, single storey with flat roofs. The site has its own access road from Orchard Way and there is a parking/yard area to the front of the units and a small WC building. Whilst the site is outside the defined development envelope, the area is predominantly residential with housing encircling the site. House types vary in age, style and density.
 4. The proposed development would consist of demolition of the buildings and the erection of two chalet style dwellings with integral garages, each with a rear garden. I have had regard to a recent appeal decision dated 24 March 2015
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(ref. APP/C3810/A/14/2223694) in which the refusal of an application for three 3-bedroomed houses on the site was unsuccessfully appealed.

5. The Council do not refer me to any statutory adopted saved policy in the Arun District Local Plan 2003 which protects existing employment sites and premises. However there is relevant emerging local plan policy and advice in the NPPF.
6. The NPPF indicates that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Emerging policy EMP DM1 in the Publication Version of the Arun Local Plan 2011-2031 is generally consistent with this aspect of the NPPF, specifying that the premises should have good prospects of employment use if they are to warrant protection. Whilst having been through a number of stages, the policy cannot be given full weight and may not be adopted in its current form. Moreover, the Council do not indicate whether or not there are unresolved objections to the emerging policy, in terms of bullet 2 to paragraph 216 of the NPPF. The Council refer to emerging policy EMP SP1(e) & (k) but this is a more general policy and criteria (e) and (k) are not entirely consistent with advice in the NPPF. I have accorded this latter policy only limited weight.
7. The appellant has produced evidence of attempts over at least a two year period (around 2011 to 2013) to let or sell the site for commercial purposes. The letting agents state that the units were suitable for storage use, rather than any other use, and the rental value would have been about £50 per calendar month. The number of enquiries made about the premises is not set out in the evidence but it is said that no offers for the property were received. Whilst there is no very recent marketing of the site for non-residential purposes the units are not good quality and would clearly need some investment in order to be used even as storage units. However, I am not convinced that such investment would be a viable proposition. I have borne in mind that it is always important for there to be a range of qualities and sizes of available industrial and commercial units in a district but in this case, I have concluded that there are neither good nor reasonable prospects of the units being used for class B uses or employment-generating purposes in the future.
8. Therefore, on this issue I conclude that the proposed development would not unduly harm the supply of employment sites in the District and would not be contrary to the NPPF or emerging policy EMP DM1.

Living conditions of occupants of 2 Deans Close

9. 2 Deans Close lies directly to the south of the appeal site. It's a two storey detached house with rear garden. The common boundary wall with the appeal site is about 2m high. The proposed southern-most dwelling would be set in from the common boundary by approximately 2m. The rear elevation of 2 Deans Close would be along a similar building line to the front elevation of the proposed southern-most dwelling. Neither proposed dwelling would have windows or rooflights in the flank elevations. The flank wall facing the garden of 2 Deans Close would stretch about halfway down its depth.
10. There is no doubt that there would be a difference in outlook from the garden of 2 Deans Close. However, the proposed roof profile with the receding ridge line, and the bottom of the roof hip on the flank at a height of about 4.6m, coupled

with the proposed set back of the new flank wall away from the common boundary, would avoid an unacceptable sense of enclosure for users of the garden at no.2. The new flank wall would be noticeable but it would not be dominant. The proposal before me is different in scale and massing to the one refused on appeal in March 2015.

11. Outlook from the interior of 2 Deans Close would also be changed but not in my view to the point where the new dwelling would dominate views from no.2. At first floor level the new dwelling would more or less comply with the 45 degree rule and, as a result, the new house would not be oppressive or visually intrusive for an occupant on the inside of no.2. Whilst the rear of 3 Deans Close overlaps with the rear elevation of no.2, the separation distances would be sufficiently wide to avoid a tunnelling or enclosed effect when inside no.2 looking out.
12. On this issue, I conclude that the proposed southern-most dwelling would not unduly harm the living conditions of the occupants of 2 Deans Close in respect of loss of outlook and would not in conflict with saved policy GEN7(iv) of the Arun District Local Plan 2003 or with emerging local plan policy or advice in the NPPF.

Other Matters

13. I am satisfied that the proposed two detached dwellings on the site would not result in a cramped or overdeveloped appearance of the site, detrimentally affecting the character of the area. The Highway Authority is satisfied that there would be no harm to highway safety or convenience and I agree with that analysis. The amount of parking to be provided accords with West Sussex County Council parking standards and there would be no harm as a result of parking arrangements for the appeal site.
14. 16, 18 and 20 Orchard Way would be sufficiently separated from the proposed houses to be detrimentally affected, whether by loss of light, increase in noise and disturbance, loss of outlook or any other residential amenity. The position of the new southern-most dwelling is such as to leave daylight and sunlight reaching the house and garden of 2 Deans Close almost unaffected. Saved policy GEN3 of the adopted Arun Local Plan 2003 cannot be given much weight in this appeal given the particular character of the immediate area and the previously-developed nature of the site.
15. The appellant has submitted a signed Section 106 unilateral undertaking dated 11 January 2016 which secures a payment to the Council of £18,256 (RPI index linked) in lieu of on-site provision of affordable housing. I am satisfied that there is a need for affordable housing in the District, backed up by an Interim Housing Policy and a viability study informing the scale of affordable housing contributions. The Community Infrastructure Levy tests are met in this case. The appellant perceives the emergence of the s.106 contribution as unfair, however, it is Central Government who purported to change national policy and a successful judicial review in the High Court has led to the ability of the Council to revert to its approved policy position. The matter was to a great extent out of the Council's hands.

Conditions

16. The Council suggested some conditions in the event that the appeal was successful and I have considered these in the light of advice in the NPPG. For the avoidance of doubt and proper planning there is a condition tying the development to the submitted plans. Owing to the previous workshop use of the site, there are conditions seeking to identify and deal with any contaminants, in the interests of human health and protection of the environment. In order to protect those interests fully it is important for the local planning authority to obtain details prior to commencement of the development.
17. In order to protect the character and appearance of the area, a condition requiring details of facing materials is attached. To ensure satisfactory drainage and avoid potential problems after development has begun, it is important for the local planning authority to obtain early details of a satisfactory surface water drainage scheme and to approve such details. In the interests of encouraging sustainable transport, a bicycle storage facility is required by condition.

Conclusion

18. Having taken into account all representations made, I allow the appeal and grant planning permission subject to conditions.

Megan Thomas

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2013.SP01, 2013/P07, 2013/PO3 revA, 2013/P04 revA, 2013/P05 & 2013/PO6 revA.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order with or without modification) no windows or rooflights shall be constructed at first floor level or above in the south elevation of Plot 2 which adjoins the side boundary with 2 Deans Close or north elevation of Plot 1 which adjoins the side boundary with 18 Orchard Way.
- 4) No development above slab level shall take place until details of materials, finishes and samples to be used in the external facings of the walls and roofs of the proposed dwellings have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.

- 5) Prior to the commencement of development hereby permitted or prior to such other date or stage in development as may be agreed in writing with the local planning authority, the following components of a Scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the local planning authority:
 - a) a preliminary Risk Assessment which includes a conceptual model of the site indicating sources, pathways and receptors of potential contaminants associated with previous uses of the site.
 - b) a Site Investigation programme based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
 - c) the Site Investigation results and the detailed Risk Assessment as in (b) above and, based on these, an Options Appraisal and Remediation Strategy giving full details of the remediation measures required and how they are to be undertaken.
 - d) A Verification Plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) above are complete, identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express consent of the local planning authority. The Scheme shall be implemented as approved.
- 6) If during development, contamination not previously identified, is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for, an amendment to the Remediation Strategy detailing how this unsuspected contamination shall be dealt with.
- 7) Prior to occupation of any part of the development hereby permitted, a Verification Report demonstrating completion of the works set out in the Approved Remediation Strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the Approved Verification Plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a long term monitoring and maintenance plan) for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the Verification Plan, and for the reporting of this to the local planning authority.
- 8) No development shall take place until full details of the proposed Surface Water Drainage Scheme have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
- 9) The dwellings hereby permitted shall not be occupied until provision for bicycle storage has been made within the site in accordance with details to be submitted to and approved in writing by the local planning authority and such provision shall thereafter be retained and used only for the keeping of bicycles.