



Appeal Decision

Inquiry held on 29 and 30 September
and 1 and 8 October 2009

Site visit made on 1 October 2009

by **P W Clark** MA MRTPI MCI

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

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Decision date:
28 October 2009

Appeal Ref: APP/Q1445/A/09/2105969

Land to the rear of 140-146 Springfield Road, Brighton

- 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 Kingsbury Estate Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2008/03194, dated 25 September 2008, was refused by notice dated 5 December 2008.
- The development proposed is the erection of a terrace of 4 two bedroom dwellings.

Application for costs

1. At the Inquiry an application for costs was made by Kingsbury Estate Ltd against Brighton & Hove City Council. This application is the subject of a separate Decision.

Procedural matters

2. Although described as two bedroomed dwellings, the houses would include a room within the roofspace. Noted on the drawings as a study area, this would be capable of use as a third bedroom so, in my decision, I have amended the description of development accordingly.
3. A unilateral undertaking provides for a maintenance strategy for the biodiversity features recommended for inclusion in the scheme by the Council's ecologist and for two payments, one to relocate slowworms to a receptor site at Wild Park, the other for improvements to bus stops, pedestrian and cycle facilities in the vicinity of the development.

Decision

4. I allow the appeal, and grant planning permission for the erection of a terrace of 4 three bedroom dwellings on land to the rear of 140-146 Springfield Road, Brighton in accordance with the terms of the application, Ref BH2008/03194, dated 25 September 2008, and the plans submitted with it, subject to the conditions appended to this decision.

Main issues

5. Four main issues separate the two main parties. These are the effects of the proposal on the provision of open space, the provision of housing, the character and appearance of the Preston Park Conservation Area and the living conditions of residents of number 144 Springfield Road.
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6. The two main parties are largely agreed on four other issues but I include them as main issues, either because third parties pursue them, or because the Council has certain reservations, or because they were determining issues in a previous appeal decision. They are the effects of the proposal on biodiversity, pedestrian safety during construction, transport provision (parking, walking, cycling and buses) and energy efficiency. The open space issue is closely linked with those of biodiversity and the character and appearance of the conservation area.
7. Two further issues are not being pursued by the Council. They are the effects of the proposal on local ambient temperatures and on carbon dioxide emissions.

Reasons

Open space parameters

8. The site lies within an extensive area of railway cutting and embankment but it is no more than a piece of surplus land adjacent to the operational railway. There is no public access to it, nor any use made of it. The wider open area extends on either side of the railway from a viaduct at its west end to a tunnel at its east end. It has London Road railway station at its centre. This is crossed by a public footbridge. The site lies on the north side of the railway, immediately to the west of the public footbridge. It forms a small part of the overall open area.
9. At face value, Brighton and Hove Local Plan 2005 (the Local Plan) policy QD20 would deny planning permission for any proposal that would result in the loss of areas of public or private open space that are important to people because of their recreational, community, historical, conservation, economic, wildlife, social or amenity value unless the proposal is of national importance or essential to meet social, environmental and/or economic needs, which cannot be located elsewhere. Although criticised in the report of the Inspector who considered the objections to the Local Plan, the policy is adopted and the validity of the plan has not been challenged.
10. Likewise, government policy, set out in *Planning Policy Guidance 17: Planning for open space, sport and recreation* (PPG17), asserts that existing open space should not be built on unless an assessment has been undertaken which has clearly shown the open space or the buildings and land to be surplus to requirements.
11. In practice however, as made clear in the justification to its policy, the Council will seek to balance the competing claims of different land uses and the community's long term requirements for open space. I was referred to recent examples of this more pragmatic approach in decisions taken by the Council itself at 67-81 Princes Road, Brighton and in an appeal decision at 55 Highcroft Villas, Brighton (APP/Q1445/A/08/2081266). In accordance with both Local Plan policy QD20 and government policy in PPG17, that decision made a robust assessment of the value of the identified open space together with consultation with the local community in order to gauge whether the land could be utilised for alternative purposes. I take the same approach.

12. A previous appeal decision (APP/Q1445/A/07/2047264) on the current appeal site concludes that the visual role of the site as an area of open space is significant but, because the Council had not specifically identified the site in accordance with PPG17 as one which should be protected, its amenity worth does not preclude the principle of development. It also concludes that replacement of open space with the development proposed in that scheme would be harmful to the local townscape and so conflict with some of the objectives of policy QD20 and that any built scheme in this location would need to pay greater regard to its setting and achieve significantly higher quality than the scheme then proposed in order to succeed.
13. Since that time, events have moved on in two ways. Firstly, a scheme of different quality is now proposed, which I consider further below. Secondly, the Council has published an Open Space, Sport and Recreation Study. This does not constitute Council policy but provides valuable background information. Intended to provide supporting evidence for the Council's Development Plan Documents, it assists in making a robust assessment of the value of the identified open space, to which I now turn.
14. The Council's Open Space study places land into one of eight categories. This site is classed as natural and semi-natural open space (NSN). There is some dispute about its categorisation as NSN since it does not meet Natural England's standards, being inaccessible to the public and below the size threshold but it could be made accessible, if desired, and although in itself it is below the size threshold, it forms part of a larger area. It was identified for its potential biodiversity value. This is considered below as an issue in its own right. There is no suggestion that it has or could have any value for any other category, so its value as identified by the Open Space study is limited in scope.
15. The Open Space study confirms that Brighton and Hove is relatively well-provided with NSN, exceeding Natural England standards both now and for the future. Although the Open Space study makes recommendations for a higher standard for Brighton, that is not yet policy and is based on arguments yet to be tested in examination, so I am not in a position to say that the higher standard should be applied. Furthermore, the appeal site is only a small part of a larger area of NSN. No evidence was submitted to show that the loss of this site would reduce the larger area below any threshold for recognition as NSN. Figure 8.2 of the Open Space study demonstrates that even without this site, all parts of Brighton and Hove would remain within the catchment of an NSN. There is nothing in the Open Spaces Study to demonstrate that this site could not be surplus to requirements within the terms of PPG17.
16. The numbers of people who made representations on the current scheme at application stage, who object to the scheme in response to the appeal, who gave up their time to attend all four days of the Inquiry and who gave evidence in person, attest to the importance of this land to local people. The additional material they have produced, in the form of petitions and statements from others, shows support from the wider community. There can be no doubt that the site forms part of an area of open land important to local people.
17. From the material submitted to me, it appears that it is important to local people for two reasons within the terms of policy QD20. These are, firstly, wildlife conservation and secondly, visual relief in a densely built-up area

providing a contribution to the character of the conservation area. Insofar as there is community and social activity and interest in its history they appear more as a response to recent development proposals than because of the intrinsic value of the open land, so I discount them. There is no suggestion that it has recreational or economic value as open land. Therefore, its value as open space is limited in scope to wildlife and amenity considerations. These are issues in their own right. I consider each in turn before I conclude on the issue of open space.

Wildlife and biodiversity

18. The site forms part of an area recognised by the Open Space study and by local residents for its wildlife and biodiversity. Yet the Council accepts that the loss of this part of the area can be adequately mitigated by a programme of slowworm translocation and new landscaping which can be secured partly by conditions (7 and 8) and partly by the provisions of a unilateral obligation which has been submitted. There is no evidence to contradict the acceptance of these conditions and obligation which is specifically provided for in Local Plan policy QD17.
19. In its reason for refusal the Council refers to Local Plan policy QD19 which seeks to protect the provision of greenways. These would be largely car-free off-road routes connecting people to facilities and open space in and around towns, cities and to the countryside for shared use by people of all abilities on foot, bike or horseback, for commuting, play or leisure. They would also provide links between important nature conservation sites.
20. Policy QD19 would deny planning permission for proposals likely to hinder their provision or harm their objectives. The land in question forms part of an indicative greenway on the Local Plan. The Council did not pursue this reason for refusal at the Inquiry and, in response to a question, accepted that sufficient room would remain between the flank of the proposed building and the extent of land necessary for the operation of the railway for a greenway link to be provided.
21. I conclude that with the suggested conditions and unilateral undertaking in place, the proposal would have no unacceptably adverse effect on wildlife and biodiversity. It would therefore comply with Local Plan policies QD17 and QD19.

Character and appearance

22. The site is within an open area inside the southern edge of the Preston Park Conservation Area. The Council's Preston Park Conservation Area Character Statement defines its special character by reference to a predominance of family dwellings giving the area a domestic, reasonably tranquil character. Subject to concerns about detailed position of windows, the Council has no concern about the style or form of the buildings proposed. Its Conservation Area Advisory Group recommends approval of the scheme. I do not adopt the detailed changes suggested; firstly because of their effect on the utility of the rooms they would serve and secondly because the architectural grammar of the rest of the conservation area is not so perfect that the slight idiosyncrasies of this proposal would cause harm.

23. On the south side of the railway the station entrance has a forecourt flanked by two rows of terraced houses. This feature interrupts the swathe of open land and residential gardens on the south side of the railway. On the north side, the station building has long gone, but the forecourt remains, now part of a scaffolding yard. The proposal would create one side of a flank to the forecourt which would reflect that on the south side and so enhance, through repetition of a feature of its layout, the character and appearance of the conservation area.
24. Although the Character Statement includes a section specifically on spaces and vistas, no particular reference is made to the open land in question. It is however protected by a Tree Preservation Order covering the whole area of open land to the north-east, north-west and south-west of the railway line. As described in the Order, the trees so protected are mainly sycamore. They make a fine view when seen to the west from either platform of the station and from the bridge carrying the public footpath over the station. I therefore concur with the previous appeal decision that the visual role of the land as an area of open space is significant but, in my opinion, one that has no bearing on the special architectural or historic interest of the conservation area.
25. The significant trees lie on the open land to the west of the appeal site. They would be unaffected by the proposal. They would continue to be seen without obstruction from the westbound railway platform and the southern part of the footbridge. From the eastbound railway platform, the view is already constricted by the public footbridge so that the buildings proposed would barely impinge upon the view. The tree belt would still be largely visible above the proposal's boundary fence. There is only one significant tree on the site itself, a sycamore which would be retained in the proposal and could be protected by condition (9).
26. I conclude that the contribution which the treed open land makes to the character of the area would remain largely unharmed by the proposal. In contrast to the previous appeal scheme its design and layout would itself make some contribution to, and so preserve, the character and appearance of the Preston Park Conservation Area. It would therefore comply with Local Plan policy HE6 which seeks the preservation or enhancement of Conservation areas with particular reference to the layout of streets and the retention and protection of trees.

Open space conclusions

27. As noted above, the value of the open space lies in its contribution to biodiversity and to the character and appearance of the area. As I have concluded that the proposal would have no significantly adverse effects on biodiversity, would retain the views of the belt of preserved trees largely unharmed and would preserve the character and appearance of the Conservation Area, it follows that I conclude that the loss of the part of the open space because of this proposal can be accepted. It would be consistent with the objectives of policy QD20. The Council has accepted that policy QD21, referred to in the reasons for refusal, is of no relevance.

Provision of housing

28. In terms of the requirement of government policy set out in Planning Policy Statement 3 (PPS3) *Housing* for a five year supply of deliverable land, the Council's Strategic Housing Land Availability Assessment (SHLAA) demonstrates that there is likely to be a shortfall for the period 2010-2015. PPS3 advises that where local planning authorities cannot demonstrate an up to date 5-year supply of deliverable sites they should consider favourably planning applications for housing, having regard to other policies in the PPS, including paragraph 69.
29. With conditions to secure noise insulation, considered below, there is no suggestion that the proposal would not use the land effectively and efficiently to achieve high quality housing for families. As I have found that its impact on other policy objectives would be acceptable, it would comply with the requirements of Paragraph 69 of PPS3. Favourable consideration should therefore be given to its use for housing. Indeed the Council's SHLAA suggests that its shortfall should be made up by windfall small housing sites such as this. I conclude that the proposal would make a small contribution towards meeting the Council's acknowledged shortfall in housing provision.

Living conditions, 144 Springfield Road

30. The previous appeal decision on this site found that the effects on loss of light or outlook from a much more extensive façade set behind the rear boundaries of 140-144 Springfield Road would have had no unacceptable impact on the living conditions of residents of those properties. Although the narrower flank façade of the current proposal would be set further north, it would be to the side of number 144, so the direct outlook from the windows of number 144 would pass parallel to the rear façade of the proposal and would not be directly terminated by its side elevation.
31. No objective evidence of daylighting conditions is provided. The relative ground levels of the proposal, number 144, the adjacent pub, its courtyard and high boundary wall and the distances between them all would mean that the proposal is unlikely to cause any unacceptable loss of light to number 144. I conclude that the effect of the proposal on the living conditions of the occupiers of number 144 would be acceptable. The proposal would therefore comply with Local Plan policy QD27 which seeks their protection.

Pedestrian safety during construction

32. As is common on most development sites a footway separates the site from the carriageway of the public highway. In this case, the carriageway terminates short of the frontage of the site and the footway is a heavily used path to the local station but in principle the difficulty is no different from that which is faced by construction on many urban sites. In this case the landowner also owns adjoining land so there is the potential for that to be brought in to play for construction purposes. Therefore, although the Council questioned it, I have no reason to disagree with the conclusion reached in a previous appeal decision on this site that a suitable method statement could be secured by condition (13) and that in consequence there would be no serious conflict with Local Plan policies TR7 or TR8.

Transport provision

33. The appeal scheme would have no on-site parking provision and is termed a "car free development" by the appellant. It shares these characteristics with the previous appeal proposal. The previous appeal decision concluded that in the absence of effective measures precluding vehicle ownership by occupiers of the proposed development or guaranteeing a means by which the parking of their vehicles on local streets might be prevented, that appeal scheme would, in all probability, exacerbate the already considerable on street parking problems in the area. This would have been to the unacceptable further inconvenience of existing local residents already competing for kerbside space and, ultimately, could have had adverse implications for highway safety. That scheme was found to be contrary to Local Plan policies HO7, TR1 and TR19 as well as national policy in PPG13.
34. It remains the case that there would be no effective measures to preclude vehicle ownership by occupiers of the proposed development. A proposed controlled parking zone would extend only to streets south of the railway line and would not encompass the site so it remains the case that there would be no means by which the parking of vehicles on local streets might be prevented. Nevertheless, it is agreed by the two main parties that a unilateral obligation providing for the payment of £1,000 towards improving accessibility to bus stops, pedestrian facilities and cycling infrastructure in the vicinity of the land would satisfy the Council's sixth reason for refusal.
35. Two relevant factors have changed since the previous appeal decision. The first is that the scheme is now for four dwellings in place of eight. Although the number of bedspaces and residents is potentially the same, the likely ages of the residents is such that the revised scheme would effectively result in a lesser demand for car ownership. The second is that additional information has been provided, in the form of a transport assessment which concludes that the development would lead to a requirement for two on-street parking spaces and that this would be accommodated on the surrounding road network. Although residents questioned the accuracy and relevance of the data on which this assessment was made, it has been accepted as accurate by the highway authority and no contradicting evidence is produced, so I have no reason to disbelieve its findings.
36. In accordance with government policy, the Council's parking standards, applied by Local Plan policy TR19, allow car parking to be provided up to a maximum. Zero falls below that maximum so accords with the policy and so the proposal would not conflict with Local Plan policy TR19. Government policy, set out in Planning Policy Guidance Note 13 *Transport* (PPG13), is that developers should not be required to provide more spaces than they themselves wish unless there are significant implications for road safety. Although poor parking practice does occur in the area, as I observed on my site visit, which may have implications for road safety, the impact of the proposal is so small that it would not make any significant difference. I therefore take the view that, in this case, the developers should not be required to provide more spaces than they themselves wish.
37. I conclude that although the proposal would still not comply with all the provisions of Local Plan policy HO7 which governs car free housing, it would,

through the unilateral undertaking, sufficiently provide for the travel demands it would create. It would therefore comply with Local Plan policy TR1 which requires such provision.

Energy efficiency

38. The Council's Local Plan policy SU2 seeks a high standard of energy efficiency but does not specify any level to be achieved. A Supplementary Planning Document elaborates on the policy, recommending a standard for brownfield sites of a minimum rating of level 3 of the Code for Sustainable Homes and level 5 for greenfield sites. The justification given for the difference is that brownfield sites are more likely to incur the remediation costs of ground contamination and that the value of greenfield sites in Brighton is such that the highest level of resource-efficiency should be sought to minimise the impact of development. An energy efficiency statement is submitted but does not indicate what level of efficiency would be achieved. In evidence, the appellant asserted that Code level 3 would be met.
39. Much effort was expended by all parties in trying to establish that the site is either greenfield or brownfield land. Previous appeal decisions, both on this site and on the site at Highcroft Villas referred to earlier, support the view that as the site was once part of the railway curtilage it fulfils the definition of previously developed (brownfield) land set out in PPS3. Whatever it has previously been, or was at the time of the last appeal decision, my site visit demonstrated that any previous activity on site has now blended into the landscape so that it can reasonably be considered as part of the natural surroundings. The site is therefore now excluded from the PPS3 definition of previously developed land.
40. Be that as it may, the site is likely to be contaminated because of its proximity to operational railway land. A condition (11) to require a decontamination survey is suggested. The logic of the Council's supplementary planning document is that no more than Code Level 3 should be insisted upon under these circumstances. But in any event; the Code is presently voluntary and would be applied in due course by Building Regulations; the supplementary planning document elaborates policy; the energy efficiency statement submitted would comply with policy SU2 as stated and its provisions can be secured by condition (5).
41. The Council is also concerned that two of the four houses would have internal bathrooms requiring the use of energy in their lighting and ventilation. Building Regulations would require mechanical ventilation in any event. I appreciate that a window opening would give occupants the option of dispensing with the artificial ventilation but any energy saving would be so slight that it would be disproportionate to refuse planning permission on this basis. I conclude that the proposal makes adequate provision for energy efficiency. It would therefore comply with Local Plan policy SU2.

Other matters

42. Although not raised by the Council, third parties pursued the conclusion reached in the previous appeal decision that, in the absence of cogent evidence that gives proper consideration to the impact of non-passenger rail traffic, it

- had not been satisfactorily demonstrated that railway activity would not cause unacceptable disturbance for future residents by reason of noise and vibration.
43. For the present appeal a rail noise and vibration assessment report is submitted which specifically addresses these points. It finds that acceptable living conditions for potential occupants of the development can be secured without any specific measure to reduce the level of noise from the railway. Despite the doubts of third parties, I have no substantive technical evidence to contradict this advice from a professional expert.
44. Third parties also pursued the matter of the proposal's relationship with the adjoining public house. This was considered in the previous appeal decision which found that any prospective occupier would be aware of this possibility and could take the matter into account. Third parties pointed out that any actual occupier could take the matter into account by using the Council's licensing and environmental health controls to curtail or terminate the activities of the public house, to the disbenefit of the local community.
45. In comparison with the previous appeal, the current proposal would effect two significant changes in its relationship with the public house. Firstly, in place of a number of bedroom and kitchen/living room windows facing directly onto the pub's external veranda and open courtyard, the flank of the proposal would closely enclose the courtyard and so contain its noise with only toilet windows and one secondary window to one bedroom facing directly onto the noise source. The Council has suggested that this window be repositioned by condition; I have reformulated this to exclude this window (condition 12).
46. Secondly, the reorientation and repositioning of the proposal would bring the windows of the kitchen and a bedroom of one house into very close proximity to the open veranda of the public house which presently abuts and overlooks the appeal site. I can foresee that this could be a cause of conflict which could be resolved to the disadvantage of the pub. But such an outcome is by no means inevitable. Other outcomes, such as the acoustic enclosure of the space can be envisaged. In any event, it represents such a small proportion of the pub's space that it would be disproportionate to expect any curtailment of its use to result in the closure of the pub to the disbenefit of the local community.
47. Third parties were also concerned that permission for this development would create a precedent. However, each appeal is determined on its own individual merits. Nothing in this decision is necessarily relevant to a different proposal on a different site.

Conditions

48. In the event of the appeal being allowed, the Council suggested a number of conditions. I have considered these in the light of the advice contained in government circular 11/95, *the use of conditions in planning permissions*, preferring the model conditions contained therein where appropriate.
49. Notwithstanding discussions at the Inquiry, I have omitted any requirement for noise insulation measures since the conclusions of the Noise and Vibration Assessment are that none are needed.

50. One condition suggested would remove permitted development rights for extensions and alterations. Government policy is that such conditions should not be imposed save in exceptional circumstances. There is an existing Article Four Direction in the Conservation Area which withdraws permitted development rights for alterations or replacements of windows, doors or roofs fronting a highway or open space, the addition of a front porch, changes to front boundaries and the demolition or alteration of chimneys. For consistency and for the avoidance of doubt, condition 2 to effect a similar control should be applied to the development. However, I have not included conditions requiring large scale sample elevations and joinery details to be submitted as these are clear enough from the approved drawings.
51. Some details are missing from the scheme as submitted. Conditions 3, 8 and 10 would require these to be submitted, approved and installed. Other details are shown but a condition is necessary to ensure that they are provided. These include conditions 4, 5 and 6. The reasons for other conditions have been discussed in earlier paragraphs.

Conclusions

52. In contrast to the previous appeal on this site, the current proposal is for a different form and layout of development which would preserve the character and appearance of the Preston Park Conservation Area, minimise its impact on parking stress, avoid potential disturbance from railway activity and from the public house, have little or no adverse effect on neighbouring residents and make a small but worthwhile, energy efficient contribution towards housing provision. The small loss of open space would not impair the contribution which the remaining area would continue to make to the visual amenity and wildlife interest of the area. I therefore allow the appeal.

P. W. Clark

Inspector

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no alteration or replacement of any window, door or roof on any elevation, nor the addition of a front porch, nor any change to front boundaries, nor the demolition or alteration of any chimney other than that expressly authorised by this permission shall be carried out.
- 3) No development shall take place until a scheme for the storage of refuse and recycling has been submitted to and approved in writing by the local planning authority, including details of its method of construction in proximity to the tree shown to be retained on the approved drawings. The scheme shall be carried out in full as approved prior to the first occupation of any part of the development and the refuse and recycling facilities shall thereafter be retained available for their intended use.
- 4) The new dwellings shall be constructed to Lifetime Homes standards.
- 5) The new dwellings shall be constructed in accordance with the measures described in the energy efficiency statement accompanying the appeal.
- 6) No dwelling shall be occupied until its cycle storage has been provided in accordance with the approved drawings. The cycle storage shall thereafter be retained available for its intended purpose.
- 7) No site clearance shall take place during the birds nesting season (February to July inclusive).
- 8) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include proposed finished levels or contours; means of enclosure, including the entrance gates; pedestrian access and circulation areas; permeable hard surfacing materials and the provision of no less than ten bird and bat nest boxes (woodcrete type) on the east or west facing walls of the terrace. Soft landscape works shall include the provision of climbing plants on the north and south facing walls of the terrace, the planting of a species-rich hedgerow along the southern boundary of the site, the planting of wildlife-friendly shrubs and wildflowers in the area to the east of the terrace. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
- 9) In this condition "retained tree" means the tree which is to be retained in accordance with paragraph 6.7 of the appellant's landscape and biodiversity statement prepared by Owen Seward dated June 2006; and paragraphs (i) and (ii) below shall have effect until the expiration of 1 year from the date of the first occupation of the building for its permitted use.