

Appeal Decision

Site visit made on 23 August 2016

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 21 September 2016

Appeal Ref: APP/D3830/W/16/3151808

**Land adjacent to Greenstede House, Wood Street, East Grinstead,
West Sussex RH19 1UZ**

- 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 Eastmead Industries Limited against the decision of Mid Sussex District Council.
 - The application Ref DM/15/4308, dated 22 October 2015, was refused by notice dated 19 January 2016.
 - The development proposed is the erection of new residential apartment building incorporating four storeys of accommodation to include 3 x 1 bedroom apartments and 8 x 2 bedroom apartments, over undercroft parking and refuse, recycling and bicycle storage.
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Decision

1. I allow the appeal and grant planning permission for the erection of new residential apartment building incorporating four storeys of accommodation to include 3 x 1 bedroom apartments and 8 x 2 bedroom apartments, over undercroft parking and refuse, recycling and bicycle storage at Land adjacent to Greenstede House, Wood Street, East Grinstead, West Sussex RH19 1UZ in accordance with the terms of the application, Ref DM/15/4308, dated 22 October 2015, subject to conditions 1) to 16) on the attached schedule.

Main Issue

2. This is the effect of the development on the living conditions of nearby residential occupiers with particular regard to outlook, daylight and sunlight.

Reasons

3. Mid Sussex Local Plan Policy B3 states that proposals for new development will not be permitted if significant harm to the amenities of nearby residents is likely to be created due to, among other things, reduction in sunlight and daylight, and reduction in outlook. The supporting text says that one of the land uses most sensitive to new development is residential and occupiers of residential properties can be seriously affected by changes in daylight, sunlight, and outlook; the policy will be applied rigorously where new development unduly affects residential premises.
 4. Pre Submission District Plan Policy DP24 on character and design requires all development and surrounding spaces, including replacement dwellings, to be well designed and reflect the distinctive character of the town. All applicants will be required to demonstrate that development does not cause significant
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harm to the amenities of existing nearby residents and future occupants of new dwellings, including taking account of the impact on outlook, daylight and sunlight among other considerations. Draft East Grinstead Neighbourhood Plan Policy EG3 on promoting good design includes the requirement not to harm adjoining amenity. Whilst limited weight can be accorded these emerging policies at this stage, they appear consistent with the aims of the adopted policies.

5. The National Planning Policy Framework sets out the presumption in favour of sustainable development and in particular paragraph 56 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. Whilst Policy B3 is somewhat dated, it is consistent with the aims of good design stated in the later Framework.
6. The site is presently open, having been the ground-level car park to a former office block to the west, Greenstede House, which has been converted to residential use through the prior approval regime. There is another block to the east, Farrington House which has received express consent for a similar change of use. To the rear, but at a lower level, is a petrol filling station accessible off Station Road. To the north side there are residential uses accessed off St James Road, and of particular relevance to the Council's case, and that of local residents, are 42 to 50, a terrace of three storey houses built close to Wood Street with a short courtyard garden between their rear facing elevation and the street.
7. There can be no doubt that the outlook from the rear of those properties, and the amount of daylight and sunlight reaching the gardens and windows, will alter were the presently open site be developed for any form of building. The presently open space affords views over the top of the petrol filling station of trees and open sky, and being almost due south, the sun would be seen to describe an arc within that gap, reaching its highest within the field of open view. Local Plan Policy B3 is in line with general planning principles of not seeking to preserve an existing situation absolutely, as that would prevent much development in town centres, and it does not seek to set absolute values, rather it seeks to avoid *significant* harm to the amenities of nearby residents, and the supporting text refers to *undue* effects.
8. The Building Research Establishment publication '*Site Layout Planning for Daylight and Sunlight: A guide to good practice*' (the Guide) is a recognised industry tool for designers and those charged with assessing these effects. It is however a guide and is not mandatory, since the actual effect can be influenced by other factors, and as in any planning decision, there are yet further material considerations which must be weighed in the balance.
9. There have been comments about the accuracy of the information used, its source and such as the scale of drawings. This may stem from a misunderstanding of the nature of digital working. Digital mapping, 3D Computer Aided Design and 3D modelling can achieve a degree of accuracy far greater than was possible with traditional surveying and drafting. The resulting digital information remains accurate and any perceived inaccuracies in the submitted paper drawings or screen views should not be afforded significant weight. It is for these reasons that Local Planning Authorities insist on a scale

bar being added to drawings, to ensure that however a drawing is printed or read on screen by others, a reasonable approximation of distances can be read. Nevertheless, all the while that digital information is being used in an assessment, there is no room for such inaccuracies.

10. The first point to note is the significance of the BRE 25° 'rule'. That is a simple initial assessment, in that if a proposal does not obstruct a 25° line in a vertical section from a point at the centre of the lowest window, there is no need to go further and the effect is deemed to be acceptable. If however that is not case, there is a need for a more detailed assessment, as in this case, which takes account of open space or obstructions either side of the vertical section. The present case 'failed' the 25° 'test' and the alternative assessment was required. The figure referred to in this further analysis is a Vertical Sky Component of 27%.
11. Vertical Sky Component is a measure of the amount of sky visible from a centre point of a window on the outside face, and a window that achieves 27% or more is considered to provide good levels of light, but if with the development in place the figure is both less than 27% *and* would be reduced by 20% or more, the loss would be noticeable. Clearly this is a different test than that of the Local Plan which refers to *significant* harm rather than a *noticeable* effect. A local resident does however, as a personal view, equate the two.
12. Because Vertical Sky Component takes account of lateral sources of light in addition to that at 90° to the rear elevation, as in the simple 25° 'rule', there is no straightforward correlation between angles in the vertical plane and Vertical Sky Component as suggested by the local resident. The equivalent Vertical Sky Component derived from angles normal to the elevation assumes obstruction of the same height to left and right, whereas the calculated Vertical Sky Component takes account of the actual situation.
13. Turning then to the daylight findings in the appellant's report, number 42, sited opposite the gap between the proposed building and Farringdon House, will receive a satisfactorily amount of daylight following the proposed development. The remaining houses in the terrace, 44, 46, 48 and 50 being directly opposite the proposed building, would receive satisfactory levels of daylight at second floor level after development, but ground and first floor levels would not strictly meet the preferred criteria set out in the Guide. The Vertical Sky Component at first floor windows would be greater than 24%, within the range where the Guide provides for larger windows to be taken into account, and these windows are a pair of full height casement doors with full height sidelights. The reduction would still be more than the 20% 'noticeable' point, but by 1% to 5%.
14. The ground floor windows of these four houses, stated to serve a kitchen and diner, would be affected to a greater extent. One window has a conventional cill height, the other a pair of full height casement doors to the garden. The effect would still be within the range of 17% to 27% where larger windows may be taken into account, but the reduction ranges between 1% and 10% greater than the 20% reduction that would be considered noticeable. The appellant states the advice of the Guide that living rooms and kitchens are considered to have a greater requirement for daylight than bedrooms and it appears entirely likely that the smaller window would serve the kitchen to provide for units under the window to maximise use of space.

15. The other part of the appellant's report is an analysis of sunlight, which shows that the windows to the south elevation of the five properties 42 to 50 would meet the preferred criteria in the Guide for sunlight, with the exception of the west window at ground floor level to No 50, which from observations at the site inspection is one of the full height casement doors. The report further states that this window would still receive the preferred level of probable sunlight hours annually, but would receive 4% rather than 5% of annual probable sunlight hours during window [sic] months, clearly this should read 'winter'.
16. These findings have prompted more criticism and rebuttal, and there appears to have been some misunderstanding between 'percentages' and 'percentage points' and the point at which a room might appear colder and less pleasant. The analysis shows that there is a limited failure in one out of twenty window openings. The rebuttal of 31 May 2016 makes clear the other factors that should be put into the calculation.
17. The effect on the gardens was also tested. These are small and contained within high boundaries, which to the Wood Street frontage is the height of the incorporated gates, approximately 2m. The appellant's report states that this factor already reduces the sunlight to below recommended levels, but that the development proposal would make no difference to 42, 44 and 46, while the further reduction at number 48 would be 3% and to number 50, 7%.
18. Reference has been made to the effect on what are now residential rooms in Greenstede House, and here again the 25° 'rule' has been misunderstood. There are places where the existing service structure to the east affects daylight, but in that case there would be daylight and sunlight around the narrow end of the proposed development, such that the effect is acceptable.
19. The reason for refusal alleged loss of daylight and natural light impacting on outlook and aspect, which is more than just a calculated effect at the window plane. These calculated effects of the changes have been considered above, but there is clearly a subjective element to outlook and aspect. The original design of the terrace has resulted in the rear elevation and rooms facing south, and they would have enjoyed a high level of sunlight, daylight and open outlook. However, in a town centre location such completely open outlook on the far side of what is a reasonably wide road may not be usual.
20. In conclusion, there would be changes to the present open outlook and aspect of the five terrace properties, and it is clear that the Building Research Establishment Guide figures cannot be achieved in every instance. The wording of Local Plan Policy B3 is to not cause *significant* harm to the amenities of nearby residents, and whilst there would be some adverse effects, both calculated and subjectively assessed, the harm in this instance is not considered to reach the level sought to be avoided by the policy.

Other Considerations

21. The development would reduce the parking once available for Greenstede House, although it appears that it is not now allocated, whilst spaces outside 42 to 50 St James Road are so allocated. The residents would generate their own needs for parking and a local resident recites the difficulties they have in that respect. The Council or Highway Authority do not raise this matter as an objection. The site is in a highly accessible location with shops, railway station and buses nearby, and the parking regime in the area appears partly designed

to deter commuters from parking all day. The situation does not appear unusual for a town centre site and should not put undue pressure on existing spaces or cause a highway safety problem through people touring round looking for spaces.

22. The site is within 7km of the Ashdown Forest Special Protection Area and Special Area of Conservation, being a European Site of Nature Conservation Importance. The Council had refused the application due to the lack of mitigation of the effects of the development, referring to an interim strategy with projects agreed with the Conservators of the Ashdown Forest.
23. On the submission of an acceptable Undertaking, the Council stated that the normal collection of the Suitable Alternative Natural Greenspace (SANG) contribution is done by condition as contained on the suggested list of conditions, whilst the Strategic Access Management (SAMM) is through a section 106 undertaking. On the information available and having mind to the Habitats Regulations, no further consideration of a Habitats Regulation Assessment is required and the second reason for refusal has been overcome.
24. The third reason for refusal concerned the absence of a completed section 106 agreement or undertaking in respect of infrastructure. Policy G3 of the Local Plan requires applicants to provide for the costs of additional infrastructure required to service their developments and mitigate their impact. An Undertaking dated 9 August 2016 has been submitted providing for contributions towards infrastructure to mitigate the effect of the additional residents on such as play equipment and sport, community buildings and the local community, education, libraries, and cycle and pedestrian improvement.
25. It is understood that the Council are in agreement with the terms of the Undertaking, and it satisfies the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 being necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. As a result, full weight can be accorded each of the provisions in this Decision in overcoming the third reason for refusal.

Planning Balance

26. The Council is unable to demonstrate a five year supply of housing sites, as required by paragraph 49 of the Framework, in which case the policies for the supply of housing should not be considered up-to-date. Paragraph 14 sets out the considerations in favour of sustainable development; approving development proposals that accord with the Development Plan without delay, and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
27. It is of note that the terrace of relatively recently constructed dwellings is placed opposite what was at the time of the permission, open land associated with an office, and occupiers have enjoyed an open outlook and aspect since taking up occupation. Whether that previous decision considered the effect of the siting of the dwellings on the future developability of this town-centre site is not referred to. It would not appear reasonable to expect the appeal site to be kept clear in changing circumstances such as the residential use of

Greenstede House, but the balance concerns the extent to which development would be reasonable in its effects.

28. The outline of the scheme has been reduced during the planning process and the effect on existing residential occupiers is of some change and some reductions in daylight and sunlight. In limited cases, those reductions are below that advised in non-mandatory guidance. The Local Plan Policy does not seek to impose absolute standards, providing for some element of judgement in the circumstances of the case. The circumstances here are of a scheme making better use of land, in a sustainable town centre location to provide housing in an area where the Council are unable to demonstrate a five year supply of housing land as required by national policy. The balance lies in the limited effects on residential occupiers, which are considered not to reach the level of significant harm, not being contrary to Development Plan policies, and not demonstrably outweighing the many benefits of this sustainable development.

Conditions and Undertaking

29. The Council had suggested conditions on the need for a Construction Environmental Management Plan, a full set of provisions for contaminated land, and restrictions as to hours of construction and burning of waste material. In view of the location and previous use, both of these requirements would be necessary. Materials should be approved to safeguard the character and appearance of the area, and further details of storm-water and foul drainage should be submitted. Vehicle and cycle parking facilities, along with refuse and recycling provisions are to be secured prior to occupation, essential to avoid significant harm to the nearby residential occupiers. The condition referred to by the Council in respect of Suitable Alternative Natural Greenspace as mitigation for the effect on the Ashdown Forest Special Protection Area should be attached. Lastly a condition is required naming the drawings, because otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans as this provides certainty.
30. In view of being set out as reasons for refusal, the merits of the Undertaking have been considered earlier in this Decision and found to be acceptable, passing the tests in the Community Infrastructure Levy Regulations 2010.

Conclusions

31. The proposal would not cause significant harm to the living conditions of nearby residential occupiers and the benefits in the provision of housing in this sustainable location, in a District that cannot demonstrate a five year supply of housing land, demonstrably outweigh the limited harm through the loss of the currently open land. The proposal represents sustainable development in line with Development Plan and national planning policy. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans; 4225-010A, 011E, 012G, 013G, 016B, 017B, 018D, 019D, and 020A.
- 3) Prior to the commencement of the development a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The Construction Environmental Management Plan shall include amongst other matters details of: measures to control noise affecting nearby residents; wheel cleaning/chassis cleaning facilities; dust control measures and site contact details in case of complaints. The construction works shall thereafter be carried out at all times in accordance with the approved Construction Environmental Management Plan, unless any variations are otherwise first submitted to and approved in writing by the Local Planning Authority.
- 4) No development shall take place until an investigation and risk assessment has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:
 - (i) a survey of the extent, scale and nature of contamination;
 - (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;
 - (iii) An appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's *'Model Procedures for the Management of Land Contamination, CLR 11'*.
- 5) A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as

- contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 6) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.
 - 7) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 4), and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 5), which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 6).
 - 8) No development shall be carried out unless and until samples of materials and finishes to be used for external walls and roofs of the proposed dwellings have been submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out in accordance with the approval given.
 - 9) The development hereby permitted shall not proceed until details of the proposed foul water drainage and means of disposal have been submitted to and approved in writing by the Local Planning Authority and no building shall be occupied until all approved drainage works have been carried out in accordance with such details.
 - 10) The development hereby permitted shall not proceed until details of the proposed surface water drainage and means of disposal have been submitted to and approved in writing by the Local Planning Authority and no building shall be occupied until all drainage works have been carried out in accordance with such details as approved by the Local Planning Authority. The details shall include a timetable for its implementation and a management and maintenance plan for the lifetime of the development which shall include arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. Maintenance and management during the lifetime of the development should be in accordance with the approved details.
 - 11) Works of construction or demolition, including the use of plant and machinery, necessary for implementation of this consent shall be limited to the following times: Monday - Friday 0800hrs - 1800hrs, Saturday 0900hrs - 1300hrs and on Sundays and Bank/Public Holidays no work is permitted.
 - 12) No burning of demolition/construction waste materials shall take place on site.

- 13) No dwelling shall be occupied until covered and secure cycle parking spaces have been provided in accordance with details previously submitted to and approved in writing by the Local Planning Authority.
- 14) No dwelling shall be occupied until parking spaces, garages and turning areas associated with it have been provided and those parking and turning areas shall not thereafter be used for any purpose other than for the parking and turning of vehicles.
- 15) No dwelling shall be occupied until refuse and recycling storage facilities have been provided in accordance with details submitted to and approved in writing by the Local Planning Authority.
- 16) No development shall take place until a scheme for the mitigation of the effects of the development on the Ashdown Forest Special Protection Area has been submitted to and approved in writing by the Local Planning Authority. The scheme shall either make provision for the delivery of a bespoke Suitable Alternative Natural Greenspace (SANG) or make provision for the payment of an appropriate financial sum towards the maintenance and operation of a SANG leased and operated by the Local Planning Authority. In the event that the scheme approved by the Local Planning Authority is for the physical provision of a SANG, no dwelling shall be occupied before written confirmation has been obtained from the Local Planning Authority that the SANG has been provided in accordance with the approved scheme. In the event that the scheme approved by the Local Planning Authority does not relate to the physical provision of a SANG, no development shall take place before written confirmation has been obtained from the Local Planning Authority that the financial sum has been provided in accordance with the approved scheme.