

Appeal Decision

Site visit made on 14 November 2016

by Timothy C King (BA Hons) MRTPI

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

Decision date: 28 November 2016

Appeal Ref: APP/U1430/D/16/3157699
Windover, Sea Road, Fairlight, TN35 4DR

- 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 Ken Eason against the decision of Rother District Council.
 - The application Ref RR/2016/1454/P, dated 26 May 2016, was refused by notice dated 15 July 2016.
 - The development proposed is '*Demolition of existing garage and workshop and replacement with ancillary living accommodation*'
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - 1) Whether the proposal, given its location, would affect the stability of the cliff-top;
 - 2) The effect of the proposal on the character and appearance of the surrounding area: and
 - 3) The effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to the adjacent property, Bishopsgarth.

Reasons

Stability of the cliff

3. Paragraph 120 of the National Planning Policy Framework (the Framework) advises that where a site could be affected by land stability issues from development proposals the responsibility for securing its safe development rests with the developer and/or landowner. This requirement is reflected in Policy OSS3 of the Rother Local Plan Core Strategy (CS). Such a constraint which, in this particular instance, arises from the appeal site's cliff-top location, is of obvious concern and appropriate detail would be expected to accompany any planning application in this regard to demonstrate that the proposal would not pose risks to the land's stability.
 4. I note the appeal site's recent planning history whereby two similar proposals (refs RR/2016/675/P and RR/2015/1825/P) were refused in May 2016 and
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September 2015, respectively. The Council's approach to both these proposals and also the application currently at appeal has been consistent in that each time the Council has raised concerns as to the issue of land stability. In the circumstances the appellant, not unreasonably, would have been expected to substantiate his case in this regard. However, save for a somewhat limited single-sheet representation from an engineer, no substantive evidence has been adduced. Although the appellant terms this an 'engineer's report' its contents is not sufficiently illustrative nor compelling given the circumstances. Any report to this end would comprise a full, structural engineer's assessment to demonstrate the relative loading of the existing building against that of the proposed development, discussing also the intended construction technique. This has not been properly satisfied.

5. On the first main issue I conclude that, in the absence of any convincing evidence to the contrary, the proposal could be harmful to the cliff-top's stability and this would be contrary to the aims and requirements of CS Policy OSS3 and relevant advice within the Framework.

Character and appearance

6. The proposal would involve the demolition of an existing garage structure and the erection, in its place, of a new building set back from the site's front boundary. It would serve as an extension to the main property's residential accommodation. The existing building, with shallow, side roof-planes and a centrally ridged roof, appears in need of some attention. The proposed replacement building would be higher, with steeper pitches and also slightly deeper but in terms of its general appearance I must disagree with the Council's assessment.
7. I consider that the proposed building, with its projecting front porch and the tall glazed section set within the oak feather edge boarding surround, would constitute a building of visual interest. It would represent an improvement on the existing arrangement and would align better with the architectural design and appearance of the main dwelling sited on higher ground, beyond. The Council's consideration that it would be of bland appearance, yet also an alien building, prominent in the streetscene, seems somewhat contradictory and is not properly qualified.
8. I conclude that the proposal would not be harmful to the character and appearance of the surrounding area and there would be no material conflict with CS Policy OSS4.

Living conditions

9. The replacement building, like that existing, would be sited alongside a smaller outbuilding set forward of Bishopsgarth, the neighbouring property, which is sited south-eastwards of the appeal site. Although the proposed building's flank walls would be higher, and its roof pitch deeper, I am also mindful of the outbuilding between and the relative orientations of the buildings involved which would tend to suggest that the proposal would not result in a significant loss of light and outlook to the detriment of Bishopsgarth's occupiers. However, as my site visit was carried out on an unaccompanied basis I was not able to enter the land to assess any degree of impact that may result in this regard.

Moreover, as I intend to dismiss the appeal on a more fundamental and substantive issue I need not explore this particular matter further.

Conclusion

10. Although I have found that the proposal would not cause harm to the streetscene or the character and appearance of the surroundings this appeal turns instead on the absence of any convincing assessment as to the proposal's effect on the cliff-top's stability. This is fundamental to the proposal.
11. For the above reasons, and having taken into account all matters raised, the appeal does not succeed.

Timothy C King

INSPECTOR