
Appeal Decision

Site visit made on 10 January 2107

by **S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI**

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

Decision date: 26th January 2017

Appeal Ref: APP/U1430/W/16/3160027

The Anchorage, The Avenue, Fairlight, East Sussex TN35 4DE

- 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 Carley Construction against the decision of Rother District Council.
 - The application Ref RR/2016/1081, dated 14 April 2016, was refused by notice dated 22 June 2016.
 - The development proposed is to develop 1no dwelling in the rear garden of The Anchorage, The Avenue, Fairlight using a strip of land at 26 Lower Waites Lane to form a new access and drive.
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Decision

1. The appeal is allowed and planning permission is granted to develop 1 No dwelling in the rear garden of The Anchorage, The Avenue, Fairlight, East Sussex TN35 4DE using a strip of land at 26 Lower Waites Lane to form a new access and drive, in accordance with the application Ref RR/2016/1081, dated 14 April 2016, subject to the conditions set out in the Schedule of Conditions attached to this decision.

Main Issues

2. The main issues are the effects of the proposed development on the:
 - a) character and appearance of the area;
 - b) the living conditions of occupants of Nos 26 and 28 Lower Waites Lane in relation to noise and disturbance.

Reasons

Character and appearance

3. The appeal site is part of what was originally the large garden of a property known as The Anchorage. This house has now been demolished. Two chalet style dwellings have been constructed on that part of the site directly fronting The Avenue following the grant of planning permission on appeal, Ref: APP/U1430/W/15/3006513. These two new dwellings each have a good sized rear garden. However, immediately to their rear is an area of approximately 30m by 26m which remains undeveloped. The proposal seeks to use this site for the construction of another single-storey dwelling.
 4. As the site lies to the rear of all the surrounding development, a new access would be required. It is therefore proposed to construct a driveway between Nos 26 and 28 Lower Waites Lane which would run along the full depth of their respective
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gardens. The proposed access would be of a sufficient width to serve a single dwelling. However, it would require the closure of one of the existing accesses that serves No 26, which could be achieved through the imposition of an appropriate condition, in the event that the appeal was allowed.

5. Both No 26 and No 28 are set well away from the shared boundary. I am therefore satisfied that there is a sufficiently large gap between these two properties to ensure that the access could be provided without it being too close to either dwelling. Consequently, the proposal would not result in a cramped appearance that would be out of character with the area.
6. Fairlight is a village where the majority of properties appear to have direct road frontage. However, my attention has been drawn to a significant number of dwellings in the vicinity of the appeal site which are located behind other development. Some of these have individual access driveways; others have shared access arrangements that appear to serve up to three dwellings. These are examples of existing backland development. However, neither they, nor the appeal, site is directly comparable with the larger scale and more comprehensive infill developments that have taken place along Stock Dale and Fairlight Gardens.
7. From the evidence before me it would appear that there has been extensive infilling of sites, including some backland development, in the village. In this context, a single dwelling served from the proposed driveway would therefore not be out of keeping with the pattern of development that now characterises the area as a whole. The size of the appeal site is comparable, if not larger, than some others in the vicinity. The site is on ground that is higher than the immediately surrounding area so the proposed dwelling would be visible. However, its low profile, and the distances separating it from neighbouring dwellings, would ensure that it would not appear unacceptably intrusive. In these circumstances I consider it would integrate satisfactorily into its surroundings.
8. I therefore conclude that the proposed development would not be harmful to the character and appearance of the area. In this respect it would comply with Policies OSS4 and EN3 of the Rother Local Plan Core Strategy (Core Strategy) which, amongst other things, requires development to respect the character of the site and its surroundings.

Noise and disturbance

9. The introduction of a dwelling on the appeal site would replace undeveloped land with some domestic activities within the garden. However, the site is within the built-up area of the village and where the use of gardens by residents would not be unusual or unexpected. Although these activities would be to the rear of No 26 and Nos 13 and 23 Rockmead Road, there is no substantiated evidence to demonstrate why this would result in unacceptable levels of noise and disturbance for occupiers of these adjacent dwellings.
10. The use of the driveway would result in some noise and disturbance for the occupiers of Nos 26 and 28 as a result of a limited number of traffic movements. However, as the proposal is for a single dwelling, the number of people and vehicles that could be expected to be entering and leaving the site each day would be small. Evidence presented in relation to existing and predicted noise levels were significantly below the levels likely to cause nuisance, even if the windows of Nos 26 and 28 were left open. The effects on No 28 could be reduced further with the provision of a 1.8m close-boarded fence. There is therefore no convincing evidence to suggest that the proposal would give rise to unacceptable levels of noise.

11. Temporary noise and disturbance arising through the construction period, although regrettable, is an insufficient reason to reject a proposal which, when built, would not be materially harmful to the living conditions of neighbours. However, I consider it would be appropriate to mitigate any disturbance during the construction period through the imposition of an appropriate condition, which is a matter I will return to later.
12. Taking all these factors into account I conclude that the proposal would not be harmful to the living conditions of occupiers of the surrounding properties, as a consequence of unacceptable noise and disturbance. In this respect the proposal would comply with Policy OSS4 of the Core Strategy which, amongst other things, seeks to ensure that development does not unreasonably harm the amenities of adjoining properties.

Other Matters

13. Although there are no other issues between the main parties I note that local residents have raised concerns about other matters including drainage, coastal erosion, highway safety (particularly during construction), and the presence of Japanese Knotweed.
14. I understand that drainage is a sensitive issue in the local community, in view of known problems associated with coastal erosion and the watercourse in Lower Waites Lane. However, the intention would be to utilise the new drainage system being installed to serve the two dwellings on the remainder of The Anchorage's site. Southern Water has agreed this current drainage system and has not objected to the current proposal. I am therefore satisfied that these concerns can be overcome by the imposition of an appropriate condition.
15. Lower Waites Lane is a private road. Consequently, the highway authority has little control over accesses along it. Whilst I acknowledge that the proposed access is close to the junction with The Broadway, an existing access serving No 26 is already operating in a very similar location. Traffic flows on both The Broadway and Lower Waites Lane are low and, given their narrow widths, excessive speeds seem unlikely. Nevertheless, I accept that the access arrangements need to be made as safe as practical and must include alterations to the existing accesses at No 26. I am also aware that in view of the gradient of the proposed access, it will be necessary to provide it with adequate drainage both during the construction of the dwelling and on final completion. I therefore consider it is reasonable to impose a pre-commencement, Grampian-style condition requiring these access arrangements to be agreed, along with a programme for their implementation. This will protect highway safety and to reduce the risk of flooding.
16. In view of the proximity of the access to the site to the adjoining properties, vehicles entering and leaving the site during the construction period are likely to give rise to some disturbance of the occupiers. I have therefore consulted the parties about the need for a condition to agree a construction method statement. It is accepted that this is appropriate and necessary and I have therefore imposed it in the interests of the amenity of adjoining occupiers and to ensure highway safety.
17. In allowing the appeal for two dwellings on the remainder of The Anchorage's site, the previous Inspector imposed a condition in relation to the control of Japanese Knotweed. The officer's report on the scheme before me suggested that, in the event that the proposal went ahead, it would be appropriate to impose a condition to ensure that the buried Encapsulation Cell which contained contaminated soil is not disturbed during construction. I shall impose such a condition accordingly.

Conditions

18. In addition to the conditions already referred to in relation to matters raised by local residents, the Council has suggested a number of other conditions in the event that the appeal was allowed. I have considered these in the light of the tests set out in paragraph 206 of the National Planning Policy Framework and imposed them where I consider them to be necessary and reasonable, incorporating amendments for the sake of clarity and precision.
19. As well as the standard time limit, a condition specifying the plans is necessary in the interests of certainty and to secure the use of the materials set out on those plans in the construction of the external surfaces of the dwelling. Conditions are required to agree hard and soft landscaping and to ensure its timely implementation in the interests of the appearance of the development. A condition to ensure that the parking and turning areas are provided prior to occupation of the dwelling is needed in the interests of safety on the site and the adjoining highway.
20. The Planning Practice Guidance advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. However, in this case in order to protect the privacy of neighbours, I am satisfied that removal of permitted development rights is justified.

Conclusion

21. The Government is seeking to significantly boost the supply of housing and requires applications for housing development to be considered in the context of the presumption in favour of sustainable development. The appeal site is within the built-up area of Fairlight and there is therefore no objection in principle to a residential development, provided this can be achieved without harm to the local environment.
22. In this case I have concluded that the proposed dwelling would not be harmful to the character and appearance of the area or the living conditions of adjoining occupiers. I am satisfied that other concerns raised by the Council and local residents can be addressed through the imposition of conditions.
23. For these reasons, and having regard to all other relevant matters raised, I conclude that the proposal is acceptable and that the appeal should be allowed, subject to conditions.

Sheila Holden

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin no later than three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: drawing Nos 1100, 1200 and 1201, dated April 2016, including constructing the external surfaces using the materials as annotated on drawing No 1201, unless otherwise agreed in writing by the local planning authority.
3. No development shall take place until a scheme for the provision of surface water drainage works has been submitted to and approved in writing by the local planning authority. The drainage works shall be implemented in accordance with the approved details prior to first occupation of the dwelling hereby permitted.
4. No development shall take place until full details of a scheme for the proposed access and the revised access arrangements for No 26 Lower Waites Lane have been submitted to and approved in writing by the local planning authority. The scheme for the proposed access shall include details of its construction, surface water drainage, gradients and surfacing, both during construction of the dwelling and prior to its occupation. The scheme shall be implemented as approved and in accordance with a programme that has been agreed in writing by the local planning authority.
5. No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) a scheme for recycling/disposing of waste resulting from construction works;
 - v) delivery and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period of the development.
6. No above ground construction work shall commence until details of both hard and soft landscaping works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) indications of all existing trees and hedgerows on the land including details of those to be retained, together with measures for their protection in the course of the development.
 - ii) a planting plan;
 - iii) written specifications (including cultivation and other operations associated with plant and grass establishment)
 - iv) means of enclosure and boundary treatments;
 - v) hard surfacing materials, including the driveway;
 - vi) an implementation programme.

All hard and soft landscaping works shall be carried out in accordance with the approved details and implementation programme prior to first occupation of the dwelling hereby permitted.

7. No development shall take place until details of a method of construction that will not interfere with the Encapsulation Cell used to eradicate Japanese Knotweed, and ensure compliance with Condition 4 of appeal decision APP/U1430/W/15/300513, has been submitted to and approved in writing by the local planning authority.
8. Prior to first occupation of the dwelling hereby permitted the parking and turning areas shown on the approved plan, drawing No 1200, dated April 2016, shall have been constructed. These areas shall thereafter be retained solely for the purposes of parking and turning vehicles.
9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order with or without modification), no extensions, alterations or structures, as defined within Classes A, B, C and E of Part 1 of Schedule 2 of the order, shall be carried out on the site otherwise than in accordance with a planning permission granted by the local authority.

End of Schedule of Conditions