
Appeal Decision

Site visit made on 23 January 2017

by Joanna Reid BA(Hons) BArch(Hons) RIBA

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

Decision date: 14 February 2017

Appeal Ref: APP/P1425/W/16/3158328

26 Western Road, Newick, East Sussex BN8 4LF

- 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 Marlow Land Company against the decision of Lewes District Council.
 - The application Ref LW/15/1014, dated 21 December 2015, was refused by notice dated 18 May 2016.
 - The development proposed is erection of a 5 bedroom detached house and new vehicular access and double garage for retained house.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a 5 bedroom detached house and new vehicular access and double garage for retained house at 26 Western Road, Newick, East Sussex BN8 4LF in accordance with the terms of the application, Ref LW/15/1014, dated 21 December 2015, subject to the conditions set out in Schedule A at the end of this decision.

Application for costs

2. An application for costs was made by Marlow Land Company against Lewes District Council. This application is the subject of a separate decision.

Procedural matters

3. The site boundaries and the proposed dwelling are at an angle to the cardinal points. However, as the north west elevation is referred to in the main parties' representations and on the plans as the north elevation and so on, I shall do the same.
4. The Council's reason for refusal 1 refers to 'noise disturbance'. Although the Council's statement says that there should be little potential for noise nuisance, it has not specifically stated that it does not seek to defend this part of its reasons for refusal.

Main issues

5. The main issues in this appeal are the effect that the proposal would have on:
 - The character and appearance of the surrounding area, and
 - The living conditions of the occupiers of Chestnut Lodge, Copperfield, 24 and 26 Western Road, and the proposal, with regard to privacy and noise.

Reasons

Character and appearance

6. The appeal site is within the planning boundary of Newick village. It includes the end of the back garden of the dwelling at 26 Western Road. The Development Plan includes the Lewes District Council and South Downs National Park Authority *Lewes District Local Plan Part 1: Joint Core Strategy* (JCS), the saved Policies of the *Lewes District Local Plan* (LP) and the *Newick Parish Council Neighbourhood Plan* (NP).
7. Part HO1.6 of NP Policy HO1 says that the construction of additional homes in the gardens of Newick's existing homes will not be supported. However, the Policy does not say that such additional homes would be prevented, the NP Independent Examiner's examination report confirms this, and I agree.
8. Trees at the back of the site are subject to Tree Preservation Order (No 10) 2006, 26 Western Road, Newick, which provide a soft landscaped edge to the built-up area where it meets the open countryside. The Council has not raised concerns about the health and longevity of these trees, and due to their siting in relation to the proposal, I agree. The dwelling would be sited in about the middle of the existing back garden and would be poorly related to the frontage development in Western Road. However, there are nearby dwellings in similar positions, including Chestnut Lodge, which is next door, and the 2 dwellings beyond it. So, the layout would respect the nearby pattern of development.
9. Due to the steep downward fall towards the back of the site, the 2-storey family-sized dwelling would be partly set into the ground, so it would look like a bungalow from the front part of the site. Chestnut Lodge is about one and a half storeys at the front and about 3 storeys at the back, so the proposal would blend well with the existing built environment. Because the scheme would respond positively to the existing topography and landscape features it would respect the local landscape character. Its pitched-roofed form and range of materials would reflect local character. So, the well-designed and spacious home would successfully integrate with the established sense of place.
10. Therefore, I consider that the proposal would not harm the character and appearance of the surrounding area. Whilst there would be some conflict with the thrust of part HO1.6 of NP Policy HO1, it would satisfy JCS Core Policy 11 and LP Policy ST3 which seek a high standard of design, LP Policy ST4 which aims to control 'backland' development, and the *National Planning Policy Framework* (Framework) which aims to always seek to secure high quality design and to take account of the character of different areas.

Privacy and noise

11. Because the site is within the built-up area of the village, a degree of mutual overlooking would reasonably be expected. The nearest dwelling to the proposed dwelling would be Chestnut Lodge, and there are no windows in its closest side wall that would face the proposed dwelling. Due to the substantial distances between these proposed and existing dwellings, their orientation, the lie of the land, and the layout of their respective gardens, overlooking from either dwelling or its garden would not cause an unacceptable loss of privacy to the neighbouring occupiers in their homes or in their back gardens, whether or not the existing vegetation by the common boundary were to be retained. A

little overlooking could occur from the nearest part of the Chestnut Lodge balcony into parts of the nearer west facing lower ground floor rooms of the proposed dwelling. However, the distance and angle of view would be sufficient to protect the future occupiers' reasonable privacy.

12. The dwellings at 24 and 26 Western Road and Copperfield would all be further from the proposed dwelling than Chestnut Lodge. The proposed dwelling would be at a lower level, such that its south wall, which would broadly face the backs of these 3 dwellings, would be roughly one storey tall. So, the intervening existing and proposed boundary treatments would be sufficient to safeguard these nearby occupiers' privacy, and the privacy of the future occupiers of the proposed dwelling, in their homes and in their back gardens. Thus, the good levels of privacy within the Area of Established Character would be maintained.
13. Turning to noise disturbance, the site is within a mainly residential area, so normal activity associated with the residential use of the site, such as children playing, would be in keeping and acceptable. The comings and goings of vehicles on the drive would be little different to the present situation if the occupiers of 26 Western Road were to use the garage in their back garden for parking. That is because the drive would only serve one dwelling. Moreover, the appellant's noise assessment and its environmental noise assessment, which includes site specific survey data, say that the proposal would not result in any detriment to the amenities of, or noise disturbance to, the occupiers of neighbouring residential properties or the area generally. I agree.
14. Thus, I consider that the proposal would not harm the living conditions of the occupiers of Chestnut Lodge, 24 and 26 Western Road, Copperfield, and the proposed dwelling, with regard to privacy and noise. It would satisfy JCS Core Policy 11 and LP Policies ST3 and ST4 which seek respect for the amenities of adjoining properties in terms of noise and privacy, and the Framework which seeks a good standard of amenity for all existing and future occupants of land and buildings.

Other matters

15. The appeal site is within the 7 km zone of influence around the Ashdown Forest Special Area of Conservation (SAC) and Special Protection Area (SPA), where the proposed new home would be likely to have a significant adverse effect on the SPA and SAC due to increased recreational disturbance. In accordance with JCS Core Policy 10, the appellant has put in a completed unilateral undertaking for a financial contribution towards Strategic Access Management and Monitoring. Because the financial contribution would be directly related to the development, necessary to ensure that the development does not have a significant adverse effect on the SAC and SPA, and it would be fairly and reasonably related in scale and kind to the development, it would meet all 3 'tests' in Regulation 122 of *The Community Infrastructure Levy Regulations 2010*, and in Framework paragraph 204. So, I shall take it into account.
16. Other matters raised by nearby occupiers include highway safety in Western Road, flood risk and biodiversity. These were not concerns of the Council in its reasons for refusal, and as little evidence has been put to me to show otherwise, I see no reason to disagree. The proposed and present boundary treatments would be sufficient to mitigate disturbance from headlights on the drive to and from the proposal. The proposed vehicle access to the existing dwelling at 26 Western Road would be sited away from the boundary with 24

Western Road. As traffic noise and light would be expected in and around Western Road, occasional vehicle movements by that access would not be harmful. Relevant ground works would be subject to Building Regulations control. Moreover, due to its scale and siting, the proposal would not harm the nearby occupiers' outlook, or cause harmful overshadowing.

17. Furthermore, the proposal would amount to a windfall that would contribute to the Council's 5-year housing land supply. It would achieve economic gains including jobs during construction, social gains including a new home, and environmental gains including the readily adaptable energy-efficient dwelling that would be in keeping with, and would thus protect, its surroundings. So, the proposal would amount to sustainable development. As the proposal would be acceptable and it would comply with the Development Plan as a whole, planning permission should be granted subject to planning conditions.

Conditions

18. The main parties' suggested conditions have been considered in the light of the advice in Framework paragraph 206 and Planning Practice Guidance and re-worded as necessary. The condition identifying the approved plans is necessary for certainty. Conditions for a scheme for Suitable Alternative Natural Greenspaces (SANG) and mitigation measures for badgers during construction are necessary in the interests of biodiversity. Conditions to control finished floor levels, external materials, tree protection, and hard and soft landscaping, are reasonable and necessary to protect the character and appearance of the area. Conditions to control the accesses, gates, drainage at the accesses, wheel washing facilities, visibility zones, and parking and turning areas are necessary in the interests of highway safety. The condition to control hours of demolition and construction are reasonable to protect nearby occupiers' living conditions. The condition to deal with unsuspected contamination is necessary in the interests of public health. These conditions have been imposed. The pre-commencement conditions are necessary because they are of prime importance to the acceptability of the scheme.
19. The ground floor west facing windows to the room labelled Living 1 would not need to be omitted for the reasons given in the second main issue, boundary treatments are shown on the plans, and there would be ample space in the existing and proposed developments to park cycles, so these conditions are not necessary. Also, as no exceptional circumstances have been put to me it would not be reasonable or necessary to remove permitted development rights. So, these conditions have not been imposed.

Conclusion

20. For the reasons given above and having regard to all other matters raised, the appeal succeeds.

Joanna Reid

INSPECTOR

Schedule A:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until a scheme for the provision of SANG (or reasonable alternative to SANG) to mitigate the effects of the development at a ratio of 8 hectares per 1000 residents has been submitted to and approved in writing by the local planning authority and such scheme shall identify the location of the SANG (or reasonable alternative to SANG) and detail the proposals and timetable to bring it up to a standard and into a condition to make it acceptable as SANG (or reasonable alternative to SANG). The dwelling hereby approved shall not be occupied until the local planning authority has confirmed in writing that the SANG (or reasonable alternative to SANG) has been provided in accordance with the approved scheme and is available for use.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans numbered 1503-100, 1503-101C, 1503-102B, 1503-103B and Y520/SK001.
- 4) No site preparation or development shall take place until the mitigation measures set out in the AA Environmental Limited letter ref 173025/JDT dated 9 January 2017 have been carried out and those measures shall be maintained at all times during site preparation and construction.
- 5) No development shall take place until details of finished floor levels and existing ground levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall commence until details and samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and samples.
- 7) In this condition 'retained tree' means an existing tree or hedge, which is to be retained in accordance with the approved plans and Patrick Stileman Ltd *Arboricultural impact assessment and arboricultural method statement* ref DS05011501 dated 12 October 2015 (particulars); and paragraphs a) and b) below shall have effect until the expiration of five years from the first occupation of the development.
 - a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars without the approval in writing of the local planning authority. Any pruning shall be carried out in accordance with British Standard BS 3998:2010 *Tree Work – Recommendations* and the arboricultural method statement
 - b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and the size and species of that tree and its time of planting shall be approved in writing by the local planning authority
 - c) Tree protection shall be maintained in-situ and not moved or removed until all construction has finished and equipment, materials, and machinery are removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition, nor shall any fires be

started, no tipping, refuelling, disposal of solvents or cement mixing carried out, and ground levels within those areas shall not be altered, nor shall any excavation or vehicular access be made without the approval in writing of the local planning authority

- d) Any arboricultural protection information and plans submitted as part of the application shall be implemented and adhered to at all times during the construction process unless otherwise approved in writing by the local planning authority. This shall include any requirement for arboricultural supervision.
- 8) No development shall take place until details of hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved prior to the occupation of the dwelling or in accordance with a programme that has previously been approved in writing by the local planning authority. If within a period of two years from the date of planting any tree, or any tree planted in replacement for it, is removed, uprooted, destroyed or dies, another tree of the same species and size as that originally planted shall be planted at the same place unless the local planning authority gives its written approval to any variation.
- 9) No development shall take place until details of the accesses shown on plan 1503-101C, gates, and surface water drainage to prevent the discharge of surface water from the site onto the public highway and from the public highway onto the site, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details, and the development hereby approved shall not be occupied until the accesses have been constructed in accordance with the approved details.
- 10) The accesses shall not be used until the visibility zones shown on the approved plans are cleared of all obstructions exceeding 600 mm high and the visibility zones shall be retained as such thereafter.
- 11) No ground work shall take place until a scheme of wheel washing during construction has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.
- 12) The development shall not be occupied until parking and turning areas for the existing and proposed dwellings have been provided in accordance with the approved plans and these areas shall be retained and shall not thereafter be used other than for the parking and turning of vehicles.
- 13) Demolition and construction works shall take place only between 0800 hours and 1800 hours on Mondays to Fridays, and between 0830 hours to 1300 hours on Saturdays, and shall not take place at any time on Sundays or Bank Holidays. No machinery shall be operated and no process shall be carried out that is audible at the site boundary, and no deliveries or removals shall take place outside the specified hours of demolition and construction.
- 14) If during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until a remediation strategy has been submitted to and approved in writing by the local planning authority detailing how the unsuspected contamination shall be dealt with. Thereafter development shall only be carried out in accordance with the approved remediation strategy.

End of Schedule A