
Appeal Decision

Site visit made on 4 July 2017

by AJ Steen BA (Hons) DipTP MRTPI

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

Decision date: 18 July 2017

Appeal Ref: APP/D3830/W/17/3171780

Land at Rear of 188 London Road, East Grinstead, West Sussex RH19 1EY

- 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 Ms J Russell against the decision of Mid Sussex District Council.
 - The application Ref DM/16/2572, dated 13 June 2016, was refused by notice dated 22 December 2016.
 - The development proposed is two new apartments.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I note that the draft Mid Sussex District Plan has been submitted for examination and the examination hearings have begun. However, I am not aware of the exact stage it has reached and the extent of outstanding objections or whether the policies concerned will be considered as consistent with the Framework. Consequently, I am only able to give it limited weight in my decision

Main Issues

3. The main issues are:
 - The effect of the proposed apartments on the living conditions of neighbouring occupiers of 188a London Road with particular regard to outlook; and
 - The effect of the proposed development on the Ashdown Forest Special Protection Area.

Reasons

Living conditions

4. The proposed development would be located to the rear of the existing building at 188 London Road, which is in a terrace of buildings fronting the main A22 through East Grinstead comprising a shop to the ground floor, currently a tattoo parlour, with a flat above. At present there is a long extension to the rear comprising a low pitched roof building containing an underused storage room with a flat roofed link to the main building, and a plant unit on the flat roof. It is proposed to replace the whole of that extension to the rear of the

building with a two storey building separated from the rear of the shop building by a small courtyard garden.

5. The proximity of the proposed building to the rear window of the upper floor flat, which is within an outrigger to the rear of the building, would result in it being dominant in views from the upper floor flat at 188a London Road. At present, there are open views over the single storey outbuildings to the rear of this and neighbouring buildings that provide an open outlook. The limited width of the proposed building, relatively low eaves and hipped roof away from the building would limit the dominating effect somewhat. Nevertheless, those matters would not wholly overcome the harm to the living conditions of that flat arising from the proximity of the blank first floor wall of the proposed development.
6. For these reasons, I conclude that the proposed development would harm the living conditions of neighbouring occupiers at 188a London Road by reason of outlook. As such, it would be contrary to Policies B3 and H3 of the Mid Sussex Local Plan (LP) and Policy EG3 of the East Grinstead Neighbourhood Plan (NP) that seek to protect neighbouring occupiers from development that causes significant harm to their living conditions, including in relation to outlook.

Ashdown Forest Special Protection Area

7. The site lies within 7km of the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC) that is designated under the Habitats Directive. Policy C5 of the LP and Policy EG16 of the NP require appropriate avoidance and/or mitigation measures be provided to mitigate the effects of recreational disturbance on the SPA and SAC from residents of new development. The Council have confirmed that financial contributions would be put toward the Council's costs in providing areas of Suitable Accessible Natural Greenspace (SANG), in this case at East Court & Ashplats Wood, and toward Strategic Access Management and Monitoring (SAMM) and that this would overcome the harm from the development on the SPA and SAC. However, no signed legal agreement under Section 106 of the Town and Country Planning Act 1990 that would ensure those contributions has been submitted.
8. Regulation 123(3) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) restricts the use of pooled contributions toward items that may be funded via CIL. If five or more obligations for a project or type of infrastructure have been entered into since 6 April 2010 and it is a type of infrastructure that is capable of being funded by CIL, no more contributions may be collected toward that project. Money put toward SAMM would be related to management and maintenance that does not constitute new infrastructure, so it is clear that those contributions would not be caught by the pooling restrictions. However, the Council suggest that money toward the SANG would be toward provision of that infrastructure which would be subject to the pooling restrictions. No information is submitted as to how many developments would be contributing toward the SANG, so it is unclear whether a contribution in this case could be taken into account. I note that the draft legal agreement only refers to SAMM.
9. A negatively worded condition has been suggested requiring a planning obligation. However, Planning Practice Guidance (reference ID: 21a-101-20140306) confirms that this should only happen in exceptional circumstances. Such exceptional circumstances have not been demonstrated in this case.

10. Given the lack of a completed legal agreement, I conclude that the effects of the proposed dwelling on the SPA and SAC would not be mitigated in this instance. As such, the proposed development would not be in accordance with Policy C5 of the LP and Policy EG16 of the NP that seek to mitigate the effects of recreational disturbance on the Ashdown Forest SPA and SAC from residents of new residential development.

Other matters

11. The Council also refused the application due to the effect of the development on a tree adjacent to the proposed building. As that was removed during the course of the development and there would not be any effect of the development on other trees, they confirmed they did not intend to defend that reason for refusal.
12. The building would be of simple design and located to the rear of other development. It reflects the simple appearance of surrounding buildings and this, combined with the limited visibility of the site, ensures that it would not harm the character and appearance of the surrounding area.
13. Reference is made to there being a lack of a 5 year housing land supply and the proposed development would provide two dwellings toward that supply. The appeal site would be an appropriate location in principle for new housing, within East Grinstead town centre and the proposal would make a contribution to the supply of housing in the area, an effective use of land. It would generate employment during the course of development, and those workers and subsequent occupiers would support local services and facilities. However, the harm that I have identified to the living conditions of neighbouring occupiers would significantly and demonstrably outweigh the identified benefits of the development.

Conclusion

14. For the above reasons and taking into account all other matters raised, I conclude that the appeal should be dismissed.

AJ Steen

INSPECTOR