
Appeal Decision

Site visit made on 6 June 2017

by N A Holdsworth MCD MRTPI

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

Decision date: 07/08/2017

Appeal Ref: APP/U1430/W/17/3170009

Duffield House, Upper Sea Road, Bexhill, TN40 1RL

- 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 Jonathan Williams against the decision of Rother District Council.
 - The application Ref RR/2016/1973/P, dated 18 July 2016, was refused by notice dated 26 September 2016.
 - The development proposed is demolition of existing double garage, repositioning of existing dropped kerb and erection of small 2 bedroom chalet bungalow.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing double garage, repositioning of existing dropped kerb and erection of small 2 bedroom chalet bungalow at Duffield House, Upper Sea Road, Bexhill, TN40 1RL in accordance with the terms of the application, Ref R/2016/1973/P, dated 18 July 2016 subject to the attached schedule of conditions.

Main Issue

2. The main issue is the effect on the living conditions of neighbouring residential properties with particular regard to privacy and loss of outlook.

Reasons

3. The appeal site occupies an irregular shaped plot, bounded by the front garden of Duffield House to the north and the rear gardens of properties located along Magdalen Road to the south. It is currently occupied by a double garage with associated forecourt area and an enclosed rear yard and has historically been used in connection with Duffield House, a semi-detached building that has been converted into flats.
4. The area of land to the front of Duffield House comprises a path to the main entrance to the building accessed through a gate on Upper Sea Road, with a lawned area to either side of the path. At the time of my site visit it was heavily screened by hedging facing the road and vegetation growing on the appeal site. The appeal proposal would result in a small reduction in size to this garden area to provide a parking space for the new dwelling, with a dwarf wall separating the parking space with the residual front garden area.
5. Rising to a total of around 7 metres in height and being built forward of the front elevation of Duffield House, the additional bulk of the appeal building

would be visible from the residual front garden of Duffield House. The new building would also be apparent from the windows on the front elevation of Duffield House, and from the nearby first floor balcony.

6. However, the front of Duffield House would otherwise retain an unobstructed outlook to the west and north. Notwithstanding its total height, the pitched roof design of the appeal proposal would soften the impact of the appeal building from the windows and balcony at first floor level. Whilst there would be some overshadowing of the front garden as a consequence of the bulk of the building given the path of the sun, this would only be apparent in parts of the day. It would not therefore have a significant effect on the function or utility of the amenity space in question. In consequence, I do not consider that the proposal would result in harm to the living conditions of residents of Duffield House through loss of outlook, overbearing impact or sense of enclosure.
7. Turning to the issue of overlooking, I note that the plans show that the roof window in the second bedroom at first floor level would be located around 1.5 metres above the corresponding internal floor level. This elevation would face directly on to the boundary of the rear gardens of 1 and 3 Magdalen Road. Given the likelihood that these windows would be opened, this could potentially result in overlooking of the neighbouring gardens.
8. The appellant does not raise objections to the condition suggested by the local authority that this rooflight is obscure glazed and fixed shut. I agree that this is necessary to avoid the potential for overlooking, particularly in respect of number 3 Magdalen Road. As such I consider that the harmful effects of the development regarding overlooking can be addressed through the use of planning conditions.
9. For these reasons I find that the appeal would be acceptable in terms of its effect on the living conditions of neighbouring residents. It would not conflict with policy OSS4(ii) of the Rother Local Plan Core Strategy adopted 29 September 2014 which seeks to ensure that development does not unreasonably harm the living conditions of local residents.

Other matters

10. The Council raise concerns about the living conditions of future occupiers of bedroom 2 of the proposed dwelling in the event that the south facing roof window is obscure glazed. However the bedroom in question would be served by a further unobscured rooflight on the north elevation that would provide for a degree of outlook, light and ventilation to that room. I consider that such an arrangement would provide acceptable living conditions for a second bedroom.
11. I note the concern of the local authority that the proposal comprises an overdevelopment of the site that takes no account of the constraints set by the surrounding residential properties. However, it has not been demonstrated that the proposal would result in harm to the character and appearance of the surrounding area. The reason for refusal principally relates to the effect of the development on the living conditions of surrounding properties, and the appeal has been considered on this basis.
12. I have taken into account the concerns of the neighbouring resident relating to the proximity of the appeal building to the site boundary. Subject to the

imposition of a condition relating to obscure glazing of the roof windows, I find that there would be an acceptable relationship between the appeal building and the property at 3 Magdalen Road, and no harm would arise to the neighbouring resident as a consequence of this appeal. Matters relating to the condition of the boundary wall fall outside the scope of this decision.

Conditions

13. I have imposed a condition specifying the relevant drawings as this provides certainty in addition to the standard condition setting out a 3 year time period in accordance with the Planning Acts. Condition 3 is necessary to ensure that the appearance of the development is consistent with the character and appearance of the wider area. Conditions 4, 5 and 6 are necessary to ensure a safe environment for vehicle users and pedestrians. Conditions 7 and 8 are necessary to ensure that the development does not result in overlooking of the surrounding buildings and gardens. Condition 9 is necessary to ensure that provision is made for cycle parking as shown on the plans and this is retained for the lifetime of the development. In some cases I have amended the wording from the Council's suggested form to ensure these conditions directly relate to the approved development and are not unreasonably prescriptive, having regard to the tests set out in the National Planning Policy Framework.
14. While I am aware that Planning Practice Guidance advises against removing permitted development rights except in exceptional circumstances in this case I find it necessary to protect the living conditions of the neighbouring residential dwellings within Duffield House and Magdalen Road. Such a condition is also necessary to ensure that the small rear garden of the proposed dwelling is not eroded to a harmful degree, and to ensure that the appearance of the appeal building respects the character and appearance of the area given its prominent location on Upper Sea Road. I have also added the condition recommended by the Council's Environmental Health officer due to the risk of oil seepage from the existing garage building. These conditions are reflected in condition 10 and 11 of the conditions schedule.

Conclusion

15. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed and planning permission is granted subject to conditions in the attached schedule.

Neil Holdsworth

INSPECTOR

CONDITIONS SCHEDULE

- 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 plans: P-263-01, dated 12.07.2016, P-263-02 dated 11.07.2016, P-263-03 dated 11.07.2016, P-263-04 dated 11.07.2016; and P-263-05 dated 15.09.2016.
- 3) No development above ground level shall take place until details of the materials to be used in the construction of the external surfaces of the dwelling have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development above ground level shall take place until details of a pedestrian visibility splay to be provided to the north of the new access have been submitted to and approved by the local planning authority. The said splay shall be provided in the approved form prior to the first occupation or use of the dwelling hereby permitted, and shall be maintained at all times thereafter such that no obstruction within it within the curtilage of the application site exceeds 600 millimetres in height above the level of the adjacent footway.
- 5) No development above ground floor level shall take place until details of the access to the proposed development have been submitted to and approved in writing by the local planning authority. Once the works have been completed in accordance with these details any subsequent works to the access arrangements must be approved in writing by the local planning authority. The approved dwelling shall not be occupied until the access has been constructed in accordance with the approved details.
- 6) The dwelling hereby approved shall not be occupied until a parking and turning area has been provided in accordance with approved drawing no. P-263-04 dated 11.06.2016. Thereafter, the parking and turning area shall be retained for that use and shall not be used other than for the parking and turning of motor vehicles.
- 7) The building hereby permitted shall not be occupied until the bedroom 2 rooflight and bathroom rooflight at first floor level within the south (side elevation) as shown on approved drawing nos. P-263-02, dated 11.7.2016, have been fitted with obscured glazing and fixed shut. The windows shall be retained in that condition for the lifetime of the development. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the windows are installed and once installed the obscured glazing shall be retained thereafter.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows, rooflights or dormer windows other than those expressly authorised by this permission shall be constructed on either the first floor south (side) roofslope or the first floor east (rear) elevation of the building hereby approved.

- 9) The development hereby permitted shall not be occupied until a cycle parking area has been provided in accordance with approved drawing no. P-263-04, dated 11.07.2016. Thereafter, the cycle parking area shall be retained for that use and shall not be used other than for the parking of cycles
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification) no extensions, alterations, buildings or structure, as defined within Classes A, B, C, and E of Part 1, Schedule 2 of the Order, shall be carried out on the site.
- 11) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) should be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority, for a method statement to identify, risk assess and address the unidentified contaminants. The contaminants shall then be addressed in accordance with the approved method statement and in accordance with a timetable agreed in writing with the Local Planning Authority.