



Appeal Decision

Site visit made on 28 May 2019

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th September 2019

Appeal Ref: APP/U1430/W/19/3222172

13 Barnhorn Road - land to rear- Bexhill TN39 4QB

- 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 M Huntley and J Manlow (Total Property Management) against the decision of Rother District Council.
 - The application Ref RR/2018/2292/P, dated 13 September 2018, was refused by notice dated 17 December 2018.
 - The development proposed is the proposed erection of bungalow and changes to existing parking arrangements for 13 Barnhorn Road.
-

Decision

1. The appeal is allowed, and planning permission granted for the erection of a bungalow and changes to existing parking arrangements for Land to rear of 13 Barnhorn Road, Bexhill TN39 4QB in accordance with the terms of application, Ref. RR/2018/2292/P, dated 13 September 2018, and subject to the conditions on the attached schedule.

Main Issues

2. I consider that the main issues are:
 - The effect of the proposed development on the character and appearance of the area;
 - The effect of the proposed development on the living conditions of existing residents, with particular reference to the outlook for 15 Barnhorn Road; and
 - The effect of the development on the Ashdown Forest Special Area of Conservation (SAC) and the Lewes Downs Special Area of Conservation (SAC)

Reasons

Character and appearance

3. The site is located within the development boundary of Bexhill, to the rear of a block of six flats known as Orchard Court, at 13 Barnhorn Road. It comprises the access from Barnham Road, the car parking for the flats and an area of vacant fenced land to the rear of the carpark. Barnhorn Close with three small blocks of flats lie to the east of the site, with No 15 Barnhorn Road to the west.

Adjacent to No 15 is Holland Avenue, a second cul de sac of detached dwellings set back from the main road.

4. The southern boundary backs onto a drainage ditch, then the rear gardens of the properties in Meads Road. The site is accessed down the secured, gated existing drive between Amberly Court and Orchard Court.
5. The immediate area is mainly residential in character, with a mix of flats, bungalows and two storey houses, sited both along the road frontage and in small cul de sac style roads.
6. The proposed development would introduce a modest detached bungalow into the vacant part of the site to the south. It would be sited relatively centrally, with a fully hipped roof and would be of traditional design. The proposed amenity space would surround the dwelling. Two parking spaces are proposed, with the parking for Orchard Court being repositioned to provide seven off street parking spaces for those residents and visitors.
7. The modest size and traditional design of the new dwelling would allow it to integrate appropriately with the surrounding development. It would be sited considerably further from the road than Orchard Court and No 15. However, its relationship to the flats at Mayfield Court to the east and the properties in Holland Avenue to the west, would prevent it from appearing isolated or overly intrusive.
8. It is acknowledged that the area of land where the proposed dwelling would be sited, has reverted to nature with a mix of trees and shrubs. It is not clear from the evidence that I have, whether this land historically formed part of the curtilage or garden of No 13. It is recognised that such undeveloped wild areas do provide some relief in urban environments. However, there are limited public views into the site, and it is clear from the evidence that the site has been cleared in the past. There is no suggestion that there are any protected species that would be disturbed as a result of this proposal.
9. I recognise that the loss of this vegetation would inevitably change the outlook from the side gardens of Mayfield Court, No 15 Barnhorn Road and the rear gardens in Meads Road. Nonetheless, as there are no Tree Preservation Orders, the site could feasibly be cleared of vegetation again, which would have the same effect.
10. For the above reasons, I conclude that the scale and location of the proposed bungalow, and the loss of the vegetation on the plot, would not cause harm to the character and appearance of the area, such that the appeal should be dismissed. The development would therefore be compliant with Policy OSS4 of the Rother Local Plan Core Strategy (2014), which requires that new development respects, and does not detract from, the character and appearance of the locality.

Living conditions

11. The adjacent detached bungalow at No 15 is sited within a long rear garden, that runs the length of the appeal site. The undeveloped nature of the appeal site means that the outlook from the rear garden of No 15, although fenced, is generally uninterrupted by other development or buildings.

12. The proposed bungalow would be sited towards the rear of the garden of No 15. It would be some 3.4 metres from the common boundary and a considerable distance from their dwelling. The longer side elevation would be parallel to the existing timber fence separating the properties.
13. The eaves of the proposed dwelling would be some 0.6 metres higher than the existing fence, with the roof sloping away from the boundary, due to its hipped design. The central siting of the bungalow would retain an appropriate gap between the new dwelling and their garden.
14. It is acknowledged that there would be a change in the outlook from the garden of No 15, as the side wall of the new dwelling would be visible over the fence. Nonetheless, in my judgement, the design and relationship between the proposal to the large garden of No 15, means that the new dwelling would not create an unduly strong sense of enclosure or be unacceptably overbearing.
15. I find that the proposed development would not unreasonably harm the living conditions of the occupiers of No 15 Barnhorn Road, in terms of any overbearing or enclosing impact. Consequently, it would not conflict with Policy OSS4 of the Rother Local Plan Core Strategy (2014) which seeks to ensure that new development does not unreasonably harm the living conditions of adjoining residents.

Ashdown Forest and Lewes Downs Special Areas of Conservation

16. Regulation 63(5) of the Conservation of Habitats and Species Regulations 2017 states, that the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of any European site. The Ashdown Forest and Lewes Downs are both designated as special areas of conservation (SAC).
17. Ashdown Forest SAC contains one of the largest single continuous blocks of lowland heath in south-east England, with the larger proportion being wet heath. The site supports important collections of beetles, dragonflies, damselflies, butterflies and birds of European importance.
18. Lewes Downs SAC comprises semi-natural dry grasslands and scrubland facies: on calcareous substrates (*Festuco Brometalia*) (important orchid sites); Dry grasslands and scrublands on chalk or limestone (important orchid sites).
19. Whilst the appeal site lies some distance from the Ashdown Forest and the Lewes Downs SACs. The proximity to these protected areas is such that it could, either alone or in combination with other projects, have a significant effect on those areas.
20. The proposal would not be directly connected with, or necessary for the management of either of the protected sites.
21. New residential development is likely to result in additional recreational pressure from visitors travelling to both Lewes Downs and Ashdown Forest. Any increased vehicle movements to and passing by the area could result in additional air pollution. Thus, it is possible that the proposed development either alone or in combination have a significant effect on these two areas. As a result, it is necessary for me to carry out a site specific assessment to determine the extent of those effects.

Appropriate Assessment

22. In summary the conservation objectives for Ashdown Forest and Lewes Downs are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features. This is to be achieved by maintaining or restoring the extent, structure and function, supporting the reliant processes of qualifying natural habitats; and maintaining the populations and distribution of qualifying species.
23. I have been provided with copies of, and have carefully considered, the Rother District Council Habitats Regulation Assessment (HRA) (May 2018), and the Habitat Regulations Assessment: Rother District Council Likely Significant Effects and Appropriate Assessment (September 2018). Both HRA assessments were undertaken by the Council, as the relevant competent authority, to examine whether their Core Strategy was likely to have any significant effects on European designated conservation sites, either alone or in combination with other projects and plans, in view of the European site's conservation objectives. I have also been provided with The Nomis dataset WU03EW travel to work data. This data was used in the Habitats Regulations Assessments – Interim approach to considering planning applications and emerging Plans, May 2018.
24. Further consultation with Natural England has confirmed that the use of travel to work data is an appropriate measurement. Using this methodology, it was determined that the appeal proposal for 1 net dwelling in Rother Middle-layer Super Output Area 009, would result in an Annual Average Daily Traffic movement of 0.007. Given this very low level of potential traffic movement impact, I am satisfied that the net increase of one dwelling, as proposed, would not result in any discernible effect on the air pollution levels of either the Ashdown Forest or Lewes Downs SACs.
25. I therefore conclude that, due to the distance of the appeal site from the Ashdown Forest and Lewis Downs, the proposed development, either alone or in combination, would not have any effect on the interest features of either of these protected sites. Mitigation measures are therefore not required, and the appeal is allowed.

Conditions

26. I have had regard to the conditions that have been suggested by the Council. In addition to the standard condition that limits the lifespan of the planning permission, I have specified the approved plans, including external materials, as this provides certainty.
27. In the interests of protecting the character and appearance of the area, conditions are required relating to details and subsequent implementation, of hard and soft landscaping and boundary treatments. In respect of highway safety and convenience, conditions are necessary to ensure adequate off street parking for the proposed dwelling and flats at Orchard Court; and appropriate access and manoeuvring space is provided prior to occupation of the dwelling. A condition to provide details of cycle parking, is required in the interests of protecting the environment.

28. A further condition has been suggested to control the construction of buildings in the curtilage of the new dwelling, under rights conveyed by the Town and Country (General Permitted Development) Order. Such conditions can only be imposed in exceptional circumstances and where there are clear reasons for imposing them. I have no evidence before me to demonstrate that such a condition would be necessary. I have however applied a condition to control future extensions to the new dwelling as this would allow the Council to assess the potential effect of any extension on living conditions of neighbouring residents and the character and appearance of the area.
29. I note that specific information provided by an interested party indicates that badgers may be present on the site. I have no detailed evidence before me to confirm whether there is a badger sett within the site or surrounding area, or whether the site is part of their foraging area. I also note that the site was cleared in 2015. However, this does not necessarily indicate that badgers would not be present on the site as a result. The Appellant does not dispute the imposition of an additional condition requiring an ecological survey to be carried out prior to commencement of the development. I consider that in view of the lack of evidence to conclude either way on this matter, exceptionally it would be appropriate to impose such a condition.

Other matters

30. My attention has been drawn to a number of concerns from local residents. Issues relating to property value, ownership and the right to use the existing access, are private matters and do not have any bearing on my decision. Although I appreciate the concern, matters of security also falls outside the scope of this appeal and therefore can have no bearing on my findings. Anxiety has also been expressed about possible disruption during the construction phase of the scheme. It is acknowledged that the construction process is likely to be disruptive. However, it would be short term and there is already other legislation available to deal with such matters. Accordingly, it would not be a reason to withhold permission or impose a controlling condition.

Conclusion

31. The assessments above have concluded that due to the distance of the proposed development to Ashdown Forest and Lewes Downs there would be no adverse effects on the integrity of either protected site.
32. I have considered all of the matters raised by the various parties, but for the above reasons, conclude that the proposal would respect the character and appearance of the area and would not harm the living conditions of existing neighbours. The appeal should therefore be allowed, and planning permission granted, subject to the conditions set out on the attached schedule.

Hilary Orr

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with following approved drawings:
 - No 5888/LBP (location Plan) dated August 2018;
 - No 58888/1/B (Proposed dwelling), dated Oct 2018, and including the specified external finishing materials; and
 - No 5888/2/B (Proposed site plan), dated Nov 2018
3. No development above slab? level shall take place until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
4. Prior to the commencement of development or site clearance works an ecological survey for the presence of badgers is to have been undertaken, by a suitably qualified person, and submitted to and approved by the local planning authority. If badgers are found to be present or foraging on the land, recommendations to specify any measures to be undertaken in mitigation. The mitigation measures shall be implemented fully in accordance with the recommendations of the survey and thereafter permanently retained as necessary.
5. The dwelling hereby permitted shall not be occupied until the boundary treatment has been erected in accordance with details (including a plan indicating the positions, design, height, materials and type of boundary treatment to be erected) which have been submitted to and approved by the Local Planning Authority. Once erected the approved boundary treatment shall be thereafter retained.
6. The dwelling hereby permitted shall not be occupied until parking and turning areas have been provided in accordance with drawing No 5888/2/B (proposed Site plan) dated Nov 2018, and the parking and turning areas shall thereafter be retained for that use and shall not be used other than for the parking and turning of vehicles.
7. The three cross-hatched spaces shown on the approved drawing No 5888/2/B (proposed Site Plan), dated Nov 2018, shall only be used by residents of and/or visitors to, the flats at Orchard Court, 13 Barnhorn Road, Bexhill TN39 4QB.

8. Prior to first occupation of the development hereby permitted, details of secure cycle parking facilities for the occupants of, and visitors to, the development shall have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.
9. No enlargement or external alterations to the dwelling hereby approved including to its roof, shall take place, whether or not permitted by virtue of Part 1 (Class A and B) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or in any other provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, without the prior permission of the Local Planning Authority.