



Appeal Decision

Site visit made on 17 September 2019

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 28 November 2019

Appeal Ref: APP/D3830/W/19/3229808

Oakhurst, Maypole Road, East Grinstead RH19 1HL

- 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 Roger Fine of Caledonian Property Venture LLP against the decision of Mid Sussex District Council.
 - The application Ref DM/18/3261, dated 6 August 2018, was refused by notice dated 29 November 2018.
 - The development proposed is described as the demolition of an existing residential building containing 2 units and the construction of a replacement 10 unit residential building with associated landscaping works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The revised National Planning Policy Framework (the Framework) was published in February 2019 and, as such, references to the Framework in this decision therefore reflect the revised Framework as published in February 2019.
3. A signed Section 106 Agreement was submitted during the appeal. I have considered this document in the determination of this appeal.

Main Issues

4. Since the application was determined and the appeal lodged, the Council has withdrawn its objections in relation to the effect of the proposed development on infrastructure. The Appellant has been made aware of this change to the reasons for refusal and has had the opportunity to comment. I see no reason to disagree with the findings of the Council and have therefore not considered this matter further.
5. Consequently, the main issues are:
 - The effect of the proposed development on the Ashdown Forest Special Protection Area (the SPA) and Special Area of Conservation (the SAC); and,
 - The effect of proposed development on the street scene within Maypole Road; and,

- Whether future occupiers of the proposed development would be likely to experience acceptable living conditions with particular reference to outlook, noise and disturbance; and,
- The effect of the proposed development on the living conditions of nearby residents.

Reasons

Ashdown Forest Special Protection Area and Special Area of Conservation

6. The evidence before me indicates that the appeal site is located within 7 kilometres of the SPA and the SAC and that, consequently, mitigation in relation to any harm caused to the SPA is required in accordance with the provisions of Policy DP21 of the Mid Sussex District Plan 2014 – 2031 (2008) (the Local Plan). The Officer's report confirms that there is no likelihood of a significant effect on the SAC and I have no evidence which would lead me to reach any other conclusion in this regard.
7. In this instance, the Council considers that the appropriate mitigation could be provided by way of a financial contribution in relation to the Strategic Access Management and Monitoring Strategy (the SAMM) and in relation to Suitable Alternative Natural Greenspaces (the SANG). The main parties have confirmed that they have entered into a planning obligation in relation to the contribution to be made for the SAMM.
8. In terms of the provision of the contribution towards the SANG, the Council has suggested the use of a condition. I must therefore consider any condition against the appropriate tests and the advice in the Planning Practice Guidance (the PPG). In essence the suggested condition would require a scheme of mitigation to be submitted.
9. As the suggested condition would be negatively worded, the advice in the PPG would mean it would require the entering into of an agreement provided it can be demonstrated that it meets the six tests relating to the use of conditions. However, the PPG notes that, it is only in exceptional circumstances where this approach may be appropriate such as in the case of more complex and strategically important development. The proposal before me, for the redevelopment of a single property, is not complex or strategically important and there are no exceptional circumstances. The fact the site is within the zone of influence of a Special Protection Area is a circumstance that will arise in many locations and in many Local Authority areas and is not an exceptional circumstance. On this basis I conclude that the use of the proposed condition, in the circumstances of this case, conflicts with the advice on the use of such conditions in the PPG.
10. There is therefore no acceptable mechanism before me that I can take account of to secure the necessary and appropriate mitigation related to the SANG and I have concluded that it would not be appropriate to secure such through a condition. The obligation for the SAMM contribution, by itself, is not sufficient to ensure that the development would have no likely significant effect on the SPA.
11. Whilst I acknowledge that the Council withdrew its objection in relation to this main issue, the SPA, is a European protected site and I am bound to consider this issue by reason of the statutory protection afforded to the SPA under the Conservation and Habitats and Species Regulations (2017).

12. For the reasons given above, in the absence of suitable mitigation, I conclude that the proposed development would be likely to have an adverse effect upon the SPA. Consequently, it would conflict with Policy DP17 of the Local Plan and Policy EG16 of the East Grinstead Neighbourhood Plan (2016) (the Neighbourhood Plan) which requires that contributions are made towards the SAMM and the SANG to protect valued landscapes for their visual, historical and biodiversity qualities. Furthermore, the proposed development would not accord with those parts of the Framework which concern the conservation and enhancement of the natural environment and it would also be contrary to the Conservation and Habitats and Species Regulations (2017).

Street Scene

13. The appeal site is located on the western side of Maypole Road and comprises a well-proportioned detached house with substantial two storey outbuilding to the rear, set within spacious grounds and which provides generous separation distances between the neighbouring properties and the appeal building. A high brick wall separates the building from its neighbour to the north-east, with a close boarded fence forming the boundary with the neighbouring property to the southwest. To the rear of the appeal site is a disused railway cutting. Whilst the house appeared to have been extended and altered from its original form, some detailing and architectural features remain.
14. The overall height, design and style of buildings located on both sides of Maypole Road can be properly described as mixed, with more modern buildings interspersed amongst older dwellings such as the appeal property which exhibit an Edwardian character. Here, whilst there is some consistency in terms of the wide separation distances between respective buildings, variety is the rule, with the exteriors of commercial and residential buildings being finished in a mixture of materials.
15. It is acknowledged that the proposal would have a lower overall height than the existing buildings which occupy the site. The proposed development would introduce a building which would have a greater footprint than that of the existing main building, in terms of its width and depth and there is concern that the proposed building would be out of scale when compared to other buildings which are sited on the north-west side of Maypole Road.
16. In this respect, the evidence before me indicates that, whilst the proposed development would have a greater overall width than the current structure to a small degree, the generous separation distances between the neighbouring properties and the appeal proposal would remain. Consequently, the defining characteristic in the street scene of spacious gaps between the properties, would be preserved.
17. Furthermore, as noted above there is a substantial two storey outbuilding located in very close proximity to the rear of the main building. The evidence and plans before me indicate that, when taken together, the overall depth of built form at the appeal site extends to within approximately three metres of the rear boundary of the property. However, the proposal would introduce a building which would be set back further from the rear boundary by a significant degree and which would reflect the building line of the rear elevation of the neighbouring dwelling at Linden.

18. The reasons for refusal further state that the proposal would lack architectural integrity and, in combination with the above, would therefore be out of keeping with the character of the surrounding area and the street scene within Maypole Road. In this regard, whilst I acknowledge that the appeal scheme would be somewhat different in design than the existing buildings, the proposed development would not, in my view, look out of place within the street scene which, as noted above, exhibits considerable variety of design and scale. The proposal would have a lower overall height than the existing structures at the site, with the proposed roof form being reflective of that of the neighbouring dwelling at Linden while being consistent with the roof ridge line height of the neighbouring property at Lyndhurst.
19. In summary of the above, I conclude that the design of the proposal would be in keeping with the varied character and appearance of the surrounding area and, due to the preservation of the separation distances between the respective properties, I conclude there would be no harm to the street scene within Maypole Road.
20. Therefore, the proposal would comply with Policy DP26 of the Local Plan and would comply with Policies EG3 and EG5 of the Neighbourhood Plan which, amongst other things, requires that development be of high quality that reflects and is in keeping with the character, scale, height and materials of surrounding development and in terms of the surrounding area. Furthermore, the proposal would accord with paragraphs 124 and 127 of the Framework which seek to ensure the creation of high quality buildings which are sympathetic to local character.

Living Conditions of Future Occupiers

21. The proposed development would introduce a parking area at basement level. Entrance to this parking area would be to the side of the proposed building, with the driveway sloping gently down from the level of the road as it passes along the northeastern elevation of the appeal property. A window of a kitchen/dining area and a bedroom window at unit 2 and kitchen/dining room windows in unit 3, would look out towards and over the driveway which provides access to the basement area.
22. It is maintained by the Council that the potential future occupants of units two and three would experience unacceptable living conditions by reason of their proximity to the driveway and by reason of the noise and disturbance, including light spill, from vehicles of future residents as they enter the driveway and basement parking area.
23. However, the evidence before me indicates that a majority of the potentially affected rooms are dual aspect, the proposal would only generate a small number of vehicle trips and that, by reason of the sloped nature of the driveway as it enters the basement, vehicles would not be stationary outside of the potentially affected units for any significant period of time. Consequently, in my view, future occupants of these units would not experience noise or disturbance associated with passengers entering or exiting vehicles, nor would living conditions be harmed due to light spill from cars as they are parked or leave the property and enter the highway.
24. The Council further contends that by incorporating obscured glazing to windows of kitchen/dining areas of unit 7 and unit 8, which look out over the side

elevations of the proposed building at first floor level, the level of outlook from these rooms would be poor and would harm the living conditions of future residents. However, it is noted that the inclusion of obscured glazing to these windows would appropriately limit potential overlooking from these rooms into neighbouring properties, with the plans which accompanied the application showing that these rooms are dual aspect, providing Juliet balconies which look out over the external amenity area at the rear of the proposed building.

25. Consequently, in my view and by reason of the dual aspect nature of these rooms, I find that the proposal would not have a significant harmful effect on the living conditions of future residents with reference to outlook.
26. In summary of the above, I have found that the living conditions of occupants of units located at ground floor level would not be harmed in respect of noise and disturbance arising from vehicles and their movements within the appeal property. Furthermore, I conclude that there are sufficient and appropriate levels of outlook for residents of first floor units and, consequently, I find that there would be no harm to the living conditions of future residents of the proposal.
27. Therefore, the appeal scheme would comply with Policies DP26 of the Local Plan and Policy EG3 of the Neighbourhood Plan which, together, seek to ensure that development is of high quality design which does not harm the living conditions of future occupants. Furthermore, the proposal would accord with paragraphs 124 and 127 of the Framework with regards to high quality design which provides high standards of amenity for future users.

Living Conditions of Nearby Residents

28. Amongst other things, Policy DP26 of the Local Plan and Policy EG3 of the Neighbourhood Plan seeks to ensure that development does not result in harm to the living conditions of residents at neighbouring dwellings. In this regard, the Council maintains that the bulk and scale of the proposed building would have an overbearing effect on the residents of the neighbouring property known as Lyndhurst and, further, that the proposed positioning of windows on the side elevation of the property would result in overlooking and loss of privacy in respect of Lyndhurst.
29. Whilst it is acknowledged that the proposed building would have a wider footprint than that of the existing building at the site, there would be a substantial level of separation distance between the appeal building and the high brick wall which forms the boundary with Lyndhurst. Furthermore, the overall height of the building is significantly lower than that of the existing structure with the overall depth of built form at the site also being significantly reduced as described above.
30. In my view, there would be a significant reduction in the bulk of built form at the site, with the rear of the site being opened up to provide external amenity space and which would remove any overbearing effect currently experienced due to the presence of the existing substantial two storey outbuilding. The opening up of the rear area of the site would be likely to improve the outlook from the garden of Lyndhurst. Consequently, this, in combination with the reductions in the scale and bulk of the built form at the site and the separation distances between the relevant properties, leads me to conclude that the

proposal would not have a harmful overbearing impact on residents of Lyndhurst.

31. The northeast elevation of the proposed building would incorporate four windows at ground floor level, with a further three windows being located at first floor level. As noted above, the boundary between the appeal property and Lyndhurst comprises a high brick wall and, consequently, there would be no opportunity for overlooking from the windows at ground floor level into the neighbouring property.
32. In respect of the windows at first floor level, as noted above, the glazing of windows to the proposed kitchen/dining area of unit 7 would be obscured thereby removing opportunities to overlook the neighbouring property from these windows. Furthermore, whilst the window which serves a bedroom at the proposed unit 6 would not incorporate obscured glazing, the separation distance between the proposed building and its neighbour would be sufficient to ensure that there was no significant degree of overlooking from any of these windows on this elevation of the proposed building. Consequently, in my view it would not be necessary to require that any of these windows be fixed shut.
33. In summary of this main issue, I conclude that the proposed development would represent an improvement in terms of impact on living conditions when compared to the existing circumstances at the appeal site. By reason of the separation distance between the relevant properties and due to the presence of the high boundary wall which separates the properties, the proposal would not be harmful to the living conditions of residents of Lyndhurst with respect to overlooking or loss of privacy. Furthermore, I find that the scale and bulk of the proposal would not have an overbearing impact on neighbouring residents. Consequently, the proposed development would comply with those parts of Policies DP26 of the Local Plan and Policy EG3 of the Neighbourhood Plan which seek to protect the living conditions of nearby and adjoining residents.
34. With regards to compliance with paragraph 8 of the Framework, the Council Officer's report confirms that the proposal is situated in a sustainable location close to the town centre which provides access to public transport. Furthermore, the Officer's report confirms that the proposal is considered to be acceptable in sustainability terms and there is no evidence which leads me to any other conclusion in this regard. Consequently, I find that, in combination with the above reasons, the proposed development would accord with paragraphs 8, 124 and 127 of the Framework.

Other Matters

35. Interested parties have raised additional objections to the proposal regarding the effect of the appeal scheme on parking, congestion, highway safety, drainage and land stability. These are important matters and I have considered all the evidence before me. However, given my findings in relation to the main issue concerning the effect of the proposal on the SPA, these are not matters which have been critical to my overall decision.

Conclusions

36. Given the sensitivity of the SPA and the protection afforded to the conservation of the natural environment within the Framework, I give significant weight to the harm of the potential adverse effects on the SPA, arising from the proposal.

The fact I have concluded that the appeal scheme would not result in harm to the street scene, character and appearance of the surrounding area or the living conditions of adjoining occupiers and potential future occupants of the proposed development, does not outweigh the harm to the SPA.

37. For the reasons given above, I conclude that the appeal should be dismissed.

A Spencer-Peet

INSPECTOR