



Appeal Decision

Site visit made on 26 November 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Appeal Ref: APP/U1430/W/19/3235597

Olivers Printers, Eastwood Road, Bexhill TN39 3PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Laurence Hulkes of Park Lane Group against the decision of Rother District Council.
 - The application Ref RR/2019/454/P, dated 8 March 2019, was refused by notice dated 28 June 2019.
 - The application sought planning permission for demolition of existing building and erection of 13 dwellings comprising 11 x 2 bedroom houses and 2 x 3 bedroom houses together with parking and access without complying with conditions attached to planning permission Ref RR/2018/2025/P, dated 31 October 2018.
 - The conditions in dispute are Nos 2, 14, 15 and 17 which state: (2) The development hereby permitted shall be carried out in accordance with the following approved plans and details: Drawing no. GEG/1002/LBP dated March 2018; Drawing no. GEG/1002/1 revision E dated September 2018; Drawing no. GEG/1002/2 revision B dated September 2018; Drawing no. GEG/1002/3 revision A dated July 2018; Drawing no. GEG/1002/4 revision A dated July 2018; Drawing no. GEG/1002/5 dated June 2018; and Drawing no. 06780-jmla-TP-00-DR-D-2201-S4-PO2 dated July 2018; (14) No part of the development shall be occupied until the car parking has been constructed and provided in accordance with the approved plan, drawing no. GEG/1002/1 Revision E dated September 2018. The areas shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles; (15) No part of the development shall be occupied until cycle parking spaces, in the form of sheds or cycle stores within each of the rear gardens of the dwellings hereby permitted, have been provided in accordance with the approved plan, drawing no. GEG/1002/2 revision B dated September 2018. The sheds or cycle stores shall thereafter be retained for that use and shall not be used other than for the parking of cycles; (17) No part of the development shall be occupied until the vehicle turning space has been constructed within the site in accordance with the approved plan, drawing no. GEG/1002/1 Revision E dated September 2018. This space shall thereafter be retained at all times for this use and shall not be used for parking vehicles.
 - The reasons given for the conditions are: (2) For the avoidance of doubt and in the interests of proper planning, as advised in Planning Practice Guidance Paragraph: 022 Reference ID: 21a-022-20140306; (14) To provide adequate car-parking space for the development in accordance with Policy TR4 (i) of the Rother Local Plan Core Strategy; (15) To provide alternative travel options to the use of the car in accordance with Policy TR3 of the Rother Local Plan Core Strategy; (17) In the interests of road safety in accordance with Policy CO6 (ii) of the Rother Local Plan Core Strategy.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing building and erection of 13 dwellings comprising 11 x 2 bedroom houses and 2 x 3 bedroom houses together with parking and access, in accordance with the application Ref RR/2019/454/P, dated 8 March 2019, without complying with conditions Nos 2, 14, 15 and 17 set out in planning permission RR/2018/2025/P, granted on 31 October 2018 by Rother District Council, but otherwise subject to the conditions set out in the schedule attached at the end of this decision.

Procedural Matters

2. An application for costs was made by Mr Laurence Hulkes of Park Lane Group against Rother District Council. This application is the subject of a separate Decision.
3. Planning permission RR/2018/2052/P (the original permission) was granted on 31 October 2018. Thereafter a further planning permission, reference RR/2019/139/P (the second permission), was granted on 21 March 2019, subject to much the same conditions. The second permission allowed addition of a further dwelling (Plot 14) to side of Plots 12 and 13, with related minor changes in layout. Though the description of the development permitted presents the scheme as a 'revision' of the original permission, the permission in fact specifically relates to Plots 12-14, and the remainder of the development is not fully detailed. The original and second permissions are indeed separate planning permissions, and this is underlined by the fact that the site areas differ. Both permissions are currently being implemented.
4. The application subject of this appeal seeks planning permission for variation of conditions 2, 14, 15 and 17 imposed on the original permission, which are equivalent to conditions 2, 9, 10 and 11 imposed on the second permission. Though some of the plans submitted show 13 dwellings, the key plans show 14. This probably reflects the fact that the application subject to this appeal was submitted during the period in which the second permission was being determined by the Council, but refused some time after the second permission had been granted.
5. Whilst it is clear that the appeal scheme can only be properly considered as seeking to vary the original permission, the extent of overlap between the two permissions would in practice enable the proposed changes to ground levels and boundaries to be implemented across the site, and thus also within those areas subject of the second permission. In this context it is necessary to take the existence of the terrace incorporating Plots 12, 13 and 14 into account in assessing the effect of the proposed changes, despite the fact that this terrace does not feature within the original permission. I have therefore done so in my reasons below, and note that this also appears to have been the Council's approach.
6. The development is now at an advanced stage. Whilst this has assisted in my evaluation of the proposal, I have based my decision on the plans submitted.

Main Issues

7. The main issues are the effects of carrying out the development without complying with the disputed conditions upon:

- the living conditions of occupants of adjoining dwellings, with specific regard to privacy and outlook; and
- the living conditions of future occupants of the development, and occupants of adjoining dwellings with regard to pollution.

Reasons

Privacy and outlook

8. The proposed increase in ground levels would bring the back gardens more closely in line with the patio areas immediately to the rear of the dwellings. Both the dwellings and patio areas are elevated above the level of surrounding dwellings. Given the shallow depth of gardens on the north and north west side of the development, this gives rise to some overlooking of the equally shallow gardens of adjoining dwellings. Little overlooking however occurs on the south side of the development, where the gardens of both the approved dwellings, and those they adjoin, are longer.
9. Raised garden levels would provide elevated vantage points much closer to the boundaries of adjoining dwellings. The Council has raised specific concern in relation to Plots 1-6. Of these, the ends of the gardens of Plots 2-5 would be separated from the boundaries of neighbouring gardens by both a walkway and bin storage areas. The backs of the gardens themselves would be enclosed by 1.5m fences. Adults of average height would be able to see over these fences, as too the 1.8m fences enclosing the bin storage areas beyond, given the difference in levels. The 1.8m fences further beyond this would however be topped by 60cm trellising. The effect of this would be to filter any long distance views possible from within the gardens, and this would be made more effective through use of dense trellising. On account of this, and the distances involved, unacceptable loss of privacy for adjacent neighbours would be unlikely to arise
10. The gardens of Plots 1 and 6 would be separated from adjacent boundaries by walkways only. In each case the gardens would again be enclosed by 1.5m fences, however this time with 30cm trellising to the top. Adults of average height would be fully screened, but nonetheless able to see through the trellising. In each case however, clear views through the trellising would only be possible if standing directly adjacent to it and peering through the gaps. Again, if dense trellising was used, these gaps would be small, and the views thus limited. As such, no unacceptable loss of privacy for adjacent neighbours would be unlikely to arise.
11. To the rear of Plots 7-14, the increased height of the boundaries would provide better screening of views from patio areas to the rear of dwellings than would exist if the scheme was to be implemented as previously approved.. Insofar as concern has however been raised in relation to the west side of Plot 14, which would directly adjoin the neighbouring garden, use of dense trellising above the 1.5m wall would again reduce any potential to see through it. The raised level of the boundary would again also provide better screening of views from the patio area than would otherwise exist. As such, whilst no unacceptable loss of privacy for occupants of neighbouring dwellings would be likely to arise, some improvement might actually occur.
12. In each case there is a high likelihood that trellising would be used to support climbing plants. This is indeed its normal function. This would help to further improve the screening of boundaries.

13. Though the gardens of the new dwellings are somewhat compact, the potential exists for future occupants to position trampolines or other play equipment within them. Children occasionally making use of such equipment might snatch glimpses into adjacent gardens. This would however be the case whether or not the levels of the gardens were raised. In neither regard is it likely that this would cause a degree of intrusion likely to be considered harmful.
14. The Council also raises concern in relation to perceived overlooking. In my view however, it is unlikely that such a perception would exist. This is because, subject to specification, inter-visibility through the trellising would be limited, and the height of the trellising plus the solid sections of boundary below would be greater than the height of most adults. The boundaries would thus be perceived to provide effective screening.
15. Boundary heights would rise in line with the levels of the gardens. This would mean that in some places the boundaries were up to 2.4m higher than adjacent ground levels. Whilst higher than previously approved, this would nonetheless still be considerably below the height of the factory building which was previously located on the site, which was, in addition, a bulky structure. In most locations the heightened boundaries would not otherwise directly adjoin neighbouring gardens, and where this would occur at the southern end of the site, the boundaries would adjoin gardens whose length would minimise any overbearing effect. As such, no unacceptable harm to the outlook of occupants of neighbouring dwellings would occur.
16. For the reasons outlined above I conclude that carrying out the development without complying with the disputed conditions would not have an unacceptable effect on the living conditions of occupants of adjoining dwellings in relation to privacy or outlook. The scheme would therefore comply with Policy OSS4(ii) of the Rother Local Plan Core Strategy Adopted 29 September 2014 (the CS), which requires that development does not unreasonably harm the amenities of adjoining properties.

Pollution

17. A factory was once located on the site, and the ground is contaminated. A scheme addressing contamination has previously been approved by the Council through clearance of a condition imposed on the original permission. Compliance with this scheme was required by condition attached to the second permission.
18. As summarised within the officer report, contaminated within garden areas material would be encapsulated using membranes and a layer crushed stone. The soil above would be clean imported material. Diagrams submitted with the appeal have confirmed that weepholes within the retaining walls would be positioned above this layer. As such no scope should exist for them to leak contaminated material into adjacent areas.
19. For the reasons outlined above I conclude that carrying out the development without complying with the disputed conditions would not have an unacceptable effect on the living conditions of future occupants of the development, and occupants of adjoining dwellings with regard to pollution. The scheme therefore complies with and OSS4(iv) of the CS which requires that all development should take full account of previous use of the site; and emerging Policy DEN 7 of the Development and Site Allocations Local Plan

October 2018, whose preparation has reached and advanced stage and thus attracts significant weight, which states that development will only be permitted where it is demonstrated that there will be no significant adverse effect as a result of contaminated land. The decision notice also cites Policy OSS3(viii) of the CS. However, as this policy deals with the location of development, and given that this is a matter which is already fixed, Policy OSS3(viii) is not relevant.

Conditions

20. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission unless they have already been discharged. In this regard however I consider that the conditions imposed on the second permission provide a better starting point, as these were drafted to take account of progress made in relation to the original permission up to that point. Their use would additionally reduce scope for tension between the conditions I impose, and those imposed on the second permission. I have therefore imposed these conditions below, making modifications to improve precision, and updating plan references. If any of these conditions have in fact already been cleared, this will be a matter which can be resolved between the parties.
21. As the development has already been commenced there is no need for a condition setting a time limit for commencement. A condition identifying the approved plans is however necessary for the sake of certainty. In this regard I note that the plans referenced by each of the parties are a mix of those approved in relation to both the original and second permissions, and those submitted in relation to the application subject of the appeal. I have therefore identified all the plans I consider to be currently relevant.
22. Conditions 2 and 4 require the development to be carried out in accordance with details which have previously agreed with the Council in relation to construction management and contamination. This is necessary in the interests of health, safety and environmental protection.
23. Condition 3 is necessary to restrict use of piling methods in order to minimise risks which may arise in relation to pollution of groundwater.
24. Condition 5 is necessary to fix the materials to be used for external faces of dwellings. This is necessary in order to ensure that the development has a satisfactory appearance in relation to its setting.
25. Conditions 6, 7 and 8 are required to ensure provision of car parking, cycle storage and turning space within the development, thus helping to ensure that the development will cater for the parking demand it will generate, and that motor vehicles will be able to safely manoeuvre.
26. Condition 9 is required in order to ensure the obscure glazing of windows from which views may be possible into neighbouring gardens, thus helping to safeguard privacy.
27. Conditions 10 and 11 are required in order to ensure that the site drainage scheme is implemented, and that on-going management arrangements are put in place. I have combined a requirement to provide evidence of implementation within Condition 10, which was previously subject of a separate condition.

28. Condition 12 is required in order to secure implementation of hard and soft landscaping works including boundary treatments. This is in the interests of ensuring that the scheme has a satisfactory appearance relative to its setting, is useable, and provides for the privacy of both future occupants and neighbours. In this regard I have incorporated within the condition a requirement to agree the type and design of trellising to be employed along boundaries.
29. Condition 13 is necessary to secure the delivery traffic measures and works to kerb lines in the interest of highways safety.

Conclusion

30. For the reasons set out above I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans, unless modified in compliance with the conditions below: 06780-jmla-TP-00-DR-D-2207-S4-P02; 06780-jmla-TP-00-DR-D-2208-S4-P02; 06780-jmla-TP-00-DR-D-2240-S4-P05 (as further clarified by supplementary diagrams dated 19 August 2019 submitted in relation to appeal APP/U1430/W/19/3235597); 06780-jmla-TP-00-DR-D-2241-S4-P02; 06780-jmla-TP-00-DR-D-2202-S4-P02; PLG/1512/18 Rev C; 5998/VC/LBP; GEG/1002/3 Rev A; GEG/1002/4 Rev A; 5998/510; 5998/200; 5998/210.
- 2) The development hereby permitted shall be carried out in accordance with the Construction Management Plan (revision 1) dated November 2018 approved by letter dated 21st January 2019 under discharge of conditions application reference RR/2018/2803/DC.
- 3) Piling or other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
- 4) The development shall be completed in accordance with the Combined Geotechnical and Ground Contamination Risk Assessment carried out by Ashdown Site Investigation Limited (Rev 1) dated 5th November 2018, unless otherwise agreed in writing with the local planning authority.
- 5) The materials to be used in the construction of the external surfaces of the dwellings hereby permitted shall consist of the following, unless otherwise agreed in writing with the local planning authority: Bricks: Ibstock Leicester Red Stock; Roof tiles: Forticrete slates (grey); Cladding: Hardieplank in colours artic white, light mist and iron grey; Render: natural white.
- 6) Prior to the first occupation of the dwellings hereby permitted the car parking spaces shown on approved plan PLG/1512/18 Rev C shall be constructed and made available for the parking of motor vehicles. The car parking spaces shall

- thereafter be retained and kept available for the parking of motor vehicles at all times.
- 7) Prior to the first occupation of the dwellings hereby permitted, cycle stores shall be provided in accordance with approved plan PLG/1512/18 Rev C. The stores shall thereafter be retained and kept available for the parking of cycles at all times.
 - 8) Prior to the first occupation of the dwellings hereby permitted, the vehicle turning space shown on approved plan PLG/1512/18 Rev C shall be constructed and made available for the turning of motor vehicles. The turning space shall thereafter be retained and kept available for the turning of motor vehicles at all times.
 - 9) At the time of construction and prior to the first occupation of the dwellings hereby permitted and labelled as Plots 6 and 7 on the approved plans, the windows in the first floor side elevations shall be obscure glazed to a level equivalent to scale 5 on the Pilkington Glass scale, and shall thereafter be retained as such.
 - 10) Prior to the first occupation of the dwellings hereby permitted, the surface water drainage scheme shown on plan 06780-jmla-TP-00-DR-D-2202-S4-P02 shall be fully implemented, and evidence of implementation shall be submitted to and agreed in writing by the local planning authority.
 - 11) Prior to the first occupation of the dwellings hereby permitted details of:
 - a) whom will be responsible for managing the surface water drainage scheme; and
 - b) evidence that these arrangements will remain in place throughout the lifetime of the development,shall be submitted to and approved in writing by the local planning authority
 - 12) Prior to the first occupation of the dwellings hereby permitted, the hard and soft landscaping schemes, including boundary treatments shown on plans PLG/1512/18 Rev C, 06780-jmla-TP-00-DR-D-2207-S4-P02, and 06780-jmla-TP-00-DR-D-2208-S4-P02, shall be fully implemented, with specific details of the type and design of trellising to be employed along the plot boundaries having first been submitted to and approved in writing by the local planning authority. If within a period of five years from the date of the planting any tree or plant is removed, uprooted, destroyed or dies, they shall be replaced with a tree or plant of the same species and size, unless the local planning authority gives its written consent to any variation.
 - 13) Prior to the first occupation of the development hereby permitted the traffic management measures and improvements to the kerb lines against the boundaries of 14 and 16 Eastwood Road shall be completed in accordance with the details approved by letter dated 21st January 2019 under reference RR/2018/2997/DC.