
Appeal Decision

Site visit made on 26 November 2019

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd January 2020

Appeal Ref: APP/T1410/W/19/3236485

8 Chiswick Place, Eastbourne, BN21 4NH

- 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 Orest Gjika against the decision of Eastbourne Borough Council.
 - The application Ref: PC/190437 dated 29 May 2019, was refused by notice dated 9 August 2019.
 - The development proposed is the demolition of existing single storey garage and construction of two-storey house within the existing site boundary walls.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing single storey garage and construction of two-storey house within the existing site boundary walls at 8 Chiswick Place, Eastbourne, BN21 4NH in accordance with the terms of the application, Ref: PC/190437 dated 29 May 2019, subject to the conditions as set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr Orest Gjika against Eastbourne Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area, with particular regard to the location of the appeal site within the Eastbourne Town Centre and Seafront Conservation Area.

Reasons

4. The appeal site is located to the rear of 8 Chiswick Place (No. 8), between that property and 27 Wish Road (No. 27), and fronts Blackwater Road. The site currently comprises a single storey single garage and an area of hardstanding with access off Blackwater Road. The site is located within the Eastbourne Town Centre and Seafront Conservation Area (the Conservation Area), at a point where the predominantly Victorian villas of the seafront, including Chiswick Place, give way to the more varied mix of properties of a range of ages on Blackwater Road, which are outside the Conservation Area.
5. In accordance with the duty imposed by section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 I am required to pay special attention to the desirability of preserving or enhancing the character or

appearance of the conservation area. Moreover, paragraph 193 of the National Planning Policy Framework (the Framework) states that when considering the impact of new development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

6. The appellant refers to the draft Conservation Area Appraisal (the dCAA) for the Conservation Area. This explains that the designated Area was built as a planned new town in the mid-to-late 19th century around a core of 18th century buildings. The special architectural and historic interest of the Conservation Area lies principally in the buildings and the planned layout. The west side of Chiswick Place comprises 19th century 4-storey, rendered villas, the rear elevations of which are clearly visible from Blackwater Road.
7. From the evidence before me and my observations during my site visit, the appeal site once formed part of the rear garden of No. 8 but is now separated from it by a wooden fence. The form and external finish of the garage on the appeal site are at odds with those of No. 8. Notwithstanding the Council's contention that the garage appears ancillary to No. 8, it appears to me to have no clear relationship to No. 8 other than being adjacent to the end of No. 8's rear garden. The garage has a closer physical and visual relationship with No. 27 being immediately to the east of that property with the gap between filled by a single-storey extension to No. 27. The garage and the associated hardstanding do not make a positive contribution to the Conservation Area.
8. The proposed development has evolved as the result of the appellant seeking to address the reasons for refusal of two previous applications to demolish the garage, move the rear garden boundary within site and erect a 2-storey 2-bedroom detached dwelling on this site. In particular, the appeal site in the proposal before me is restricted to the garage and area of hardstanding whereas, from the evidence before me, the previous proposals incorporated part of the garden to No. 8. The proposed dwelling would not project forward of the side elevation of No. 8 and the fenestration has been designed to limit the potential for overlooking.
9. The proposed dwelling would be of a contemporary design deliberately not copying the architectural style of either No. 8 or No. 27 which I consider to be an honest approach. Given the variety of architectural styles along Blackwater Road, I do not consider that it would be a discordant feature in the street scene. Although the design has given rise to some objections by third parties, I consider the design to be acceptable in this context, a view I note is shared by the Council.
10. The proposed dwelling would be set approximately 0.7 m below the existing ground level and would be lower than the ridgeline of No. 27. Whilst clearly visible, it would not therefore be unduly prominent or dominant in the street scene, being seen in the context of taller buildings to either side and not projecting forward of the side elevation of No. 8. The proposed development would not interrupt or detract from the view along Blackwater Road to the South Downs, which I note the dCAA identifies as important, given its modest size and positioning relative to existing development on Blackwater Road.

11. Although relatively modest in size, the proposed dwelling would have a significantly greater bulk than the existing garage and would thus have a different relationship with No. 8. However, I have noted above that the existing garage does not relate closely in form or appearance to No. 8 and the appeal site appears as a distinct site in its own right with a road frontage rather than as part of No. 8's rear garden. I am not persuaded therefore that it is necessary for any building on the site to appear as being ancillary to No. 8 for it to be acceptable.
12. The site forms part of the gap between the rear elevations of No. 8 and No. 27 and the proposed dwelling, having a greater bulk than the existing garage, would reduce the extent of this gap. From certain angles it would partially block the view of the rear elevations of Chiswick Place. Whilst the space to the rear of Chiswick Place and the view of the rear of these properties make a positive contribution to both the character and appearance of the Conservation Area, from the evidence before me, neither are identified as making a particular contribution to the character or appearance of the Conservation Area in the dCAA. Furthermore, a sufficient gap would remain between No 8 and the proposed dwelling to allow an appreciation of both the open space to the rear of Chiswick Place and of the rear elevations of those properties from Blackwater Road.
13. The plot size of the proposed development would be substantially smaller than those of other properties on Blackwater Road, which are predominantly larger buildings on larger plots which provide space around the buildings. However, the proposed development would have open space to the front and rear and, in my judgement, the size of the plot relative to the size of the proposed dwelling would be acceptable. Given the variety of sizes and forms of existing properties along Blackwater Road, I do not consider that the proposed development would be materially harmful to the character and appearance of the road due either to its plot size or to the extent of built development proposed relative to the size of the plot.
14. I therefore conclude that the proposed development would not be harmful to and thus would preserve the character and appearance of the Conservation Area. Consequently, I find no conflict in this respect with Policies D10 and D10A of the Eastbourne Core Strategy Local Plan (2013) (ECSLP) or saved Policies UHT1, UHT4 and UHT15 of the Eastbourne Borough Local Plan (2001-2011) (EBLP) which seek to ensure good design that respects local character, protect and enhance, where applicable, significant heritage assets and protect visual amenity. I also conclude that the development would not conflict with Policy D5 of the ECSLP, which supports the delivery of housing or saved Policy HO6 of the EBLP which supports well-designed infill development. I also find no conflict in this respect with paragraph 193 of the Framework regarding designated heritage assets.

Other Matters

15. The side elevation of Cornfield Terrace is located on the other side of Blackwater Road to the appeal site. The Terrace is listed as Grade II. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to

- have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
16. The view from Blackwater Road allows an appreciation of the side elevation of Cornfield Terrace. This view would not be interrupted by the proposed development. Given the modest size of the proposed development relative to the side elevation of the Terrace the development would not visually compete with or otherwise distract from Cornfield Terrace. I therefore conclude that the proposed development would not be harmful to the setting of the listed building and would thus preserve that setting. In this respect, the proposed development would not conflict with paragraph 193 of the Framework as regards development affecting the significance of a designated heritage asset.
 17. The Council acknowledges that it is unable to demonstrate a 5-year supply of deliverable housing sites as required by paragraph 73 of the Framework. From the evidence before me, as at 1 October 2018, the Council could only demonstrate 1.57 years' supply. Therefore, in accordance with footnote 7 of the Framework, the most important policies for determining the application are out-of-date and clause d) of paragraph 11 of the Framework is engaged.
 18. Under this clause permission should be granted unless either the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
 19. In this case, I have concluded above that the proposed development would not harm either the Conservation Area or the setting of Cornfield Terrace and would thus not conflict with the policy for the protection of designated heritage assets as set out in paragraph 193 of the Framework. Accordingly, the application of these policies does not provide a clear reason for refusing the development. I have not identified any adverse impacts of granting permission as regards other policies of the Framework that would significantly and demonstrably outweigh the benefits of an additional dwelling. Consequently, under paragraph 11 d), permission should be granted.
 20. I note that objections were raised to the proposed development by a number of third parties, with common themes being the design of the proposed dwelling and the effects on the Conservation Area, air quality and circulation, the living conditions of the occupiers of neighbouring and nearby properties and car parking. I consider the design of the proposed development to be acceptable in itself and I have considered the effect on the Conservation Area above.
 21. As regards air quality, I have little evidence of the causes of air pollution in Eastbourne and I am not persuaded that the proposed development would significantly add to this pollution, either by itself or in combination with the permitted flats at St Andrew's URC Church. I have no evidence that it would disrupt the flow of air in nearby gardens such as to be harmful to the enjoyment of these gardens by their owners.
 22. The only windows in the south elevation facing the rear gardens of the properties on Chiswick Place and No 27 are at ground floor level and at high level above head height. Accordingly, the development would not result in significant additional overlooking and loss of privacy for the occupiers of

- neighbouring and nearby dwellings and their gardens. Although the high-level window might lead to some perception of being overlooked, this would principally be limited to the ends of the gardens of the properties neighbouring No. 8. I have no evidence that the windows in the rear elevation of the proposed dwelling would allow harmful levels of additional light, smells or noise to emanate from the proposed dwelling given the existing residential nature of the area, street lighting and traffic on Blackwater Road and Chiswick Place.
23. Given the extent of the openness to the rear of Chiswick Place, the proposed development would not result in an unacceptable loss of light to neighbouring and nearby dwellings or their gardens. Whilst the development would block some views from neighbouring and nearby properties, the planning system does not operate to protect private interests such as private views.
24. The proposed development would result in the loss of off-road parking spaces. However, from the evidence before me, the garage and hardstanding are currently used by a third party not associated with any of the surrounding properties. Accordingly, the loss of the appeal site would not create a demand for additional parking in the vicinity. Even if it did, I have no persuasive evidence that this would be harmful to highway safety or the living conditions of the occupiers of surrounding dwellings. The appeal site is within walking and cycling distance of a range of facilities and services in the town centre and the proposals include a cycle storage facility. There is thus the opportunity for the proposed development to be car free.
25. In response to the other concerns raised, as the site currently accommodates a garage and hardstanding, the proposed development would not result in the loss of any garden area for No. 8 or any other property. I have no evidence that the appeal site is of particular archaeological interest. The attachment of the proposed dwelling to No. 27 and potential damage to the existing walls would be private matters between the parties involved and are outside the scope of this appeal. The granting of permission for this development would not set a precedent for further development in the rear gardens of 2 – 7 Chiswick Place as the site before me is previously-developed land with a road frontage, which differentiates it from these rear gardens.

Conditions

26. I have based the conditions attached to this permission on those suggested by the Council with some amendment in the interests of consistency. Planning permission is granted subject to the standard 3-year time limit condition. It is also necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty.
27. A Construction Management Plan is necessary in the interests of highway safety and the living conditions of the occupiers of nearby dwellings. It is necessary for this to be a pre-commencement condition to ensure that the Plan covers demolition and site clearance. Conditions regarding materials and details of windows and doors are necessary in the interests of the character and appearance of the proposed development, of the area and of the Conservation Area. Conditions regarding surface water drainage are necessary to reduce the risk of flooding and pollution.
28. Condition 8 is necessary to safeguard the living conditions of the occupiers of neighbouring properties. Conditions 9 and 10 are necessary to safeguard the

character and appearance of the area and the living conditions of the occupiers of neighbouring properties with the restriction of permitted development rights for the extension, enlargement or alteration of the proposed dwelling being justified by the restricted size of the site and proximity to neighbouring dwellings.

Conclusion

29. In reaching my decision, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area and had special regard to the desirability of preserving the setting of the listed Cornfield Terrace. I have concluded that the proposed development would preserve both and so not conflict with the relevant policies of the ECSP, EBLP or the Framework. There are no material considerations that indicate that a decision should be made other than in accordance with the development plan.
30. For the reasons given above, and having had regard to the other matters raised, the appeal is allowed and planning permission is granted subject to conditions.

Martin Small

INSPECTOR

Schedule of Conditions

- 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 approved drawings: 002 266 Rev A Plan and street elevation as existing, 003 266 Rev C Plans Elevations and Sections as Proposed and 004 266 Rev A Typical detailed elevation and section as proposed.
- 3) No development shall take place, including any ground works or works of demolition, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to in full throughout the entire construction period. The CMP shall provide details as appropriate but not be restricted to the following matters:
 - the anticipated number, frequency and types of vehicles used during construction;
 - the method of access and egress and routing of vehicles during construction;
 - the parking of vehicles by site operatives and visitors;
 - the loading and unloading of plant, materials and waste;
 - the times of any deliveries related to the development, which should avoid peak travel times;
 - the storage of plant and materials used in construction of the development;
 - the erection and maintenance of any security hoarding;
 - the provision and utilisation of wheel washing facilities or any other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders);
 - dust and/or any pollutants;
 - measures to manage flood risk during construction; and
 - details of public engagement both prior to and during construction works.

Prior to submission of the CMP, the applicant shall first make contact with East Sussex County Council Highways to ensure their agreement with the submitted details.
- 4) Prior to their use on site, specifications and samples of all external facing materials to be used for the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out and maintained in accordance with the approved details.
- 5) Notwithstanding any indication to these matters on the approved plans, no above ground build shall take place until large-scale elevation and

cross-section drawings at a scale no smaller than 1:10 of all windows and doors showing their arrangement, section sizes, profiles and arrangement within the reveals of the building, shall be submitted to and approved in writing by the Local Planning Authority and shall thereafter be carried out and maintained in accordance with the approved details.

- 6) No above ground build shall take place until details of a surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The surface water drainage scheme should be supported by an assessment of the site's potential for disposing of surface water by means of a sustainable drainage system and be carried out or supervised by an accredited person. An accredited person shall be someone who is an Incorporated (IEng) or Chartered (CEng) Civil Engineer with the Institute of Civil Engineers (ICE) or Chartered Institute of Water and Environmental Management (CIWEM). The implementation of the surface water drainage scheme shall thereafter be carried out in accordance with the approved details prior to the occupation of the dwelling hereby approved.

Prior to submission, the applicant shall first make contact with East Sussex County Council SuDS Team and Southern Water to ensure their agreement with the details.

- 7) Following completion of the works and prior to first occupation of the development hereby permitted, a statement by an accredited person, who is an Incorporated (IEng) or Chartered (CEng) Civil Engineer with the Institute of Civil Engineers (ICE) or Chartered Institute of Water and Environmental Management (CIWEM), confirming that the surface water drainage scheme approved under condition 6 has been fully implemented shall be submitted to and approved in writing by the Local Planning Authority.
- 8) All finished floor levels within the development, hereby approved, shall be no less than 1.7m from the sill level of the dormer roof window in the southern/rear elevation of the building. Should any finished floor level be less than 1.7m from the sill level, details regarding obscure glazing and opening arrangements of the window shall be submitted to and approved in writing by the Local Planning Authority prior to first use of that floor space and thereafter maintained as such.
- 9) Prior to the first occupation of the development hereby permitted, refuse and recycling facilities shall be provided in accordance with the approved plans and thereafter maintained as such.
- 10) 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 extension, enlargement or other alteration of the dwelling/house hereby permitted as provided for within Schedule 2, Part 1, Classes A, B or C shall be undertaken.

End of Schedule