



Appeal Decision

Site visit made on 17 December 2019

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th January 2020

Appeal Ref: APP/D3830/W/19/3236125

Kings House, 13 Cantelupe Road, East Grinstead, RH19 3BE

- 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 Mark Bright of Lodgecrest Investments Limited against the decision of Mid Sussex District Council.
 - The application Ref: DM/19/1664 dated 10 April 2019, was refused by notice dated 23 July 2019.
 - The development proposed is construction of a detached building comprising 4 one-bedroom apartments.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The first reason for refusal in the Council's decision notice alleges harm to the living conditions of the occupiers of existing neighbouring residential development, although it does not specify those properties. I have had regard to the contents of the Council's delegated report which identifies Kings House and Nos. 11c & 11d High Street. I have used this to inform my main issue below, although it is not possible to identify the numbers of those flats in Kings House which might be affected.
3. The Council's third reason for refusal concerns the effect of the proposed development upon the living conditions of the future occupiers of the proposed new flats, with particular reference to internal living space. The appellant has submitted plan/drawing no. 01215/PL10 Revision C, which removes internal wardrobes from the bedrooms and moves the bedroom door by approximately 400mm. The appellant states that they would be content with either the previous scheme upon which the Council's decision was based, or Revision C, being approved.
4. I have applied the 'Wheatcroft Principles'¹ and find that due to the minor internal nature of the changes, the acceptance of the amended scheme would not deprive those who should have been consulted on the changed development, the opportunity of such consultation. I have therefore considered the appeal on the basis of the two alternative amended layouts.

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

Main Issues

5. The main issues are the effect of the proposed development upon:
- the living conditions of existing occupiers of Kings House, 11c & 11d High Street and the future occupants of the proposed new flats, with particular reference to privacy and outlook;
 - the living conditions for the future occupiers of the proposed new flats, with particular reference to noise, general disturbance and light pollution;
 - the living conditions for the future occupiers of the proposed new flats, with particular reference to internal living space; and,
 - the habitat and biodiversity at the Ashdown Forest Special Protection Area and Special Area of Conservation.

Reasons

Privacy and outlook

6. The appeal site comprises a parcel of land to the rear of Kings House, which is an extensive 4-storey building understood to comprise 38 apartments, and an undercroft leading to the parking area and refuse storage area to the rear. The immediate surrounds of the proposed development are the car park of Kings House to the north and east. To the south and west it is surrounded by an access road and parking areas associated with properties on Cantelupe Road, High Street and London Road, a short distance beyond which are the rear of those buildings.
7. The proposed new 4-flat building would measure approximately 13.5m (l) x 10.8m (d) x 5.2m to the eaves and 7.3m to the ridge. The window arrangement would result in a largely blank elevation to the rear, save for one window on each of the northern flats. To the front would be a window in each flat serving the main living areas and another to respective bathrooms. The proposals would result in back to back distances with surrounding dwellings of approximately 12.2m to the four storey Kings House (to the front of the new building) and 14.6m to the rear between the two storey 11c and 11d High Street.
8. Notwithstanding the broadly similar height of the buildings, the proximity, width, height and massing would result in a considerable expanse of mainly blank elevation opposite 11d High Street such that it would be significantly harmful to the outlook. The windows of 11c primarily face onto the service road, therefore the relationship with 11c would result in only a modest amount of harm to the outlook, and the arrangement would not be unacceptable in this regard.
9. To the front of the proposed development one window would serve each of the kitchen sections of the respective main living spaces, but the outlook from those windows would be visible from most of that living space. The extensive height and width and the close proximity of Kings House would be significantly overbearing and result in a poor quality outlook from the front facing kitchen living area windows, which would be significantly harmful to the living conditions of the future occupiers of the proposed development. The proximity, width, height and massing of the proposed building would also result

- in significant harm to the living conditions of the occupiers of ground floor and first floor apartment windows nearest the development on Kings House by reason of loss of outlook.
10. Whilst I note there appears to be no minimum distances in development plan policies, the absence of such a standard is not reflective of an absence of harm, and I have considered the proposals on their own merits. The appellant suggests obscure glazing the kitchen window, however replacing a poor outlook from this part of the living area with no outlook would result in a greater level of harm. Additionally, I am not convinced that the size, location and orientation of the remaining windows would provide an adequate level and quality of outlook in their own right from the kitchen and eastern part of the main living area.
 11. The direct views and proximity between Kings House and the proposed development would result in harm to the living conditions of the current occupiers of the ground and first floor of Kings House, and the proposed development, as a consequence of a loss of and lack of privacy respectively. Although the new windows would directly serve the kitchen space, the visibility out of them would be frequently apparent from most of the living area. I note the comments of the respective parties in respect of some retro-fitted obscure glazing/film to some of the windows on Kings House, and it is not clear if this is authorised and which rooms these windows serve. However, even if it were authorised, many windows did not appear to have this and there would be harm to and from the remaining non-obscured windows.
 12. In referring to a loss of privacy the Council's reason for refusal includes reference to Nos. 11c and 11d. However, the alignment of the rear facing windows in the proposed new flats would be such that there would be no loss of privacy for Nos. 11c and 11d and no harm in this regard.
 13. The appellant has provided a plan highlighting the relationship between other existing nearby flats and those under construction, suggesting the limited distances are characteristic of this area. The distances shown are approximately 4.3m – 15m between 3 and 4-storey buildings. However, it is understood that some of these developments have come about as a result of prior notifications for the conversion of office buildings, and not through full planning applications. Furthermore, the presence of other potentially unacceptable developments doesn't justify allowing further harmful proposals. I have considered the proposed development on its own merits.
 14. For the reasons set out above I find harm having regard to Policy DP26 of the Mid Sussex District Plan (2018) (the MSDP), which requires proposals do not cause significant harm to the amenities of nearby and future occupiers in respect of various living conditions, including privacy and outlook. As the most recently adopted document this takes precedence over Policy EG3 of the East Grinstead Neighbourhood Plan (2016) (the EGNP) which requires development does not harm adjoining amenity. However, DP26 sets a higher threshold of harm, therefore, conflict with DP26 also results in conflict with EG3. The development would also conflict with paragraph 127(f) of the National Planning Policy Framework (2019) (the Framework) which requires that planning decisions should create places that promote health and well-being with a high standard of amenity.

Noise, disturbance and light pollution

15. The proposals include a low level wall and pillars separated by railings to enclose the narrow outdoor amenity space that would provide a small degree of separation from the building and its surroundings. The appeal site is abutted to the north and the east by part of the access drive to and some of the 26 parking spaces for use by the residents of Kings House. The northern flats would face onto the access road, the undercroft and the parking area.
16. Based upon the number of spaces in the vicinity of the appeal site there are likely to be a considerable number of unrestricted vehicular and pedestrian comings and goings to the spaces by residents. This would include vehicles driving or manoeuvring in low gears and the opening and closing of car doors, which could begin early in the morning lasting late into the evening at a very close proximity to the flats. The episodes of noise and disturbance is likely to be frequent and unrestricted, such that it would result in significantly harmful living conditions suffered by the future occupiers of the ground floor flats of the proposed development.
17. The appellant's willingness for the imposition of a suitable noise condition is noted. However, a condition is not before me and the suggested standard is not clear. It is not explicit whether any given standard would be sufficient to mitigate the nature of the harm from the characteristics of the noise, whether the standard would be achievable in this development, and/or whether this would affect the design of development or standard of accommodation before me. Furthermore, even if it were possible to impose such a condition, it would not mitigate the other harm I have found.
18. Outside of daylight hours and therefore particularly during darker months, the front windows of the ground floor flats would suffer from frequent episodes of direct glare from car headlights at close proximity. This level and frequency of light pollution would be likely to result in significantly harmful living conditions suffered by the future occupiers of the ground floor flats of the proposed development. The appellant has referred me to mitigation provided by the wall, pillars and railings, however the location and gaps in the wall and railings would not adequately mitigate the harm. I have significant concerns that a landscaping scheme could not provide adequate mitigation with reference to its height, thickness and noise attenuation properties, to mitigate the harm from headlights and noise to a sufficient degree.
19. I note the reference to north facing windows nearby on Cantelupe Road. However, that example does not appear to have the main windows directly facing the access drive, and the number of parking spaces served and restrictions (if any) are not clear. Furthermore, the presence of other potentially unacceptable developments doesn't justify allowing further harmful proposals. Residents of a town centre location might be more accepting of some disturbance and light pollution. However, even allowing for this, based upon the evidence before me I am not persuaded the scheme before me would provide satisfactory living conditions.
20. For the reasons set out above the proposed development would be contrary to Policy DP26 of the MSDP which requires that proposals do not cause significant harm to the amenities of nearby and future occupiers in respect of (amongst other things) noise and light pollution. For the same reasons there would be conflict with Policy EG3 of the EGNP. There would also be conflict with

paragraph 127(f) of the Framework, the relevant provisions of which I have already referred to above.

Internal space

21. Policy DP27 of the MSDP requires all new residential development meets the Technical Housing Standards – National Described Space Standards (2015) (the NDSS). Policy DP26 requires development does not cause significant harm to the amenities of future occupiers.
22. The scheme was submitted on the basis of each flat being a 1 person dwelling providing approximate internal space of 49 square metres (sqm) and storage of 1.1 sqm, although the Council's report suggests two of the units would be approximately 47sqm. In the scheme assessed by the Council, the floorspace of the bedroom was over 11.5sqm, resulting in it being deemed suitable to provide two bed spaces by the NDSS. A two person 1-bedroom flat should provide a minimum of 50 sqm of gross internal floor space and 1.5 sqm of built in storage, so the development would not meet this requirement.
23. The appellant has submitted plan/drawing no. 01215/PL10 Revision C, which removes wardrobes from the bedrooms and moves the internal bedroom door by approximately 400mm, reducing floor space in the bedroom to below 11.5 sqm. The appellant states that they would be content with the development being determined on the basis of the scheme subject of the Council's decision or Revision C. There is no dispute that the Revision C scheme would meet the NDSS and the Council removes its objection on this basis.
24. In practice moving the bedroom door and removing the wardrobe is likely to make little difference if any, as to whether these market flats would be occupied by one or two persons in the future. The scheme considered by the Council did not meet the NDSS and whilst there would be a conflict with Policy DP27 of MSDP, the conflict is very minor and does not result in harm. Therefore, I find that there would not be harm from either scheme, to the living conditions of future occupiers with regard to internal floorspace with reference to Policy DP26 of the MSDP. However, this does not alleviate the other harm I have found above.

The Ashdown Forest

25. The appeal site is within the 7km zone of influence of the Ashdown Forest where harm from the proposed development would result from the increased recreational disturbance and from atmospheric pollution. The Council's delegated report sets out the reasoned justification for seeking a planning obligation to provide a contribution towards Strategic Access Management and Monitoring (SAMM), and the imposition of a planning condition to secure a scheme of mitigation to make provision for a Suitable Alternative Natural Greenspace (SANG) or a contribution towards the SANG managed by the District Council. Natural England has been consulted upon the proposal and raises no objection subject to suitable mitigation being secured.
26. The appellant has stated that a completed planning obligation dated 12 July 2019 for £5,616 has been submitted to the Council for the SAMM. The appellant has also confirmed they would be willing to accept the imposition of a pre-commencement planning condition to provide the contribution towards the SANG. The Council has confirmed that the planning obligation has been

completed and subject to the imposition of a suitable planning condition in relation to the SANG, it would withdraw its objection in respect of the impact upon the Ashdown Forest SPA and SAC.

27. As the competent authority in this matter I have not been provided with a copy of the completed planning obligation. Therefore, I cannot be satisfied that the suggested mitigation measures within it would be sufficient to mitigate the harm to the Ashdown Forest. Furthermore, on the evidence before me, I am not persuaded that a negatively worded condition would be an appropriate mechanism for securing the required habitats mitigation, including because it has not been shown that exceptional circumstances exist in this case having regard to the Planning Practice Guidance². Taking a precautionary approach, I must therefore conclude that the proposal would have a likely significant adverse effect on the integrity of the Ashdown Forest, contrary to Policy DP17 of the MSDP and Policy EG16 of the EGNP.
28. In-light of my findings on the main issues above, it is not necessary to look at this matter in further detail including by seeking the missing obligation in this case, given the proposal is unacceptable for other reasons. As such, planning permission will not be forthcoming via this appeal and the designated habitats at the Ashdown Forest will therefore not be affected by my decision.

Other Matters

29. The East Grinstead Conservation Area (EGCA) lies approximately 5m to the south of the site taking in some of the yard/parking areas and the rear of a number of nearby buildings to the south and west which face what appear to be the main historic thoroughfares. The Council has concluded that the proposed development would preserve the setting of the EGCA, and the development is compliant with Policy GP35 of the MSDP and the Framework. The visibility of the proposed development from the road frontages within the EGCA would be negligible, and the height and roof form of the building is such that it would not be notably higher than, dominate surrounding buildings within the EGCA, or appear incongruous. I conclude the development would not affect the character or appearance or the significance of the EGCA as a development that would be within its setting, and the development is compliant with Policy GP35 of the MSDP.
30. Due to the sustainable and accessible nature of the location of the development, the Council considers the proposal would be compliant with Policy DP21 of the MSDP and it raises no objection to the lack of new additional car parking provision for the development. The Design & Access Statement suggests an upgrade to the carriageway surface of the service road and the formation of a pedestrian footpath. These are not on the plans before me but would only attract a small amount of weight in favour of the proposals. The Council concludes the proposals would integrate various energy, materials and water efficiency measures to comply with Policies DP21 and DP39 of the MSDP and the proposals would be compliant with Policy DP41 of the MSDP in respect of drainage. I see no reason to disagree with the Council's conclusions in these regards.
31. The proposed development would be of a scale, form, height, materials and coverage reflecting the surrounding area, and would be generally acceptable in

² Paragraph 010 Reference ID: 21a-010-20190723 Revision date: 23/07/2019

respect of its character and appearance to comply with the relevant provisions of Policy DP26 of the MSDP and Policy EG3 of the EGNP. However, this does not outweigh the harm I have found above.

Planning Balance

32. The provision of four dwellings would provide new residential accommodation in an accessible location, result in a small temporary economic benefit during construction, and once occupied a small sustained benefit to the local economy. It is proposed to re-surface a service road and provide a footpath to the side and rear of the development. These benefits attract modest weight in favour of the scheme. There would be a benefit from supporting strong, vibrant and healthy communities to which I attribute modest weight. As the proposal would not be harmful to the character and appearance of the area, the EGCA, provide adequate access, drainage, internal living space, and energy efficiency measures these are a neutral factor in the balance. Even if I were to have assumed the proposed mitigation for the Ashdown Forest SPA and SAC were adequate, this would also be a neutral factor in the balance.
33. On the other hand, I have found that the proposal would result in significantly harmful living conditions for the future occupiers by reason of noise and disturbance and light pollution, and for occupiers of existing properties and future occupiers by reason of privacy and outlook. These are matters that attract significant weight against the scheme.

Conclusion

34. The proposed development would result in significant harm to the living conditions of future occupiers and the occupants of some existing neighbouring properties. There are no considerations advanced which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR