
Appeal Decision

Site visit made on 21 January 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 3rd April 2020.

Appeal Ref: APP/T1410/W/19/3232470

St. Lukes Church, land between 9 & 11 Elm Grove, Hampden Park, Eastbourne BN22 9NN

- 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 Dominic Ashford (Ashford Construction Ltd.) against the decision of Eastbourne Borough Council.
 - The application Ref PC/190096, dated 22 February 2019, was refused by notice dated 18 April 2019.
 - The application sought planning permission for demolition of existing church and erection of a terrace of four 4 bedroom houses without complying with conditions attached to planning permission Ref EB/2006/0752(FP), dated 2 July 2007.
 - The conditions in dispute are No 5 and the unnumbered plans condition which state:
(5) The wall fronting Elm Grove shall be, except for the creation of the pedestrian entrances as shown on the approved drawings, retained during and after the construction of the development.
(Un-numbered 'Plans' condition) The development hereby permitted shall be carried out in accordance with the following approved drawings:- 4166 01 Rev A – Floor Plans; 4166 02 Rev A – Elevations and Street scene.
 - The reasons given for the conditions are:
(5) These conditions reflect those suggested by the Council as necessary to ensure the satisfactory appearance of the development, to protect the amenity of the neighbours and to encourage the use of non-motorised travel.
(Un-numbered 'Plans' condition) For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing church and erection of a terrace of four 4 bedroom houses at St. Lukes Church, land between 9 & 11 Elm Grove, Hampden Park, Eastbourne BN22 9NN in accordance with the application Ref PC/190096 dated 22 February 2019 without compliance with condition number 5 previously imposed on planning permission Ref EB/2006/0752(FP) dated 2 July 2007 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 4166 01 Rev A – Floor Plans; 4166 02 Rev A – Elevations and Street scene.
 - 2) The bicycle stores provided for each dwelling shall be retained and kept available for the parking of bicycles at all times.

Preliminary Matters

2. Planning permission for the original development was granted at appeal¹. Subsequently, the Council approved a non-material amendment (NMA) to the design of the scheme in November 2018². In March 2019 a further NMA was approved to add a 'plans' condition to the original permission³. No number was given to the new condition, and the plans listed were those set out in the planning permission (granted at appeal), not those approved in the 2018 NMA.
3. The application sought to remove condition 5 which provides for retention of the front boundary wall, in order that the appellant can demolish it. It is clear from the application form that the application also sought minor material amendments to the approved scheme to form parking spaces and associated vehicular accesses at the front of the site, albeit that as the 'plans' condition was un-numbered it was not listed on the application form. It is clear that the Council determined the application on that basis and that is the basis on which I have determined the appeal, as reflected in the heading above. At the time of my site visit the front wall remained in place and no parking or access had been formed.
4. Changes to the design of the dwellings were also included with the application, however the Council confirms that they are the same as those approved under the 2018 NMA. I saw on site that the dwellings had been completed and appeared to accord with the plans submitted. As these design amendments have previously been approved and there is no dispute between the parties on this matter, I have not considered them further in this appeal.
5. As part of the appeal the appellant has submitted proposed elevation drawing 290300 08E, however revision 08D is listed on the Council's decision notice. The difference between them is that 08E adds brick piers to the front of the site. The Council has subsequently confirmed that 08E was submitted as part of the application and was one of the drawings before it when it made its decision, and that reference to the earlier drawing was an error on the decision notice. Although the appellant has requested that I determine the appeal on the basis of 08D, that drawing is no longer consistent with the other site layout drawings which all show the brick piers. I have therefore considered this appeal on the basis of version 08E to ensure consistency with other drawings and in so doing, no party would be prejudiced by this approach.

Main Issues

6. The Council refused to permit the removal of condition 5 or permit revised drawings on the grounds of highway safety. The previous Inspector's reasons for imposing conditions are not specific to each condition, but nevertheless did not include highway safety. Therefore, it is necessary for me to consider whether the disputed conditions remain necessary for any of the previous Inspector's reasons, notwithstanding that they are not matters in dispute between the parties.
7. Therefore, the main issues are the effect of the formation of car parking and a vehicular access on highway safety and whether Condition 5 is necessary.

¹ APP/T1410/A/07/2033878

² Council Ref. 181033

³ Council Ref. 190163

Reasons

Highway safety

8. The proposal would provide 4 car parking spaces, each 5 metres long. The Council has referred me to standing advice from East Sussex County Council⁴, which states the minimum dimensions of a usable car parking space are 2.5m wide by 5.0m long and that, 'An additional 0.5m will need to be added to either or both dimensions where the space is adjacent to a wall or fence (to allow doors to be opened)'.
9. While the appellant suggests that the advice only requires an additional 0.5m in width, it is evident that it also requires additional length where adjacent to a wall, as in this case. No explanation is given for this in the limited quote from the text that I have been provided with. However, vehicles reversed into a parking space would need space to open boots or rear doors for unloading and as such would not park right up against a wall. Even when driving into a space in a forward gear, drivers may still be reluctant to park right up to a wall. Therefore, it is reasonable to require additional length for spaces adjacent to a wall.
10. The dimensions given in the standing advice exceed those in the Government's Manual for Streets (MfS) and the minimum dimensions of a driveway when applying to East Sussex County Council for the installation of a vehicular crossing. The reasons for this exceedance are not given in the limited quote provided, however the evidence before me is that the document forms the advice of the highway authority for all developments of 5 houses or less in East Sussex. Consequently, it is a consideration which I have taken into account, as it is clear that it reflects local circumstances and the advice given by the highway authority.
11. The proposal would fail to meet the minimum standards for the size of car parking spaces. Consequently, there is potential that cars parked in the spaces would overhang the footway. While the road might not be heavily used, any overhanging vehicle may make it difficult for pedestrians to pass, particularly those pushing prams, using wheelchairs or mobility aids, and may lead them to move onto the carriageway. As such, it would introduce hazards to highway safety and conflict with the requirements of paragraph 110 of the National Planning Policy Framework (the Framework) to minimise the scope for conflict between vehicles and pedestrians.
12. Although the likelihood and extent of cars overhanging the footway would be strongly influenced by their size and the way they were parked, it is not reasonable to assume that residents of the dwellings would all have small cars and park consistently well. Nor is there any mechanism that could reasonably impose or enforce such requirements.
13. At my site visit I observed that on both sides of the street a number of cars parked in existing frontage parking were overhanging the footway. I do not have any information about the size of those spaces and therefore cannot directly compare them with the appeal proposal. Nonetheless, those cars

⁴ Referred to by the Council as 'ESCC Highways Minor Application Guidance document'

restricted the width of the footway and therefore, there were already hazards to pedestrian safety present.

14. While Elm Grove is not a through route for traffic, it connects to a walking and cycling path and together they link numerous local facilities and services, including Hampden Park train station, medical centres and supermarkets. Therefore, Elm Grove is likely to be well used by pedestrians. In this context, the introduction of additional hazards would result in a harmful and unacceptable impact on highway safety.
15. Accordingly, the proposed parking arrangements would highway safety and fail to minimise the scope for conflict between pedestrians and vehicles. I have not been directed by either party to any development plan policies in respect of highway safety, however the proposal would conflict with the provisions of the Framework.

Whether Condition 5 is necessary

16. Elm Grove has a mixed character, with some walls, hedges and railings and many open frontages with parking. The wall along the front boundary of the appeal site is quite substantial in size and depth and has a significantly different appearance to the much smaller and lower walls found in places along Elm Grove. It is not therefore typical of the surrounding area. Its removal and replacement by frontage parking would be consistent with the appearance of many other properties in the street and as such, would not harm the character and appearance of the area. Consequently, I find no conflict with Saved Policy UHT5 of the Eastbourne Borough Plan 2001-2011 (EBP) which seeks to retain boundary walls, but only where they are typical of the surrounding area.
17. The retention of the wall would have the effect of preventing the formation of off-street parking, and thereby naturally encouraging occupiers of the dwellings to use sustainable modes of transport, as promoted by Policy D8 of the Eastbourne Core Strategy Local Plan 2013 (CSLP) and the Framework. Nonetheless, removing the wall in itself would not encourage use of the private car or discourage sustainable travel. Therefore, I find no conflict with national or local policies on this basis.
18. The wall encloses the front of the appeal site and does not continue onto neighbouring properties. Therefore, its removal would not in itself impact on the living conditions of neighbours.
19. Accordingly, in itself the removal of the wall would not conflict with any of the reasons given by the previous Inspector when imposing conditions on the original permission. I note that the Council did not have an objection on this ground and that the retention of the wall was not requested by the Council or referred to by the Inspector when determining the appeal. I therefore find that condition 5 is not necessary, so would not meet the Framework tests and Planning Practice Guidance (PPG) on use of conditions. Therefore, permission can be granted without it.

Other matters

20. If the front boundary wall were to be removed this would leave the frontage open. Furthermore, the formation, laying out and construction of a means of access and, once the dwellings are occupied, the provision of a hard surface for parking may be permitted development in terms of planning legislation, which

represents a potential fall-back position. However, in the absence of any evidence to the contrary, separate consent would be required for a vehicular crossing under s184 of the Highways Act 1980. The appellant has provided a copy of the application form for applying for such a crossing which asks a number of questions.

21. Notwithstanding the appellant's answers, the plans before me would not provide the pedestrian visibility splays required because of the proposed brick piers at each access. There is also a lamp column within 1.5m of the proposed crossing. The form advises that in such circumstances further advice should be sought from the highway authority before continuing with an application.
22. Furthermore, the information provided with the form states that enough space is needed to park a vehicle wholly within the property perpendicular to the road. While it refers to a minimum area of 4.8m by 2.4m being required, it is unclear whether the highway authority would also apply the larger space requirements in its standing advice document when considering an application for a crossing.
23. It is therefore not certain whether the highway authority would allow a crossing with the parking layout before me. Consequently, I am unable to conclude on the available evidence that there would be a reasonable prospect of the fall-back position being implemented. I therefore afford this little weight.
24. The proposal would involve moving the nearby lamp column, which currently restricts the width of the footway. This would be a small benefit of the scheme by making it easier for footway users to pass by. However, it would be set against the potential of 4 cars overhanging the footway along a significant length of that footway. The removal of on-street parking would create a place for vehicles to pass each other but there are several other such opportunities on what is a relatively short stretch of road, therefore this would be of minimal benefit to other road users.
25. The proposal would provide private benefits to residents of the dwellings by reducing the distance from the parking to front doors, making it easier to install electric charging points. The appellant contends that the parking spaces could be used for deliveries however they may well already be occupied and as such this would be of minimal benefit. Given the modest scale of the proposal, these benefits to residents would be limited.
26. The proposal would also provide one additional parking space compared to the existing situation. There is no substantive evidence before me of a need for more parking in the area however, and in this highly accessible location I can afford this only limited weight. Overall, I find that the limited benefits of the scheme would not outweigh the public interests of minimising conflict between pedestrians and vehicles and resisting unacceptable impacts on highway safety.

Conditions

27. The guidance in the PPG 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. As the planning permission has been implemented and the dwellings have been completed and occupied, the implementation and working hours conditions previously imposed are no longer necessary. A condition

specifying the approved plans is however necessary for the avoidance of doubt and in the interests of certainty.

28. The main parties have confirmed that details of materials and cycle stores were submitted, approved and implemented, therefore these aspects of the previous conditions are no longer necessary. It remains necessary to require the cycle stores to be retained however, in order to encourage the use of sustainable modes of transport.

Conclusion

29. The removal of the front boundary wall would not harm the character and appearance of the area, discourage use of non-motorised travel or harm the living conditions of neighbours and would not conflict with national or local policies on these matters. Condition 5 of the original permission is therefore not necessary and, in this respect, the appeal is allowed.
30. The proposed amendments to the development to form car parking and vehicular access in the configuration proposed would however result in an unacceptable impact on highway safety and conflict with the Framework. This harm would not be outweighed by any other consideration, including the benefits of the proposal. Therefore, I conclude that in this respect the appeal should not succeed. For the avoidance of doubt therefore, the plans condition remains unchanged.

L McKay

INSPECTOR