



Appeal Decision

Site visit made on 4 February 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 15th April 2020.

Appeal Ref: APP/D3830/W/19/3239677

106 Marlborough Drive, Burgess Hill, West Sussex RH15 0EU

- 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 Bob Deveson against the decision of Mid Sussex District Council.
 - The application Ref DM/19/1365, dated 5 April 2019, was refused by notice dated 5 July 2019.
 - The development proposed is a dwelling with parking, to replace existing double garage and hardstanding.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant has submitted an amended elevation drawing during the appeal, Ref. B.044.17.05 Rev B. The only amendment is to correct the labelling of the east and west elevations, with no changes to the scheme proposed. As such, there will be no prejudice to any party by my taking this drawing into account.

Main Issues

3. The main issues are the effect of the proposal on: the character and appearance of the area, including trees; the living conditions of the occupiers of neighbouring properties in respect of outlook, privacy, noise and disturbance; and the living conditions of future occupiers of the proposed dwelling in respect of outside space.

Reasons

Character and appearance

4. Although the area around the appeal site has a mix of dwelling types and styles, there is nevertheless a strong linear character with dwellings fronting onto relatively wide roads, interspersed with a small number of cul-de-sacs. Generously sized front and rear gardens give the area a spacious, green character. Although there are domestic outbuildings in gardens, these are generally small and as such do not diminish this character. The large, relatively open garden of the appeal site can be appreciated from the road through the existing gates, with the space between No 106 and No 41 Inholmes Park Drive allowing for views through to the line of trees beyond. As such, the site contributes positively to the character of the area.
5. Only part of the existing garage is visible from Marlborough Drive due to the tall hedge along the curving boundary. It is not therefore prominent in the street scene

and does not undermine the sense of spaciousness in the rear garden, nor is it particularly unattractive. As such, while its removal would free up this part of the site for alternative development, it would not result in a material benefit to the character and appearance of the area.

6. The proposed dwelling would be significantly taller and wider than the garage and set forward of it. Therefore, the hedge would provide only limited screening, and much of the front elevation and the roof of the proposed dwelling would be visible from the road via the existing driveway. In addition, given its height, parts of the rear roof and dormers would be seen from Ravenswood Road in gaps between the bungalows.
7. Although the design attempts to create the appearance of a single storey building, the proposed dwelling would nevertheless be significantly larger than other outbuildings in the area, including that of No 41. It would however still be considerably smaller than No 106, which is itself smaller than other neighbouring dwellings. The scale of the proposal, the large porch and front roof lights would clearly identify it as a dwelling, therefore it would have a materially different appearance to the existing garage and other nearby outbuildings. Its visual impact would be exacerbated by the proposed slate roof, which is not a material used in the vicinity.
8. Consequently, the layout, scale and form of the proposed dwelling would sit uncomfortably somewhere inbetween those of surrounding dwellings and outbuildings, and therefore would not be compatible with the predominant scale of housing in the area. Accordingly, it would be a prominent and incongruous feature in this backland position and would noticeably and harmfully alter the positive contribution that the spacious rear garden makes to the character of the area.
9. The fence proposed between No 106 and the proposed dwelling would physically and visually separate the two and create a hard edge to the site. Although some planting is proposed, there would not be space for enough to adequately screen or soften the fence. While the resulting plot sizes would be comparable with others in the vicinity, nevertheless the subdivision would be visible from the street scene and as such, the fence would further diminish the spacious, green character of the area. Although a fence could be erected as permitted development, it would not have a comparable impact to the appeal proposal as a whole. There would also appear to be no need for such a fence without the subdivision of the plot proposed. As such, the fact that part of the proposal might be permitted development can be afforded very little weight.
10. In addition, the proposed replacement parking for No 106 would significantly reduce the area of lawn at the front of the dwelling, eroding the open and green character of this part of the site and its contribution to the street scene.
11. The line of trees along the railway track provide a green backdrop to the dwellings along Marlborough Drive and neighbouring streets and as such, makes a significant, positive contribution to the character of the area. The trees follow the angled boundary of the appeal site, from north of the proposed dwelling to the eastern edge of the site. Although they would be close to the rear garden, they are trackside and therefore outside the control of future occupiers of the proposed dwelling. Consequently, irrespective of any potential impact on living conditions, which I return to below, the trees are unlikely to be removed or significantly reduced as a result of the proposal. Thus, there would be no conflict with DP Policy DP37 which seeks to protect trees that contribute to the character of the area. This would not however overcome the harmful impacts of the proposed dwelling and associated works.

12. Accordingly, the proposal would result in significant harm to the character and appearance of the area. It would conflict with Policy DP26 of the Mid Sussex District Plan 2014-2031 (DP) which, amongst other things, seeks to achieve high quality design and layout that reflects the character of the area; and Policy H2 of the Burgess Hill Neighbourhood Plan 2015-2031 (NP) which seeks to resist development in back gardens unless it achieves good design without harm to local amenities. Furthermore, it would conflict with the requirement of the National Planning Policy Framework (the Framework) to achieve good design and development that is visually attractive, sympathetic to local character and adds to the overall quality of the area.
13. The appellant contends that although both are adopted policy, the DP should take precedence over the NP given its age. The objectives of NP Policy H2 relate to good design, living conditions and protecting the prevailing character of the area and are therefore consistent with DP Policy DP26 and the Framework. Therefore, NP Policy H2 carries full weight.

Living conditions of neighbouring occupiers

14. The neighbouring property 41 Inholmes Park Road shares a long, angled boundary with the appeal site, much of which is occupied by a dense evergreen hedge which the parties agree is around 4.5 metres high. It is the dominant feature in the existing outlook from the rear garden, sun-room and dining room of No 41, as the existing garage is screened by the hedge and there is only a small shed in the other neighbouring garden.
15. The occupier of No 41 sets out however that the hedge is diseased and is dying back, and that it needs to be significantly reduced in height for maintenance purposes. Given the evidence provided and observed on site, it is clear that part of the hedge has already been removed and that more is dying. Consequently, there is a reasonable prospect that the hedge will be significantly reduced in length, and potentially also in height, in the medium to long term. It therefore cannot be relied upon to provide screening of what would be a permanent dwelling.
16. Without the hedge, the entire side and part of the front of the proposed dwelling would be visible from the rear garden of No 41 and would be relatively close to the sun-room, which protrudes out into the garden. The proposed dwelling would introduce substantial built form into the outlook from these areas, with only the 2m high proposed fence in between. Given its position, No 41's garage would only screen a small part of the proposed dwelling from view from the sun-room, and would have very little impact from the rest of the garden. There would be insufficient space between the proposed dwelling and the stream to provide planting of the size needed to mitigate this impact. As such, it would be a highly prominent and dominant feature in the outlook from the sun-room and garden of No 41 and consequently, would significantly harm the living conditions of the occupiers.
17. The front rooflights of the proposed dwelling would be visible from No 41 but at an angle, such that there would be no direct overlooking between the two properties. Any perception of overlooking from the two bathrooms could be mitigated by obscure glazing the rooflights, which could be secured by condition.
18. The use of the appeal site as a separate dwelling would be likely to increase domestic activity in the vicinity of the garden of No 41, however as that part of the site is already used for domestic purposes the increase would not be significant. As such, occupation of the proposed dwelling would not result in a significant adverse impact on No 41 in respect of noise and disturbance.

19. Turning now to the host property, activity on the appeal site is currently only that of the occupiers and their visitors. The proposal would involve vehicles associated with a separate dwelling passing directly alongside bedroom, kitchen and dining room windows in the side of No 106 and then parking and manoeuvring alongside their garden area. In addition, the gate would belong to the new dwelling, and would be opened and closed adjacent to both dining room windows.
20. The resulting noise and disturbance would not be within the control of the occupiers of No 106 and as such would be materially different to the existing situation. Although the number of vehicle movements would be relatively low, the proposal would nevertheless result in a significant increase in noise and disturbance above that already experienced in this relatively quiet road. As such, it would significantly harm the living conditions of the occupiers of No 106.
21. Although the appellant contends that a 1.8 metre fence would be erected along the new boundary, there is no substantive evidence before me that it could be designed to effectively mitigate noise impacts. In any event, the proximity of the fence to No 106 would substantially restrict the outlook from the side windows, in particular the bedroom and kitchen, which have no other windows and currently have an open aspect. The other side of the dwelling is already constrained by a similar fence and as such the proposal would significantly limit the outlook from the dwelling, to the detriment of the living conditions of the occupiers.
22. Although the appellant, who is the current occupier, is willing to accept these impacts, this does not make them acceptable. The proposed development would be permanent, and the impacts would apply to all future occupiers.
23. Consequently, the proposal would result in significant harm to the living conditions of the occupiers of No 41 in respect of outlook but not privacy; and of No 106 in respect of outlook, noise and disturbance. It would therefore conflict with NP Policy H2 and DP Policy DP26 insofar as they seek to avoid harm to living conditions, including as a result of access arrangements. Furthermore, it would conflict with the Framework requirement to achieve a high standard of amenity for existing and future users.

Living conditions of future occupiers

24. The section of the garden behind the proposed dwelling would have trees to the north and east¹, with the boundary hedge to the west and dwelling to the south. As such, it would be heavily shaded for much of the day and would not therefore provide good quality, useable outside space for future occupiers.
25. However, as set out above it is likely that the hedge will be removed in time. The layout would also provide private garden areas to the side and front of the proposed dwelling, which would be more open and shaded by the trees only in the morning. These would be of sufficient size for day to day activities such as sitting out, hanging out washing, and children playing.
26. Therefore overall, the proposal would not result in significant adverse effects on the living conditions of future occupiers in respect of outside space. Accordingly, there would be no conflict with DP Policy DP26 or the Framework in this respect.

Planning balance

27. The evidence before me is that housing requirements in Burgess Hill have been met, however the housing targets set out in the DP are expressed as minimums

¹ T3 and G4 as labelled on drawing 1884-02 of the Arboricultural Survey Impact Assessment & Method Statement

- and are not a cap on development in this area. The proposal would provide an additional dwelling in a location with good access to facilities and services. The proposal would also meet the Framework objectives of boosting housing land supply, using a small, windfall site in a built-up area and making more effective use of land. However, it would fail to achieve the Framework objectives of good design and a high standard of amenity. As a residential garden in a built-up area the site is excluded from the Framework definition of previously developed land.
28. The appellant's evidence suggests that this is an area of high house prices in relation to earnings, and the proposal would offer a dwelling at the lower end of the market. The only housing needs evidence before me is for affordable housing however, which is not what is proposed here. As such, while it would offer some market choice, there is no substantive evidence that the proposed dwelling would meet an identified local need for market housing of this type.
29. There would be economic benefits through construction of the dwelling and in the longer term, new households would introduce expenditure into the local economy. There would also be additional benefits from further council tax income and a new homes bonus, however, no schemes upon which the bonus would be spent have been identified. In accordance with the Planning Practice Guidance, it would not be appropriate to make a decision based on the potential for the development to raise money for the Council in the absence of evidence to demonstrate how that money would be used to make this particular development acceptable in planning terms. Moreover, the economic benefits of the proposal would be generic and would arise with any housing development. Consequently, I can give them only limited weight.
30. The proposed dwelling would incorporate sustainable construction and energy efficiency features and provide satisfactory internal accommodation. The proposal would meet parking and access requirements and would be appropriately flood resistant and resilient without increasing flood risk elsewhere. However, these would simply meet the needs of future occupiers and mitigate the impacts of the proposal, rather than provide any benefits. These factors are therefore of neutral consequence in the planning balance. Given the small extent proposed, new planting would have only limited biodiversity benefits.
31. Given the modest scale of the development proposed, in the context of the Council having a Framework compliant supply of housing land, the benefits would be commensurately modest, such that they would be outweighed by the significant harm and associated development plan conflict identified above.

Other matters

32. The proposal has the potential to impact on the Ashdown Forest and Lewes Downs Special Area of Conservation. However, as the appeal is being dismissed for other reasons and there is therefore no prospect of any planning permission being granted, I have not considered this matter any further.

Conclusion

33. Overall, taking account of the Framework and the above considerations, including the benefits of the development, I find that material considerations do not indicate that planning permission should be granted for the development, which conflicts with the development plan. The appeal is therefore dismissed.

L McKay

INSPECTOR